

PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE

Agreement Describing the Relationship of The American Law Institute, the National Conference of Commissioners on Uniform State Laws, and the Permanent Editorial Board with Respect to the Uniform Commercial Code

This is an agreement dated July 31, 1986, and amended January 18, 1998, between The American Law Institute (Institute), a corporation organized under the laws of the District of Columbia, with its principal office at 4025 Chestnut Street, Philadelphia, Pennsylvania 19104, and the National Conference of Commissioners on Uniform State Laws (Conference), an unincorporated association, with its principal office at 645 North Michigan Avenue, Suite 510, Chicago, Illinois 60611.

Introduction

A. Background of Agreement

In the period 1944-1945, the Institute and the Conference entered into a cooperative effort on a Commercial Code project, which ultimately became the Uniform Commercial Code (Code) enacted in every state except Louisiana (but there in part) and for the District of Columbia and the Virgin Islands. The Code project involved two goals: (1) the preparation of a complete code of commercial paper, bills of lading and other subjects intended to round out the rules governing the conduct of commerce, and (2) the publication of appropriate commentaries. Some initial work was undertaken by the Conference, but the participation of the Institute was sought because of the belief that local customs and local points of view from every part of the country should be considered, and the magnitude of the project made careful review by many leading lawyers incomparably more advantageous than study by the Conference alone. On the other hand, it was recognized that after the Code project was completed obtaining enactment was the responsibility of the Conference due to its experience in this context (and that obtaining enactment of amendments, revisions and additions to the Code is the duty of the Conference).

An Editorial Board was created composed of the Chief Reporter for the Code project and two representatives from each of the Conference and the Institute to plan and coordinate the work among the several divisions of the project. This Board, upon the successful completion of the project and by agreement between the Institute and the Conference dated August 5, 1961 (and since supplemented on October 10, 1962 and February 22, 1975), evolved into the

Permanent Editorial Board for the Uniform Commercial Code (PEB). The function of the PEB is to assist in attaining and maintaining uniformity in state statutes governing commercial transactions by (1) discouraging non-uniform amendments to the Code by the states, and (2) approving and promulgating amendments to the Code when experience has demonstrated a provision is unworkable or otherwise requires amendment; when court decisions have rendered the correct interpretation of a provision doubtful; when new practices have rendered a provision obsolete or new provisions desirable; and when amendments would lead to wider acceptance of the Code.

The American Bar Association Section on Corporation, Banking and Business Law has complemented the work of the PEB in many ways, including providing comment on the Code as originally promulgated; studies of the merit of non-uniform amendments to the Code in the various states; annual surveys of cases interpreting the Code and developments with respect to the Code with critical analysis as to the results produced; and studies of the need for and the appropriate form of provisions for revisions of the Code with respect to bulk sales and commercial paper and of new areas for coverage with respect to uncertificated securities, personal property leasing and sales of services and intangible property.

B. Purpose of Agreement

The purpose of this agreement with respect to the Uniform Commercial Code is (1) to set out the relationship between the Institute and the Conference with respect to the Code and amendments, revisions or additions to the Code in order to reflect the experience gained by the Conference and the Institute in working with the Code over several decades and in promulgating past amendments to it; (2) to establish a restated agreement superseding the 1961 agreement and its supplements creating the PEB because circumstances with respect to the Code and what is necessary to maintain it as a viable statute have changed considerably since the early 1960's and the role of the PEB should reflect this; and (3) to provide authorization for engaging the continuing assistance of the American Bar Association and, when appropriate, the assistance of other groups to take advantage of the widest possible experience and expertise.

Agreement

A. Relationship Between Institute and Conference

The agreement between the Institute and the Conference with respect to the Code and amendments, revisions or additions to it is:

1. The PEB may make recommendations concerning amendments, revisions, or additions to the Code to the Institute and the Conference. A study committee of the Institute or of the Conference also may recommend a project concerning the Code without a prior recommendation of the PEB, but only after consultation with the PEB. If a project recommendation is approved by the Conference and the Institute, a drafting committee under the auspices of the PEB will be appointed by the Conference and the Institute cooperatively. A majority of the members of a drafting committee shall consist of members from the Conference. The drafting committee shall operate in the usual manner of a Conference drafting committee. The

Conference and the Institute will consult with each other on their appointments to the drafting committee and the Reporter or Reporters for the drafting committee shall be jointly selected by the Conference and the Institute.

