

HOUSE No. 26

The Commonwealth of Massachusetts

The Commonwealth of Massachusetts

COMMISSION ON UNIFORM STATE LAWS

c/o Stephen Y. Chow, Commissioner

125 Summer Street, 8th Floor

Boston, Massachusetts 02114

November 5,

2012

The Honorable Steven T. James

Clerk of the House of Representatives

State House, Room 145

Boston, Massachusetts 02133

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 2013-2014 legislative session.

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

This legislation would adopt the Uniform Trade Secrets Act (UTSA) 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. Forty-seven States and the District of Columbia have enacted the UTSA.

2. 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 revises Article 1 of the UCC, which provides definitions and general provisions; among other things, it limits the application of Article 1 to other articles of the UCC and extends to all parties under those articles except Article 5 (letters of credit) the “good faith” required of merchants under Article 2. 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 7 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.

The bill also makes conforming amendments to Articles 2, 2A, 4A, 5 and 8. The legislation relating to Article 1 has already been enacted in 42 States and U.S. Virgin Islands, and the legislation relating to Article 7 has already been enacted in 43 States. The 2010 amendments to Article 9 have already been enacted in 29 States.

3. 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. Ten States have enacted the amendments.

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

This legislation would adopt the Uniform Assignment of Rents Act (UARA) 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. Three States have enacted the UARA.

5. 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 (UCCJEA), which among other things provides for a rebuttable presumption of continuing exclusive jurisdiction in the home State. Massachusetts is the last of the fifty States that has not enacted the UCCJEA (also enacted in the District of Columbia and the U.S. Virgin Islands), leaving it in the odd position that children subject to child custody orders from other States would presumptively remain subject to the jurisdiction of the order-issuing court after removal from the State, but those subject to Massachusetts orders would not.

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

This legislation would adopt the Revised Uniform Arbitration Act (UAA) promulgated by the ULC in 2000 as a replacement for the Uniform Arbitration Act that 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. Sixteen States and the District of Columbia have adopted the revised UAA.

7. AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

This legislation would adopt the Uniform Mediation Act (UMA) 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. The UMA would promote mediation across State lines and has been enacted by ten States and the District of Columbia.

8. AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW.

This legislation would standardize 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. Since its promulgation in 2009, four States and the District of Columbia have enacted the Uniform Collaborative Law Act.

9. 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 (UFCMJRA), which adds provision on burden of proof, procedure, and a statute of limitations. The UFCMJRA has been enacted by 18 States and the District of Columbia.

10. AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

This legislation, prompted by the difficulty of obtaining consular certifications in the security regime post-9/11, would extend to state proceedings the same flexibility that federal courts have employed for since 1976 under 28 U.S.C. § 1746, allowing an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language declaring truth under penalty of perjury. The 2008 Uniform Unsworn Foreign Declarations Act has been enacted in 16 States and the District of Columbia.

11. AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

This legislation would add to the General Laws the Uniform Real Property Electronic Recording Act (URPERA) promulgated by the ULC in 2004 to extend to real property recording the benefits of the Uniform Electronic Transactions Act (UETA) promulgated by the ULC in 1999, which was enacted by the General Court in 2003 as Chapter 110G of the General Laws. URPERA does three fairly simple things to facilitate electronic recording of real property. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an express extension of the principles of UETA to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets statewide standards and requires it to set uniform standards that must be implemented in every recording office. URPERA has been enacted by 26 States, the District of Columbia and the U.S. Virgin Islands. This bill adds URPERA as a new chapter 36A following chapter 36 addressed to the registers of deeds, which the General Court may address to the recorders of the Land Court under chapter 185 by adopting bracketed language in the bill.

12. AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

This legislation would enact the Uniform Electronic Legal Material Act (UELMA) promulgated in 2011 by the ULC in response to an increasing number of states publishing statutes and other legal materials in electronic format only in order to conserve financial resources. UELMA does not require publication in electronic format and does not prescribe particular technologies. However, where the relevant official publisher of legal material chooses to publish an official version of the material electronically, that material must be authenticated by providing a method to determine that it is unaltered; preserved, either in electronic or print form; and accessible, for use by the public on a permanent basis. The bill proposes certain materials and official publishers that may be amended upon further study. In the year since its promulgation, two States have already enacted UELMA.