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WHY SOUTH CAROLINA SHOULD ENACT THE UNIFORM COMMERCIAL CODE IN 1965

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To set an appropriate background for this article it should be pointed out that of the 26 states east of the Mississippi River, 19 enacted the Uniform Commercial Code prior to 1965. In 17 of these states the Code is already effective.

Of the 7 states east of the Mississippi River which have not as yet enacted the Code, 3 states other than South Carolina are expected to do so in 1965. These 3 are Alabama, Florida and North Carolina. If South Carolina also enacts the Code, that will leave only Mississippi and Vermont east of the Mississippi River, and perhaps Delaware, which will not have enacted the Code by the end of this year.

Of the eastern states which have enacted the Code, Pennsylvania has been operating under it for almost 11 years, and Massachusetts for more than 6 years. A number of states have had three or more years' Code experience.

The foregoing paragraphs indicate that the Uniform Commercial Code in the year 1965 is not an experimental innovation.

While the Legislatures of the eastern states were much quicker in grasping the desirability and importance of enacting the Code, the states west of the Mississippi River are rapidly catching up.

Of the 24 states west of the River, 10 enacted the Code prior to 1965 and already in 1965 the Code has been enacted in Utah, North Dakota and Iowa,—in the last named state without a dissenting vote in either House of the legislature. The Code is also pending in the legislatures of Texas, Minnesota, Kansas, Colorado, Nevada, Washington and Hawaii. In at least 4 of these states the Code bill has passed one House as this article is being written. If all of these states enact the Code this year, only

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† Mr. Schnader is often referred to as the "Father of the Uniform Commercial Code" because it was he who made the proposal to the National Conference of Commissioners on Uniform State Laws in 1940 to abandon the piecemeal approach to codification of commercial law in favor of a single comprehensive statute. His suggestion was accepted and the Uniform Commercial Code was conceived.—Ed.

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four states west of the Mississippi will have failed to write it on their statute books,—Arizona, Idaho, Louisiana and South Dakota.

The acceptance of the Code by legislatures has been much more rapid than was the acceptance of any other extensive uniform act. In the 12 years since Pennsylvania enacted it in 1953, 31 states have enacted the Code and the legislatures of 11 additional states are now considering it. In addition, the Congress of the United States enacted the Code for the District of Columbia, the legislature of the Virgin Islands was the first to enact it in 1965, and the Code is now being translated into Spanish so that it may be ready for enactment by the legislature of Puerto Rico.

Why, the reader may inquire, has a voluminous statute containing some 400 sections and occupying approximately 200 pages in the printed laws of any state, "caught fire" so rapidly?

The answer is that the pre-Code state laws regulating commercial transactions have for many years ceased to be adequate in the light of the tremendous changes which have occurred in the tempo of business since the turn of this century.

The Negotiable Instruments Law which was enacted by every American jurisdiction was promulgated by the National Conference of Commissioners on Uniform State Laws in 1896, and the other popular uniform commercial acts were promulgated by the same organization in the early years of this century.

When the NIL was being drafted there were very few automobiles in all of the United States. Electric light was just beginning to come into general use. There was no radio or television. Telephones were scarce. There were no airplanes. And the magnificent system of highways which span the length and breadth of the nation today had not yet been conceived. Communication and transportation moved at a snail's pace compared with the rapid fire communication and transportation to which all of us have become accustomed during the last 20 years.

Add to all these considerations the fact that today thousands upon thousands of concerns, large and small, transact business not in only one state,—as was the custom at the turn of the century,—but in many, if not in all, states of the nation. And today billions of items of commercial paper cross state lines in the course of a year.

What does all this have to do with the statutory law regulating commercial transactions?

It seems obvious that the law regulating a particular commercial transaction ought to be the same no matter in what American jurisdiction the transaction may occur. There is absolutely no reason why a concern which does business in every state should be required to comply with different regulatory laws in 50 states in conducting the identical operation in each of those states. If there is any field in which uniformity of state law is really of compelling importance, it is in the field of commercial transactions.

Read what the Senior Vice President of the Mellon National Bank and Trust Company of Pittsburgh wrote to the author last September:

> Further substantial benefit is being obtained as this uniform statute is enacted by additional states. Conversations about loans and other banking transactions involving businesses of other states now include the observation that the other state is or is not a "Code State." The advantage of uniformity in the laws governing commercial transactions is substantial and desirable.

