

May 30, 2014

The Honorable Nikki R. Haley
Governor, State of South Carolina
State House, 1st Floor
Columbia, SC 29201

Re: H343, R207 – Updates to Articles 1 and 7 of the Uniform Commercial Code

Dear Governor Haley,

On behalf of the South Carolina Bankers Association I write to ask you that you sign in to law H343, R207, a ratified bill that updates Articles 1 and 7 of the Uniform Commercial Code.

The South Carolina Bankers Association is typically a proponent that South Carolina's version of the UCC is up-to-date not only to stay consistent with other states' UCC laws but also with respect to modern commercial practices and case law. These updates do just that. In fact, South Carolina has not updated Article 1 or Article 7 since 1966.

Briefly, the Article 1 updates adopt a number of technical changes that are needed to stay consistent with other articles that have been recently updated such as Article 9 (Secured Transactions). The Article 7 updates clarify that electronic warehouse receipts, bills of lading and documents of title are acceptable in South Carolina. With her permission, I have included with this letter a one-page summary from Senate Judiciary staff attorney Katherine Wells that describes these changes in more detail.

Please contact me if you have any questions or concerns.

With kind regards,



A. O'Neil Rashley, Jr.
Senior Vice President and Counsel

SHORT SUMMARY
BILL COMBINING S. 343 and S. 376
PROVISIONS OF TITLE 36-UNIFORM COMMERCIAL CODE
CHAPTERS 1 and 7 and
MISCELLANEOUS PROVISIONS FROM OTHER UCC CHAPTERS

45 states have adopted these provisions. SC Ports Authority, SC Trucking Assoc., SC Dept. of Ag, and SC Bankers Assoc. support these changes. SC provisions last revised in 1966.

Summary of Changes to Title 36, Chapter 1-General Provisions Adds and revises definitions, especially to create a framework for the use of electronic documents of title, as well as other definitional updates. Amends the definition of “good faith” to incorporate both an objective (“observance of reasonable commercial standards of fair dealing”) and a subjective element (“honesty in fact”). The scope of the UCC clarified that it only applies to transactions that fall under the UCC. Expressly provides that the meaning of an agreement can be determined by the parties' course of performance, course of dealing and applicable usages of trade.

Summary of Changes to Title 36, Chapter 7-Warehouse Receipts, Bills of Lading, and Documents of Title Updates Chapter 7, Title 36 to provide a framework for the use of electronic documents of title by adding and amending definitional sections and substantive provisions to assure that the provisions of Chapter 7 are easily implemented for both paper and electronic records. Additionally, changes to the provisions reflect modern industry practices by eliminating archaic terminology and references to practices that are no longer relevant. No changes to liability allocations and no changes to bailor/bailee relationships from existing law.

Summary of Changes to Chapters 2, 2A, 3, 4, 4A, 5, 8, and 9- The 47 other provisions that are included in the bill are technical amendments to other provisions in the UCC to conform to the changes in Chapters 1 and 7.

Summary of Other Changes The “Official Comments” from the Uniform Law Commission (ULC) are not included in the bill. The Code Commissioner is instructed to include the Official Comments after enactment into the annotated versions of the SC Code, and clarifies that the Official Comments are not indicative of legislative intent. The SC Reporter’s Comments, included in the bill, have been prepared by Professor Philip Lacy, an expert in UCC law from the USC School of Law. They are strictly explanatory, citing either to appropriate SC case law or to other SC Code provisions that need to be considered. The Effective Date would be October 1, 2014, which would give sufficient time for parties affected by these changes to be prepared for these changes.