



## Recent updates to the Massachusetts Uniform Commercial Code

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On July 1, 2013, Gov. Deval L. Patrick signed into law Chapter 30 of the Acts of 2013. The new law updates Massachusetts' version of the Uniform Commercial Code, codified in Chapter 106 of the General Laws, and adopts the 2010 Amendments to UCC Article 9, Revised Articles 1 and 7, and a number of other amendments to the UCC.

The UCC was first enacted in Massachusetts in 1958 and it had been more than 10 years since any material changes have been made to the Massachusetts UCC.

Here is what the new UCC amendments will do.

### REVISED ARTICLE 1

The amendments to Massachusetts UCC enact the 2001 revisions to Article 1 dealing with the general provisions of the code. There are some key substantive changes.

*Scope.* Section 1-102 makes explicit that the substantive rules in Article 1 apply only to transactions within the scope of the other Articles of the Uniform Commercial Code.

*Good faith.* Section 1-201(b)(20) replaces the current definition of "good faith" ("honesty in fact in the conduct or transaction concerned") with the definition adopted by all but one of the recently revised Articles of the Uniform Commercial Code — "honesty in fact and the observance of reasonable commercial standards of fair dealing."

*Course of performance.* Section 1-303 adds the concept of "course of performance," taken from Articles 2 dealing with sales of goods and 2A dealing with leases of goods, to course of dealing and usage of trade as contractual interpretive tools.

*Statute of Frauds.* Revised Article 1 deletes the Statute of Frauds "for kinds of personal property not otherwise covered" that appears in current section 1-206.

### REVISED ARTICLE 7

The bill would also enact the 2003 revisions to Article 7 dealing with documents of title. A few of the key changes effected by

the revisions are set forth below.

*Definitions.* To permit electronic documents of title in contrast to paper-based ones (referred to as "tangible" documents of title), a document of title must be in a "record" as opposed to a "writing." The issuer of the document determines the format in which the document is initially issued. To convert a tangible document to an electronic document or vice-versa, the person entitled under the document must provide a process by which the person entitled can request the issuer to reissue the document in the alternative medium. The substitute document issued in the new medium will contain a notation that it was previously issued in the other medium. The person who procures issuance of the document in the alternative medium must surrender possession or control of the first document to the issuer and provide a warranty that the person is the person entitled under the surrendered document.

*Control of electronic documents.* A concept of "control" of an electronic document substitutes for the paper-based concepts of possession and indorsement. The essence of the control definition is that the system reliably establishes the person who has rights under the document.

*Delivery of electronic documents.* A tangible document is delivered by voluntary transfer of possession, and an electronic document is delivered by voluntary transfer of control.

*Changes in industry practice.* The Article 7 revisions also take into account changes in industry practice. While the revisions continue the standard of reasonable care that a warehouse must exercise for stored goods, the warehouse can limit its liability without stating a limitation per article or per unit of weight. A warehouse may also, in the ware-



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house receipt or storage agreement, place reasonable requirements regarding the manner and time of presenting claims. A carrier's lien is expanded to proceeds in the carrier's possession.

### TECHNICAL CORRECTIONS TO ARTICLE 9

The bill would make some technical corrections to conform certain aspects of the Massachusetts Article 9 to the official text of Article 9.

*Bank obligations with respect of a control agreement.* The bill would clarify that a bank is not required to enter into or disclose the existence of a control agreement with a secured party claiming a security interest in a deposit account maintained with the bank.

*Secured party liability arising from the security interest alone.* The bill would also clarify that the existence of a security interest or the debtor's authority to deal with collateral, without more, does not subject the secured party to liability in contract or tort for the debtor's actions.

*Re-designating sections of Part 4.* The bill would re-designate sections of Part 4 of Article 9 to coincide with the Part 5 section references in the Official Text of Article 9 as used in all other states' Uniform Commercial Codes.

## 2010 AMENDMENTS TO ARTICLE 9

In addition to providing for the Articles 1 and 7 revisions and the technical corrections to Article 9 referred to above, the bill includes the amendments to Article 9 promulgated in 2010. Here is a brief summary.<sup>1</sup>

*Name to be provided on a financing statement when the debtor is an individual.* If the debtor is an individual whose principal residence is in Massachusetts and the debtor holds an unexpired Massachusetts driver's license or identification card, the debtor's name as shown on the debtor's license or card must be provided on a financing statement.

*Definition of "registered organization."* A registered organization includes an organization whose "birth certificate" emanates from the act of making a public filing (e.g., a corporation, limited liability company, limited partnership or statutory business trust) as well as a Massachusetts business trust.

*Name of registered organization.* The name of a registered organization debtor to be provided on the financing statement must be the name reflected on the "public organic

record" of the registered organization. In most cases, a registered organization's "public organic record" is the articles or certificate of organization or other publicly available record filed with the state to form or organize the registered organization.

*Debtor's change of location; new debtor.* If a debtor changes its location to a new jurisdiction or a new debtor located in a new jurisdiction becomes bound by the original debtor's security interest, a financing statement filed in the original jurisdiction is effective to perfect a security interest in collateral acquired within the four months after that event. The secured party can continue the perfection beyond the four-month period by filing a financing statement or otherwise perfecting under the law of the new jurisdiction within the four-month period.

*Other changes.* The amendments provide for other changes: (a) only an initial financing statement may indicate that the debtor is a transmitting utility; (b) a filing office will no longer be permitted to reject a financing statement that fails to provide the type of organization of the debtor, the jurisdiction of organization of the debtor,

or the organizational identification number of the debtor or a statement that the debtor has none; (c) an information statement may, but need not, be filed by a secured party of record who believes that an amendment or other record relating to the financing statement of the secured party of record was filed by a person not entitled to do so; and (d) the uniform forms of initial financing statement and amendment have been updated to reflect the amendments.

*Transition rules.* The amendments contain their own set of transition rules with an effective date of July 1, 2013. ■

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<sup>1</sup> The 2010 amendments to Article 9 are discussed in greater detail, with statutory citations and with summaries of changes to the Official Comments, in Edwin E. Smith, "A Summary of the 2010 Amendments to Article 9 of the Uniform Commercial Code," *Uniform Commercial Code Law Journal*, Number 4 (2010).