South Carolina has substantial commercial and manufacturing interests and it is safe to say that the South Carolina business and commercial community is anxious for expansion and growth.

South Carolina's neighbor on the south, Georgia, enacted the Code in 1962. Kentucky, Tennessee and Virginia are also Code states. North Carolina, Florida and Alabama expect to enact the Code this year. If these expectations are realized and if South Carolina is not also a Code state, it will be more difficult for the surrounding states to do business in South Carolina and it will at the same time be more difficult for South Carolina to do business in her neighboring states. That alone is a splendid reason for urging the South Carolina Legislature to enact the Code now.

One of the very best statements of the reasons why any state which has not yet done so should enact the Code in 1965 was made in the July 1964 issue (beginning at page 253) of "The Alabama Lawyer" by Messrs. Joseph S. Johnston and J. Vernon Patrick, Jr. of Birmingham.

In the following quotation, we have inserted in brackets the words "South Carolina" after the word "Alabama":

> As Alabama [South Carolina] industries continue to expand their operations into out-of-state markets, the simpli-

fication and streamlining of our commercial laws and the elimination of inconsistencies between the laws of Alabama [South Carolina] and those of other states in which Alabama [South Carolina] industries do business becomes more and more important. The Uniform Commercial Code has now been adopted in the District of Columbia and in twenty-nine states [now 32], including the important commercial States of New York, California, Pennsylvania, and Illinois, as well as neighboring Georgia and Tennessee, and is expected to be enacted in at least twelve other States by the end of 1965. Because of the large number of states in which it has been adopted, the Code must even now be taken into account in advising Alabama [South Carolina] business clients with respect to out-of-state purchases, sales and other operations.

As more and more states adopt the Code, delay on the part of Alabama [South Carolina] in taking the same steps makes our state less attractive to industries which are considering the expansion of their business operations into new territories. Large companies find it possible to establish uniform procedures and policies and to use the same business form in each of the Uniform Commercial Code states in which those companies do business. If it is necessary for a company, before expanding its operations into Alabama [South Carolina], to take account of different laws and otherwise deal with Alabama [South Carolina] in special ways, there is an unnecessary impediment and deterrent to doing business here.

One of the principal advantages which would follow from adoption of the Code is that it would spell out in detail the legal consequences which obtain in particular situations where Alabama [South Carolina] law is now uncertain. For example, Article 5 of the Code would provide Alabama [South Carolina] with a detailed and sophisticated statutory treatment of letters of credit, frequently used in international business transactions. There is at the present time very little Alabama [South Carolina] law with respect to letters of credit. * * * The adoption of the Uniform Commercial Code should, therefore, be of great value to Alabama [South Carolina] businesses and banks interested in entering the international field or in expanding their present international business operations, because it would provide greater

certainty in an important area of the law governing such operations.

Another major advantage of the Code is the resulting simplification of the law. The growth of statutory law and the large number of reported decisions handed down by various courts over the last fifty years have proved to be a two-edged sword. On the one hand, the case-by-case and statute-by-statute development of the law in the various states has gradually evolved a number of complex and reasonably fully developed legal systems, which provided the certainty necessary for the great economic development of the various states over the past fifty years. On the other hand, these legal systems have become increasingly cumbersome and complicated, some of the statutes are poorly drafted, patchwork, make-shift arrangements; and they vary from one state to the next. Important inconsistencies in laws governing commerce have arisen, including some eighty differences in interpretation of the Uniform Negotiable Instruments Law alone over the past sixty years. One practical result is that business firms which do business in several states must use different forms and different procedures in each state. * * * Finally, the present situation unduly complicates the job of lawyers who must advise their clients with respect to business transactions involving more than one state. * * *

Perhaps a few paragraphs on the history of the Code will not be amiss.

One of the guiding motives of the founders of the National Conference of Commissioners on Uniform State Laws in 1892 at Saratoga, New York, was uniformity of statutory law governing commercial transactions. The Conference had hardly begun to function when in 1896 it promulgated the Negotiable Instruments Law which was subsequently adopted by every American jurisdiction.

