

Mercer Law Review

Volume 43
Number 3 *Lead Articles II - U.C.C. Revisions:
Promises and Pitfalls*

Article 3

5-1992

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Recommended Citation

Kessler, Richard P. Jr. (1992) "Uniform Commercial Code Revisions--State Bar of Georgia Legislative Process," *Mercer Law Review*. Vol. 43 : No. 3 , Article 3.

Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol43/iss3/3

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Uniform Commercial Code Revisions—State Bar of Georgia Legislative Process

by Richard P. Kessler, Jr.*

The National Conference of Commissioners on Uniform State Laws ("NCCUSL") was created by the various states to draft and promote uniform laws for adoption by all states.¹ For over ninety years the NCCUSL has drafted and proposed numerous uniform laws which the various states have enacted, the most notable of which being the Uniform Commercial Code ("UCC"). The UCC was offered to the states for their consideration in 1951.²

The UCC has evolved over the last forty years and revisions adopted by the NCCUSL in response to changing commercial conditions have been submitted to the states for consideration. The State Bar of Georgia has acted as a clearinghouse in Georgia for UCC revisions drafted and approved by the NCCUSL.

Under the bylaws of the State Bar: "No legislative matter shall be recommended, supported or opposed by the State Bar unless such action has been initiated by a written report and has a recommendation from an appropriate committee or section."³ In accordance with these bylaws, revisions to the UCC adopted by the NCCUSL and submitted to Georgia for its consideration are referred to the Uniform Commercial Code Com-

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The views expressed in this Article are those of the author and are not necessarily those of the State Bar of Georgia.

1. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1990-91 Reference Book 2).
2. W. ARMSTRONG, A CENTURY OF SERVICE—A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 75 (1991).
3. Art. II, Sec. 5 of the Bylaws of the State Bar of Georgia.

mittee ("UCC Committee") of the Corporate and Banking Law Section of the State Bar.

An appropriate subcommittee of the UCC Committee reviews both the proposed revisions to the UCC and the existing law in Georgia. The UCC Committee usually engages a reporter to assist the committee in drafting its report and recommendations. Under Standing Board Policy 100 Legislative Policy and Procedure adopted by the Board of Governors of the State Bar of Georgia on June 14, 1986 ("Legislative Policy"), any committee report and recommendation regarding any legislative proposal must include the following:

- (i) The specific legislation, if any, which is pending or proposed.
- (ii) If no specific legislation is pending or proposed, a statement of the issues to be addressed by the legislation.
- (iii) A summary of the existing law.
- (iv) Principal known proponents or opponents of the legislation and, if possible, a brief statement of the reasons for opposition or support by the other interests.
- (v) A listing of any other committees or sections which may have an interest in the legislation and a certification that any such committees have been provided a copy of the proposal simultaneous to its transmission to the Advisory Committee on Legislation.
- (vi) The position which the committee, section or group recommends be adopted by the State Bar of Georgia.⁴

In accordance with the State Bar's Legislative Policy, the report and recommendations of the UCC Committee must contain all of the required elements. One of these elements includes submitting a Georgia version of the proposed NCCUSL revisions to the UCC with any "non-uniform" variations which are required for Georgia. Upon completion and adoption of the report and recommendations by the UCC Committee, the report and recommendations are submitted to the Advisory Committee on Legislation of the State Bar.

The Advisory Committee on Legislation is a committee of the Bar composed of at least nine members, at least six of whom are members of the Board of Governors including the immediate past president.⁵ The Advisory Committee on Legislation considers all bar committee legislative proposals to determine if they fall within the scope of the purposes of the

4. Standing Board Policy 100 Legislative Policy and Procedure § 1.02(a)(1) (adopted by the Board of Governors on June 14, 1986). The UCC Committee (and for that matter any other Bar Committee) is prohibited from taking a legislative position on revisions to the UCC (or any other law) without complying with the provisions of the Bar's Legislative Policy. *Id.* §1.01(b).

5. *Id.* § 1.04(a).

