

# House Research Act Summary

**CHAPTER:** 162

**SESSION:** 2004 Regular Session

**TOPIC:** Uniform Commercial Code, articles 1, 3, 4, and 7 revisions

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## Overview

This act involves the uniform commercial code, usually referred to as “the UCC.” The UCC governs commercial transactions of various kinds in all 50 states. The goal is to have the UCC be as uniform as possible from state to state, but it is adopted and amended by state legislatures, and states are free to have their own variations. Some “nonconforming” provisions are always necessary to make the UCC work well with an individual state’s laws that are outside of the code, and the UCC itself defers to state laws in many situations. Minnesota’s version of the UCC takes up 271 densely worded pages in Minnesota Statutes.

The UCC is continually evaluated and updated by the National Conference of Commissioners on Uniform State Laws (NCCUSL, which is pronounced “neh-kiu-sel”), which also oversees other uniform state laws. Minnesota has representatives (called “commissioners”) on NCCUSL, consisting of the revisor of statutes; three persons “learned in the law” appointed for two-year terms by the governor, attorney general, and the chief justice of the Minnesota Supreme Court; plus any other person who has served as an appointed commissioner representing Minnesota on NCCUSL for at least 20 years (a sort of “life membership”). Most “uniform laws commissioners” are law professors or practicing lawyers.

Changes in a uniform law, such as the uniform commercial code, are adopted and recommended to the states by NCCUSL after several years of study, consultation, and discussion. On the uniform commercial code, NCCUSL receives advice from the Permanent Editorial Board for the Uniform Commercial Code. It usually takes several years for all the states to consider and act on NCCUSL recommendations for changes in uniform state laws.

### **Article 1 – Revision of Uniform Commercial Code**

Article 1 of this act amends Article 1 of the Uniform Commercial Code. It repeals all of Minnesota's current version of Article 1 of the UCC and replaces it with the current uniform version, adopted by NCCUSL in 2001, except that Minnesota keeps its own existing choice of law provision. Article 1 of the UCC contains definitions and general principles that apply throughout the other articles of the UCC, unless another article provides to the contrary.

### **Article 2 – Conforming Amendments to Other UCC Articles**

Article 2 of this act makes conforming changes in other articles of Minnesota's version of the UCC to conform to the changes to Article 1 of our UCC that are made in Article 1 of this act.

### **Article 3 – General Conforming Amendments**

Article 3 of this act makes conforming changes to Minnesota laws that are not part of our UCC that are necessary to conform to the changes to Article 1 of our UCC that are made in article 1 of this act.

### **Article 4 – Uniform Commercial Code**

#### **Article 7 – Electronic Documents of Title**

This article of the act makes changes in Minnesota's version of Article 7 of the UCC. That article deals with documents of title for goods that are in the custody of a commercial warehousing or transportation business. This area of commercial law builds on the principles of the law of bailments, which goes back hundreds of years in Anglo-American law. The basic goal is to keep things clear as to the ownership, possessory, collateral, and other rights of various parties in goods that are in the custody of a storage or transportation business while being stored or shipped. That includes the process of transferring ownership of goods during that time. This new version of Article 7 of the UCC makes changes designed to facilitate the use of electronic (as an alternative to paper) documents of title for the purpose of proof of ownership and other rights and for the purpose of transferring those rights. These changes to Article 7 of the UCC were adopted by NCCUSL in 2003.

### **Article 5 – Uniform Commercial Code**

#### **Conforming Changes**

This article of the act makes conforming changes to other articles of Minnesota's version of the UCC, where necessary to conform to the changes in Article 7 of the UCC made in article 4 of this act.

## **Article 6 – Miscellaneous Conforming Changes**

This article of the act makes conforming changes in our non-UCC laws, where necessary to conform to the changes made in Article 7 of our UCC by article 4 of this act.

## **Article 7 – Uniform Commercial Code Articles 3 and 4**

### **Changes Involving Warranties on Remotely-created Items**

This article of the act makes changes in Articles 3 and 4 of Minnesota's version of the UCC. These changes involve the allocation of risk among banks for what is called "a remotely-created item." That type of "item" is typically created in a telemarketing transaction. Instead of charging the purchase to a credit card, the customer can instead create by telephone a charge against the customer's checking account. It is a sort of orally created check. The telemarketer or other entity to whom the "item" is payable, (the "payee" of the "item") deposits the item in the payee's bank. The risk involved to the banking system is that the "remotely-created item" was created through identity theft or some other type of fraud, and will be rejected by the customer's bank.

The remotely-created item, just as a check, can go through several intermediate collecting banks in more than one state, in the process of getting from the telemarketer's bank in which it was initially deposited to the customer's bank upon which the item was drawn. Minnesota is the first, and so far the only state, to have adopted the new articles 3 and 4 of the UCC, which add, for remotely-created items, transfer warranties similar to those that have been traditionally provided for checks by the payee bank and each intermediate collecting bank to the next bank in the chain. The theory is that the telemarketer's bank, in which the "item" was deposited, is in the best position to protect the banking system from a fraudulent remotely-created "item" deposited by that bank's telemarketing customer. Some other states have adopted non-uniform provisions that are similar to the new UCC articles 3 and 4 in regard to these warranties.

If the item is ultimately rejected by the bank upon which it was drawn, the changes made in this article protect a bank in the chain of "collecting banks" from a warranty claim unless that bank in turn received a warranty from the bank from which it received the check. This can happen, since the check may go through banks in several states, including some with UCC laws that include the warranties for remotely-created items and some with UCC laws that do not.

This issue affects only allocation of warranty risk among banks, and has no effect on bank customers. This article of the act is unrelated to the rest of this act, except that it involves the UCC.