2. The Executive Committees of the Institute and the Conference shall determine and allocate the general categories of expenses of any approved drafting project with respect to the Code. The actual project budget shall be administered by the Conference or the Institute as may be agreed, with periodic reports to the other organization.
3. The results of a drafting project shall be submitted by the drafting committee to the Conference and to the Institute in the usual manner. The order and coordination of submission shall be determined by the Executive Committees of each body. If desirable to accommodate pressing commercial need for the drafting product, priority will be given to the project in scheduling consideration by the Conference and the Institute. Any drafting product also shall be submitted to the PEB for its comment at times that will permit it to provide significant guidance and advice, but neither the Conference nor the Institute is bound to follow the advice of the PEB.
4. If there is disagreement between the Conference and the Institute about a drafting project, the Executive Committees of the two organizations with the advice of any existing drafting committee shall attempt to resolve the differences. Any resolution must be approved by the Institute and the Conference according to their respective procedures. In the event of disagreement that cannot be expeditiously resolved each body is free to promulgate its own draft as an alternate amendment to the Code with notation as to its unilateral source or, if appropriate, as an act outside of the Code.

B. *Composition and Functions of PEB*

The agreement of August 5, 1961, as supplemented, creating the PEB is superseded. The agreement between the Institute and the Conference with respect to the PEB is:

- *1. The Institute and the Conference agree to continue the Permanent Editorial Board for the Uniform Commercial Code (PEB). The PEB shall continue in existence until terminated upon written notice by either the Institute or the Conference, in which case the work of the PEB shall be concluded and income and assets distributed to the Institute and the Conference as determined by the Executive Committees of the two bodies, subject to the limitations imposed on the funds received from other sources. The PEB as continued shall consist of twelve members, one of whom shall be the Director of the Institute, and another of whom shall be the Executive Director of the Conference. The other ten members shall be the present members of the PEB and their successors, five of whom

*As amended January 18, 1998.

shall be selected annually by the Institute by its Council and five of whom shall be selected annually by the Conference by its President. Whenever a matter peculiar to one state is before the PEB, any member from that state shall be disqualified from voting. The position of chair of the PEB will rotate between the Institute and the Conference every five years, beginning at the first meeting in 1998 with a member selected by the Conference. The person to be designated chair will be selected by the organization responsible for the designation in accordance with its own procedures after consultation with the other organization. The PEB may obtain the services of legal counsel from time to time upon terms approved by the Director of the Institute and the Executive Director of the Conference. The PEB may also obtain the services of a research director to perform the following functions and any others as may be designated from time to time by the PEB:

- (1) monitoring outside developments in technology, business practices, federal and state legislation that in any way may impact on or relate to the Code, international developments, and other matters considered relevant by the research director;
- (2) summarizing the same for the PEB at each meeting, along with (as required) recommendations to address the matters presented;
- (3) meeting with appropriate American Bar Association Committees, and other groups involved in matters concerning the Code at the direction of the PEB;
- (4) preparing drafts of and seeing through to completion PEB Commentaries, annual reports of the PEB, and such other matters as directed by the PEB;
- (5) receiving and, as directed by the chair of the PEB, acting on communications or requests to the PEB; and
- (6) reporting to the PEB or a designated subcommittee of the PEB at such times and in such manner as specified by the PEB as to the above matters.

The research director may be appointed by the chair of the PEB with the concurrence of the member designated for that purpose from the organization not holding the position of chair, and after consultation with the members of the PEB, for a term not to exceed three years, and may be appointed for successive terms. The terms of the appointment, including an appropriate stipend, will be determined between the PEB, acting through its chair and with the concurrence of the member designated for that purpose from the organization not holding the position of chair, and the person appointed.

