

HOUSE No. ___

The Commonwealth of Massachusetts

COMMISSION ON UNIFORM STATE LAWS

c/o Stephen Y. Chow, Commissioner

11 Beacon Street, Suite 900

Boston, Massachusetts 02108

November 6, 2018

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 2019-20 legislative session.

1. 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 Uniform Commercial Code 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. Eleven States and the District of Columbia have adopted these amendments.

2. AN ACT TO RENAME THE UNIFORM FRAUDULENT TRANSFER ACT AND MAKE OTHER AMENDMENTS THERETO.

The proposed legislation would adopt the amendments to the Uniform Fraudulent Transfer Act promulgated by the ULC in 2014. The amendments would, among other things, rename the Act as the “Uniform Voidable Transactions Act”, and substitute the word “voidable” for “fraudulent” throughout the Act, to clarify that the elements of common law fraud need not be proven in order for the Act to provide a

remedy. The amendments also provide uniform burdens and standards of proof for an action under the Act and a choice of law rule and would clarify certain defenses to actions under the Act. It has been enacted by nineteen States.

3. 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. Twenty-one States and the District of Columbia have adopted the revised UAA.

4. 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 eleven States and the District of Columbia.

5. 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. Seventeen States and the District of Columbia have enacted the Uniform Collaborative Law Act.

6. AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COUNTRY MONEY JUDGMENTS.

This legislation would update Chapter 235, 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 twenty-three States and the District of Columbia.

7. 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 twenty-one States and the District of Columbia.

8. 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. Eighteen States and the District of Columbia have enacted UELMA.

Respectfully,


STEPHEN Y. CHOW,
Uniform Law Commissioner