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Uniform Commercial Code

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ing with the protection of security interests.¹⁸ Pennsylvania enacted a vehicle code;¹⁹ California recodified its motor vehicle law;²⁰ and New Mexico passed a motor vehicle sales finance act.²¹

Two states, Alabama and Iowa, enacted legislation permitting corporations to sell, lease, exchange, mortgage, or otherwise dispose of all or substantially all, of the corporate assets and property, without stockholder approval, when in the ordinary course of business, otherwise only with stockholder consent.²²

BRIAN T. CALLAHAN

UNIFORM COMMERCIAL CODE

LEGISLATIVE DEVELOPMENTS

Three states have recently enacted the Uniform Commercial Code. On August 27, 1959 the Governor of New Hampshire signed a bill making the UCC the law of that state effective July 1, 1961, the same date on which the Connecticut Act goes into effect. In Kentucky the effective date of the Code is July 1, 1960.

The Ohio House of Representatives passed the UCC and the judicial committee of the Senate reported it out favorably. However, the rules committee of the Senate failed to allow the Code to be voted upon because of the pressure of pre-adjournment business. Further action must now await the 1961 session.

Study Commissions for the Code have been created by legislation in Georgia, Indiana, New Jersey, New Mexico, Rhode Island, and Wyoming, with California considering the creation of such a Commission.

Steps are being taken in Illinois, Kansas, Maine, Maryland, Michigan, North Dakota, and Utah to have the Code prepared for legislative consideration either this year or in 1961.

The Legislature of Washington has referred the Code to a Statutory Law Commission for study and report in 1961.

MASSACHUSETTS AMENDMENTS

In Massachusetts a number of amendments were enacted to the UCC dealing with investment securities and secured transactions, as covered by Articles 8 and 9 respectively.

By amendment to § 8-304, a purchaser of an investment security is not charged with notice of an adverse claim merely because he knows it is held for a third person, unless he has actual knowledge (rather than reason to

¹⁸ Ark. Acts 1959, Act 183, 307; Cal. Civ. Code §§ 2981, 2982; Fla. Laws 1959, H.B. 798, 799; Iowa Laws 1959, H.B. 309.

¹⁹ Pa. Laws 1959, H.B. 500.

²⁰ Cal. Laws 1959, ch. 3.

²¹ N.M. Laws 1959, S.B. 165.

²² Ala. Laws 1959, S.B. 261; Iowa Laws 1959, H.B. 368.

know as under the section prior to amendment) that the transaction is for the benefit of such third person. By amendment to § 8-381, a good faith delivery of such securities by an agent or bailee in accordance with his principal's instructions frees him not only from liability for conversion if his principal had no right to dispose of the securities (as provided under the section prior to amendment), but also from liability for participation in breach of fiduciary duty.

Amendments to §§ 8-402 and 8-403 deal with issuers of investment securities. By the amendment to the first section an issuer seeking assurance of the effectiveness of an indorsement of a non-court appointed fiduciary, need no longer secure a certificate of appointment or incumbency from the fiduciary, a document showing the appointment, or "other evidence reasonably deemed by the issuer to be appropriate" being sufficient. The issuer is not charged with notice of the contents of any such document except as it relates to the appointment or incumbency. § 8-403 which limits the duty of the issuer with respect to adverse claims, has been amended to impose upon him the obligation of inquiry as to such claims brought to his attention by notification, only where the notification is in a writing identifying the claimant, the registered owner, the issue of which the security is a part, and containing the claimant's address.

The first amendment to Article 9 dealing with secured transactions is found in § 9-207. As amended a secured party may use or operate collateral to preserve it or its value, or pursuant to court order, consistent with the security agreement. Consumer goods are excepted. Prior to amendment the collateral could be used only in connection with custody and preservation. Now reasonable expenses incurred in the use or operation of the collateral are chargeable to the debtor and secured by the collateral.

The amendments to §§ 9-301 and 9-312 deal with the purchase money security interest holder. Under the first section if he files his statement within ten days before or after he gives value he will be preferred over a transferee in bulk or a lien creditor whose interest arises between the time his interest attaches and his filing. By the amendment the ten day fore-and-aft period is dated from the time the collateral comes into the possession of the debtor rather than from the date the value is given. § 9-312 has been amended to conform with § 9-301 with respect to the ten-day-grace period. § 9-312(4) preferred the purchase money security interest holder over a conflicting security interest in the collateral, if his interest was perfected when the debtor received possession of the collateral. As amended, the purchase money security interest is preferred if perfected within 10 days after the debtor receives possession.

§§ 9-403 and 9-405 deal with filing and indexing of secured interests. Under § 9-403 as amended, the index may be made up of the financing or continuation statements themselves or copies of them. If the statement covers fixtures and is filed in the registry of deeds, it is also to be indexed according to the name of the record owner of the real estate. § 9-405 dealing with assignments of security interests and their recording has been

completely rewritten. Now the financing statement showing the assignment of the security interest may be signed either by the original secured party or the assignee as the secured party. Where a separate written statement of assignment is filed, it must be signed by the secured party of record. Such an assignment by separate statement is to be noted on the index of the financing statement.

§ 9-501 deals with the remedies of the secured party upon or after default by the debtor. In addition to remedies specified in the Default Part of Article 9, the amendment allows for such other remedies as may be provided in the security agreement. Limitations are placed on the permissible contractual remedies however, to the extent that waiver may not be had by the debtor of certain rights specifically provided by code sections dealing with the redemption and disposition of collateral, discharge of the obligation by acceptance of the collateral, and accounting requirements with respect to surplus proceeds.

These amendments, so soon after the passage of the UCC in Massachusetts reflect the fact that a statute as all-encompassing as this, can never be said to be completely perfected, but will for some time, at least, be subject to change and modification as the needs of the business and financial community dictate.

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