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Uniform Commercial Code

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delegation of legislative power, and that it authorized price fixing without contractual agreement of any kind, in violation of the Sherman Act.²²

In a very recent case,²³ the Montana Fair Trade Act²⁴ has been held to constitute "price fixing," an activity expressly prohibited by Art. XV § 20 of the state constitution.

ADMINISTRATIVE REGULATIONS

The FTC's Rules of Practice for Adjudicative Proceedings²⁵ have been amended²⁶ so as to allow the hearing examiner to defer ruling on a motion to dismiss, made at the end of the complainant's evidence, until the close of all the evidence. The FTC has announced proposed amendments²⁷ to the twelve rules established under authority of the Fur Products Labelling Act.²⁸ Proposed Trade Practice Rules for the Pleasure Boat Industry have also been announced by the FTC.²⁹ If approved, they would include rules covering representations as to length of a boat, speed claims, maintenance, construction materials and capacity.

RICHARD T. COLMAN

UNIFORM COMMERCIAL CODE

LEGISLATIVE DEVELOPMENTS

The Uniform Commercial Code has already been enacted in the following jurisdictions: Pennsylvania (1953), Massachusetts (1957), Kentucky (1958), Connecticut (1959), New Hampshire (1959), Rhode Island (1960), Arkansas (1961), New Mexico (1961) and Wyoming (1961). Further legislative activity concerning the UCC is expected to reach an all time high in 1961. According to the Uniform Commercial Code Committee, National Conference of Commissioners on Uniform State Laws, the Code has been or will be introduced in the 1961 session of the legislature in twelve additional states. These states are: California,¹ Illinois,² Maine,³ Missouri,⁴

²² 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1-7 (1958).

²³ *Shaggs Drug Center, Inc. v. Union Carbide and Carbon Corp.*, No. 10067, 1961 Trade Cas. ¶ 69,930 (Mont. Sup. Ct. 1961).

²⁴ Mont. Rev. Codes Ann. §§ 85-201 to 85-208 (1947).

²⁵ 16 C.F.R. § 3 (1960).

²⁶ 25 Fed. Reg. 9530 (1960), amending 16 C.F.R. § 3.8(e) (1960).

²⁷ 25 Fed. Reg. 10554, 10779 (1960), proposed amendment to 16 C.F.R. § 301 (1960).

²⁸ 65 Stat. 179 (1951), 15 U.S.C. § 69f.(b) (1958).

²⁹ 25 Fed. Reg. 13245 (1960), proposed 16 C.F.R. § 56.

¹ Code has been introduced and hearings were scheduled for late February. Committees of the State Bar Association and State Bankers Associations have been working on their final recommendations.

² The Code was introduced in the Illinois Senate by 18 prominent Senators.

³ In Maine, the Code was introduced in the legislature on February 7, 1961.

⁴ Very little authoritative information available.

CURRENT LEGISLATION

Montana,⁵ New Jersey,⁶ North Dakota,⁷ Ohio,⁸ Oklahoma,⁹ Oregon,¹⁰ Washington,¹¹ and Wisconsin.¹²

In its August, 1960 report the Commercial Code Committee urges preparation of annotations of the Code in all jurisdictions. They emphasize that this will expedite the passage of the Code once introduced, as it will make clear from the outset what changes in the law are being made. The Committee also stresses the fact that these annotations can be made at relatively little expense. As was exhibited in Massachusetts and Oregon, the work may be done by local law offices thereby requiring a negligible outlay of funds.

Annotations have already been prepared in California, Illinois, Montana, New Jersey, Ohio, Tennessee and Virginia.

In the following states annotations have been begun although they are not yet completed: Alabama, Arkansas, Florida, Idaho, Kansas, Maine, Michigan, Missouri, New Mexico, New York, Oklahoma, Oregon, South Dakota, Texas, Washington, West Virginia and Wisconsin.

The above states are those which have shown the most enthusiasm for the Code. However, there has been marked preliminary activity in North Carolina and Utah and the Code is being studied in all other states except Alaska, Colorado, Hawaii, Louisiana and South Carolina.

AMENDMENTS

In the nine states in which the UCC has already been passed the legislatures have not dealt with the Code to any great extent recently. This would seem to be an encouraging sign because, as the Commercial Code Committee pointed out, "the practice of miscellaneous amendment would rapidly destroy the Code's principal appeal, namely, that when it becomes the law of all the states, the statutory law regulating commercial transactions will be uniform."¹³ However, a bill was introduced in the Massachusetts House¹⁴ to amend

⁵ The Code was introduced on January 18, 1961.

⁶ The Legislative Committee of the State Bankers Association has unanimously endorsed the Code. The Legislative Commission appointed to study the Code has made its report to the Legislature and the Code will be introduced soon after the Legislature has convened.

⁷ In North Dakota the Code was introduced into the legislature and passed the House of Representatives in mid-February.

⁸ The Bill was introduced into the Senate on January 11, 1961, and was referred to the Senate Judiciary Committee for study.

⁹ In Oklahoma the Code was introduced simultaneously in both House and Senate on January 9, 1961. Joint hearings are being held.

¹⁰ In Oregon the Bill was introduced in the House of Representatives on January 9, 1961.

¹¹ In Washington the Code was introduced early in this year's session of the Senate.

¹² The Code is being studied by the Legislative Committee. If this study is completed in time, the Code will probably be introduced in Wisconsin in April.

¹³ Mid-Winter Report of the Commercial Code Committee 8 (1961).

¹⁴ House Bill 1344, Mass. House of Representatives. The bill at printing was in

§ 3-305(2), which excepts certain "real defenses" from cut-off by holders in due course. The amendment adds another exception:

(f) That, if the instrument was received for financing the purchase of consumer goods, as defined in § 9-109(1) hereof, the holder shall be subject to any defenses which the buyer of the said goods may have against the seller of such goods.

By adding purely personal defenses to the list the amendment is out of harmony with the policy of the Code Committee against piecemeal amendments and would, in many instances, in effect destroy the entire purpose and utility of negotiable instruments. Many states have protected buyers of consumer goods from cut-off of personal defenses by holders in due course by making use of negotiable instruments in the financing illegal.¹⁵ Article 9 expressly yields to such statutes.¹⁶

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the hands of the Judiciary Committee.

¹⁵ See N.Y. Pers. Prop. Law § 403(1). Mass. Gen. Laws Ann. ch. 255B regulates instalment sales of motor vehicles but does not prohibit use of negotiable instruments.

¹⁶ UCC §§ 9-201, 9-203(2).