

HOUSE No. 00022

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven.
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THE COMMONWEALTH OF MASSACHUSETTS

COMMISSION ON UNIFORM STATE LAWS

C/O ONE FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

The Honorable Steven T. James

Clerk of the House of Representatives

State House, Room 145

Boston, Massachusetts 02133

November 3, 2010

Dear Clerk James:

In accordance with the provisions of Section 33 of Chapter 30 of the General Laws and under the authority granted to it by the provisions of Section 27 of Chapter 6 of the General Laws, the Board of Commissioners on Uniform State Laws herewith respectfully submits the following legislative recommendation for filing and action in the 2011-2012 legislative session.

1. AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.

This legislation would adopt the Uniform Trade Secrets Act promulgated by the Uniform Law Commission (the ULC) in 1979 (and revised in 1985) with some modifications recommended by the Boston Bar Association and presented in the previous legislative sessions. The legislation would codify the common law, with proper clarification, on rights and remedies arising from the misappropriation of trade secrets, which may have significant commercial value for a business or other enterprise.

2. AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

This legislation would adopt the Uniform Assignment of Rents Act promulgated by the ULC in 2005. The legislation provides basic rules that establish the "security interest" of a creditor in the rent (income) from rental property, the rights of tenants to notice and the effect of notice, and the priority of the security interest against other creditors. The bill removes a number of uncertainties under current law, thereby facilitating the extension of credit secured by interests in real estate rents.

3. AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING GENERAL PROVISIONS, DOCUMENTS OF TITLE AND SECURED TRANSACTIONS.

The first set of sections in the proposed legislation revises in three broad ways various provisions of the Uniform Commercial Code (UCC) as appearing in Chapter 106 of the General Laws. First, the proposed legislation updates Article 1 of the UCC, which provides definitions and general provisions. The Article 1 revisions were promulgated by the ULC in 2001. Second, the proposed legislation revises Article 7 of the UCC, which deals with documents of title, such as bills of lading and warehouse receipts. The most important changes relate to allowing for the possibility of documents of title to be in electronic form. The Article 1 revisions were promulgated by the ULC in 2003. Third, the proposed legislation makes certain technical amendments to Article 9 of the UCC. The most substantive changes would provide rules for security interests in electronic documents of title in order to coordinate Article 9 with the Article 7 amendments set forth in the bill.

The second set of sections in the proposed legislation amends Article 9 of the UCC, under amendments promulgated by the ULC in 2010, to, among other things, provide greater guidance as to the name of an individual debtor to be provided on a financing statement, further improve the filing system for filing financing statements, provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity, and make a number of technical changes that respond to issues arising in the marketplace. The second set of sections provides for a uniform effective date for those sections of July 1, 2013, and contain a set of transition rules.

4. AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS.

The proposed legislation makes certain amendments to Articles 3 and 4 of the UCC promulgated by the ULC in 2002. Article 3 deals with negotiable instruments, such as checks and negotiable promissory notes. Article 4 deals with bank deposits and collections. The proposed legislation would clarify existing rules for lost negotiable instruments and how a maker of a negotiable note obtains a discharge on payments when the note has been sold. It also removes various barriers to electronic commerce, protects consumers who have claims or defenses on negotiable promissory notes issued for the purchase of consumer goods, conforms the state law rules on telephonically generated checks to newly issued federal regulations, and updates the provisions of Article 3 dealing with guaranties on negotiable instruments.

5. AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES.

This legislation would adopt the Revised Uniform Arbitration Act promulgated by the ULC in 2000 as a replacement for the Uniform Arbitration Act trust it previously promulgated in 1955. Massachusetts adopted the prior act in 1960, which appears as Chapter 251 of the General Laws as the Uniform Arbitration Act for Commercial Disputes. The proposed legislation would modernize the existing statute, particularly in light of the Federal Arbitration Act and the rise in use of the arbitration approach. Specialized matters such as arbitration of labor disputes would remain outside the scope of this legislation.

6. AN ACT RELATIVE TO THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

This legislation would update and add to Chapter 209B, of the General Laws, which was based on the 1968 Uniform Child Custody Jurisdiction Act, with the 1996 Uniform Child Custody Jurisdiction and Enforcement Act, which among other things provides for continuing exclusive

jurisdiction in the home state.

7. AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COURT MONEY JUDGMENTS

This legislation would update Chapter 253, Section 23A, of the General Laws, which was based on the 1962 version of the Uniform Foreign Money-Judgments Recognition Act, with the 2005 Uniform Foreign-Country Money Judgments Recognition Act, which adds provision on burden of proof, procedure, and a statute of limitations.

8. AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

This legislation would adopt the Uniform Mediation Act promulgated by the ULC in 2001. The legislation focuses on communications (notices) and privileges in the mediation process to promote confidence in, and the integrity of, that form of alternative dispute resolution. The bill adopts optional text that specifically requires a mediator to be impartial unless agreed otherwise.

9. AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW

This Act standardizes the most important features of collaborative law, a form of alternative dispute resolution that is becoming more popular in the states. Collaborative law is now used mainly in family law disputes, but its practice has spread to other areas of the law, including the settlement of contract and insurance disputes. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent

Sincerely,

EDWIN E. SMITH,

Uniform Law Commissioner.