The NIL was followed by the Uniform Warehouse Receipts Act, the Uniform Sales Act, the Uniform Bills of Lading Act, the Uniform Stock Transfer Act, the Uniform Conditional Sales Act and the Uniform Trust Receipts Act.* Like the NIL, the Uniform Warehouse Receipts Act and the Uniform Stock Trans-

* South Carolina has enacted the following uniform commercial acts: Bills of Lading Act, Negotiable Instruments Law, Stock Transfer Act, Warehouse Receipts Act.

fer Act were enacted by every American jurisdiction. However, for the reasons previously mentioned, these Acts were becoming less and less appropriate to regulate commercial transactions as the years went on and as methods of communication and transportation brought about the acceleration of everything connected with modern business.

An attempt was made to prepare amendments to the uniform commercial acts and thus bring them up to date. However, it was soon discovered that legislatures were prone to consider amendments to uniform commercial acts of less importance, than the acts in their original form. Thus it was that amendments to the Warehouse Receipts Act and to the Sales Act were adopted by less than half of the states which had adopted the original Acts.

All of these factors combined to cause the National Conference of Commissioners on Uniform State Laws in 1940 to initiate the project which finally resulted in the promulgation in 1951 of the Uniform Commercial Code.

The National Conference of Commissioners is a body consisting of an average of three active Commissioners from each state and a number of life members and associate members. Its total membership approximates 225. Even though it initiated the Commercial Code project, it speedily discovered that the project was one which could not be handled by the Conference alone. Accordingly, it invited The American Law Institute, with a membership of approximately 1200 judges and lawyers, to join with it and the invitation was accepted. Thus the product which was promulgated in New York City in the fall of 1951 was the joint work of The American Law Institute and of the National Conference of Commissioners on Uniform State Laws.

The Code is divided into ten articles each of which we shall describe very briefly.

Article 1 is entitled "General Provisions." It consists of two parts, in the first of which the most important sections deal with rules of construction, the extent to which the provisions of the Code may be varied by agreement, the territorial application of the Code and the parties' power to choose applicable law, a provision that the remedies of the Code are to be liberally administered, severability and a provision to the effect that the section captions shall be considered parts of the act for purposes of interpretation. In part 2 there are general definitions applicable throughout the Code, a statement that in all transactions to which the Code applies there shall be an obligation of good

faith, a section on course of dealing and usage of trade and similar general provisions.

Article 2 replaces the Uniform Sales Act. It dispenses with the fictional theory which underlay the old uniform act, namely, that the respective rights of buyer and seller depended to a large extent on which of the parties had title to the goods. The theory of Article 2 is that the respective rights of buyer and seller depend on the agreement between them. There are many provisions in Article 2 which have no counterpart in the Uniform Sales Act. It is one of the most interesting articles of the Code.

Article 3 supplants the Negotiable Instruments Act. It is entitled "Commercial Paper." Its principal function was to resolve the many questions of interpretation which had arisen under the NIL. In 1940 when the Code project was initiated, as many as 80 sections of the NIL's 198 sections had different meanings in different states because the highest courts of those states had interpreted them differently. It is to be hoped that the courts will continue to have little difficulty in ascertaining the true meaning of the provisions of the Uniform Commercial Code on Commercial Paper.

Article 4 is entitled "Bank Deposits and Collections." This is a subject on which the National Conference of Commissioners on Uniform State Laws had never promulgated an act, but on which the American Bankers' Association had promulgated an act which was rather widely adopted. Because of the tremendous volume of commercial paper which moves in commerce every business day, this is one of the most useful as well as the most needed articles of the Code.

Article 5 deals with letters of credit,—a subject on which there had not been any state statutory law prior to the promulgation of the Code. A related fact is that almost all the decisional law on the subject was contained in the reports of the decisions of the New York courts. As the letter of credit is being used to an increasing extent, this article of the Code fills a gap in the law of every state except perhaps New York.

Article 6 on bulk transfers was inserted in the Code because there was a great variety of state statutes on this subject and it was felt that the Code should contain a short article which would substitute uniformity for variety.

Article 7 deals with warehouse receipts, bills of lading and other documents of title. It takes the place of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, irons

out some inconsistencies which existed in the provisions of these two acts and adds provisions which will enable the Article to apply to all types of transportation including those which were not in use when the Code was drafted.

Article 8 is entitled "Investment Securities." It replaces the Uniform Stock Transfer Act but covers a great deal more territory than was covered by that act.