- *2. The PEB will request the American Bar Association to appoint one or more representatives to meet with it without voting privileges to advise it on suggestions for the improvement of commercial law in the United States, based upon their experience and studies identifying subjects for

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statutory amendment, revision or addition, or commentary by the PEB. The PEB may also request representatives of other groups, as well as individuals that it may designate from time to time, to meet with it. The expenses of the representatives shall be borne by their sponsoring groups.

3. The PEB shall report annually to the Institute and the Conference before the dates of their respective annual meetings and otherwise as appropriate or requested.
4. Income available for expenditure for PEB purposes shall include the income of the Falk Fund and copyright royalties and similar payments from Code publications, including supplemented Comments or Annotations to the Code. On an annual basis, a representative of the Institute and a representative of the Conference shall determine categories and amounts of expenditures to be made in the coming year and shall prepare a budget based on the determination. An accounting to the Institute and the Conference of the specific income available to the PEB and the specific expenses incurred in its operation for the immediate past period will be rendered on an annual basis or a more frequent interval as may be agreed upon. Income after payment of necessary and reasonable expenses for the performance of the designated functions of the PEB that are budgeted or otherwise approved by the Institute and the Conference shall be reserved to be used in accordance with this agreement in drafting amendments, revisions or additions to the Code or for other purposes the Institute and the Conference may agree upon. The actual administration of the budget of the PEB shall be by the Institute unless the Institute and the Conference otherwise agree.
5. It shall be the function of the PEB to discourage amendments or additions to the Uniform Commercial Code not authorized pursuant to this agreement, to assist in attaining and maintaining uniformity in state statutes governing commercial transactions, and to monitor the law of commercial transactions for needed modernization or other improvement. The PEB may accomplish these functions in any manner consistent with its purpose as stated herein, this agreement between the Institute and the Conference, or approval granted by the Institute and the Conference, including but not limited to:
 - a. making recommendations to the Institute and Conference for amendments, revisions or additions to the Uniform Commercial Code after studies conducted by the PEB upon its own motion or as suggestions by the American Bar Association or other groups indicate action is needed to correct unworkable provisions, to resolve divided interpretation of the law, to accommodate new or developing commercial practices, or to advance acceptance of a uniform commercial law, and thereafter commenting upon any drafting product;
 - b. preparing and publishing supplemental Comments or Annotations to the Uniform Commercial Code and other articulations as appropriate to reflect the correct interpretation of the Code and issuing the same in a manner and at times best calculated to advance the uniformity and

orderly development of commercial law; provided, however, that Annotations or Comments which suggest a substantial departure from an accepted interpretation of the Code shall first also be approved by the Executive Committees of the Conference and the Institute and if those bodies direct shall be circulated for suggestions by interested groups prior to their becoming final;

- c. monitoring significant case law and statutory developments and the course of commercial practices either itself or in cooperation with the American Bar Association or other groups to detect significant divisions of authority, problem areas of commercial law and practice, and non-uniform amendments, and devising recommendations or other methods to deal with these matters including the publication of reports commenting on one or more developments;
 - d. monitoring developments in federal law preempting or otherwise affecting the state commercial law and devising recommendations or other methods to deal with the issues raised; and
 - e. coordinating the proper relationship between statutory commercial law and case law developments impacting upon it in the area of products liability and elsewhere and taking appropriate actions to reconcile the issues.
6. Normally the PEB will meet twice a year with the meetings scheduled to accommodate the requirements of the Institute and the Conference. It or subcommittees of the PEB may meet more often upon approval of the Executive Committees of the Institute and the Conference, as expressed in the budget for the PEB or by other means, and shall meet less often as directed by the Institute and the Conference.

The American Law Institute

National Conference of Commissioners on
Uniform State Laws

By ROSWELL B. PERKINS
President

By PHILLIP CARROLL
President

By GEOFFREY C. HAZARD, JR.
Director

By WILLIAM J. PIERCE
Executive Director

Amended January 18, 1998:

The American Law Institute

National Conference of Commissioners on
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By CHARLES ALAN WRIGHT
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By GENE N. LEBRUN
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