State Bar.⁶ If a legislative proposal passes the initial "scope and purpose" test, the Advisory Committee on Legislation then determines if the substantive elements of the legislative proposal merit recommendation to the Board of Governors for adoption of a legislative position.⁷

All committee reports and recommendations on legislative proposals must be submitted to the Advisory Committee on Legislation at least thirty days prior to a meeting of the Board of Governors of the State Bar.⁸ If the Advisory Committee on Legislation approves of the UCC Committee's legislative proposal concerning revisions to the UCC, the Advisory Committee on Legislation must make a recommendation concerning the proposal to the Board of Governors at its next meeting.⁹

Generally, the Board of Governors must adopt legislative positions no later than the close of the calendar year immediately preceding the 40-day session of the General Assembly, during which the legislation is to be advocated.¹⁰ The Board of Governors is permitted to adopt a legislative position at a later date if, by a two-thirds vote of those present and voting, a determination is made that a need to take a legislative position exists.¹¹

Upon receipt of the recommendation of the Advisory Committee on Legislation, the Board of Governors at its next meeting must also determine if the proposed legislative action on the UCC revisions is within the

6. Bar Rule 1-103 provides:

The purposes of the State Bar of Georgia shall be:

- (a) to foster among the members of the bar of this State the principles of duty and service to the public;
- (b) to improve the administration of justice; and
- (c) to advance the science of law.

RULES AND REGULATIONS FOR THE ORGANIZATION AND GOVERNMENT OF THE STATE BAR OF GEORGIA Rule 1-103 (1991).

7. Standing Board Policy 100 Legislative Policy and Procedure § 104(e) (adopted by the Board of Governors on June 14, 1986).

8. *Id.* § 1.02(a)(1).

9. *Id.* § 1.02(a)(2).

10. *Id.* § 1.02(b).

11. *Id.* § 1.02(b)(1). The Executive Committee of the State Bar of Georgia is also empowered to consider legislative proposals if it determines that the requested legislative action could not reasonably have been submitted for consideration by the Board of Governors or that a significant material change in circumstances since the last meeting of the Board of Governors requires the action. *Id.* §§ 1.02(b)(2), 1.03(a)(3). The President, during a legislative session, may act upon pending or proposed legislation after consultation with and agreement by any two from among the president-elect, the immediate past president and the chair of the Advisory Committee on Legislation. *Id.* § 1.03(c). Any action taken by the Executive Committee or the President must be reported to the Board of Governors at its next meeting. *Id.* § 1.03(d).

scope of the purposes of the State Bar.¹² If this determination is made in the affirmative, the Board of Governors must consider the merit of the legislative proposal.¹³ The Legislative Policy requires the vote of at least two-thirds of the members of the Board of Governors present and voting in order for the bar to support the legislative proposal.¹⁴

If the UCC Committee's legislative proposal receives a two-thirds vote of the Board of Governors, the UCC Committee chair, working with the lobbyist for the State Bar, asks a member of the Georgia General Assembly to author the proposed legislation. After an author is obtained, the UCC revision is submitted to the Legislative Counsel of the State Bar of Georgia who converts the proposed legislation into proper bill form. The bill is proofed by the UCC Committee and then formally introduced by the author into the General Assembly. The lobbyist and the UCC Committee chair work with the author of the bill and assist the members of the appropriate House and Senate committees in understanding the substance of the UCC revisions embodied in the bill. The lobbyist and the UCC Committee chair assists the author in shepherding the bill through the General Assembly, and members of the UCC Committee provide testimony, if required.

Close review and supervision of NCCUSL revisions to the UCC by the State Bar's UCC Committee, as well as the exhaustive formal legislative review procedure required by the State Bar's Legislative Policy, assures the citizens of Georgia that commercial transactions governed by the UCC are consistent with Georgia law and conform to UCC statutes adopted by other states. Through this process, the State Bar of Georgia fulfills its obligation to promote the administration of justice and improve the practice of law.

12. *Id.* § 1.02(a)(3). The State Bar of Georgia is an "integrated bar" comprised of an association of attorneys in which membership and dues are required as a condition of practicing law—created under state law to regulate the State's legal profession. The Supreme Court of the United States in a recent case, *Keller v. State Bar of California*, 110 S. Ct. 2228 (1990) established parameters for legislative conduct on the part of integrated bars. Support of legislation falling outside the scope of purposes of the State Bar could possibly, under *Keller*, expose the State Bar to liability for violating members' constitutional rights. Support of revisions to the UCC clearly falls within the Bar's purposes. *See supra* note 6.

13. Standing Board Policy 100 Legislative Policy and Procedure § 1.02(a)(4) (adopted by the Board of Governors on June 14, 1986).

14. *Id.* § 1.02(a)(4).