Article 9 is entitled "Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper." This article makes a real contribution to the law of any state. It replaces the Uniform Conditional Sales Act and the Uniform Trust Receipts Act neither of which were adopted by a large number of states. More importantly it replaces the hodge podge of statutory law which existed in every state prior to the adoption of the Code and which still exists in those states which have not as yet enacted it. It is unnecessary to say that the hodge podge refers to the variety of different statutory provisions providing for the use of personal property as security for credit or for loans,—chattel mortgage acts, conditional sales acts, factors lien acts and almost any modification of the foregoing,—each with its own specific requirements as to signature, affidavits, place of filing and so on, which frequently led to unintended dire results for clients because of little errors in exactly meeting the requirements of the legislation.

Article 9 substitutes a very simple procedure. There must be a security agreement between the parties and a financing statement must be filed in the state capitol or locally or both, depending upon which of several options any particular legislature prefers. The Article also permits future accounts receivable and future inventory to be used as security. This provision is of great advantage to "the little businessman" in that it greatly expands his ability to finance his needs.

Article 10 is entitled "Effective Date and Repealer." It has been found generally desirable to permit an interval of from 9 to 15 months to intervene between the passage of the Code and its effective date. This is necessary to enable the personnel of financial institutions and of mercantile establishments, as well as the lawyers of the state, to familiarize themselves with the Code's provisions before it takes effect.

Obviously, it is desirable to have the Code repeal specifically all uniform acts which are replaced by the Code's provisions and

any other statutes of the state which cover the same ground as is covered by any part of the Code.

This has been a very sketchy statement of what the Code contains. The scope of this article does not permit a discussion in detail of the Code's provisions.

After Pennsylvania enacted the Code by a unanimous vote of both houses of its legislature in 1953, there was no further enactment until the Massachusetts Legislature enacted the Code in 1957. The reason was that in 1953 the New York Legislature, instead of enacting the Code, referred it to the New York Law Revision Commission and gave that Commission a large sum of money with which to assemble a staff and make a thoroughgoing line by line examination of the Code.

The report of the New York Law Revision Commission came out early in 1956 and while the Commission found that the preparation of a commercial code embracing practically all phases of commercial laws was entirely feasible, it felt that the Code in its then form was not suitable for enactment by New York.

The Code's Editorial Board, consisting of Judge Herbert F. Goodrich of the United States Court of Appeals for the Third Circuit, Chairman, seven representatives of the Institute and seven representatives of the Conference, had reactivated its staff as the work of the New York Commission went forward. There was an exchange of information and discussion between the staffs of the two organizations so that when the New York Commission's report was made public, it came as no surprise to the Code's Editorial Board. That Board immediately set to work to examine the detailed criticisms and suggestions of the New York Commission and it found it possible to adopt most of the New York Commission's suggestions. Accordingly, the Code which Massachusetts adopted in 1957 was a revised Code,—revised by the Code's Editorial Board in the light of the suggestions coming chiefly from the New York Law Revision Commission.

With the enactment of the Code by Massachusetts, further enactments followed rapidly. However, as state after state enacted the Code, more and more non-uniform amendments were made to the Code's text.

In an effort to stem the tide of amendments and to assure a periodic review of the Code to see whether amendments are needed, a Permanent Editorial Board was established in 1962. This Board is duty bound to review the Code at least once in five

years and to propose amendments which may be necessary because provisions of the Code have been found to be unclear or because changing commercial practices require modifications in the Code's provisions.

This Board has made two reports. Its first report was made in the fall of 1962 and recommended 26 amendments to the Code's text. It also dealt with all other amendments to the Code made by any of the 18 states which up to that time had enacted the Code, giving reasons why the amendments should not be engrafted upon the Codes of other states. The second report was issued in the fall of 1964 and dealt with all non-uniform amendments previously made by any state, which had not been officially promulgated by the Permanent Editorial Board. It rejected all of them and gave its reasons for rejection.

It is hoped that the states enacting the Code in 1965 will adhere strictly to the official text and not add to the non-uniformity which results from varying amendments, thus tending to defeat the very purpose of the Code,—to make uniform the law regulating commercial transactions.

Among the very interesting facts which have developed over the years is that the Code has nowhere been considered a partisan political piece of legislation. When the Code was enacted in Pennsylvania in 1953, both houses of the legislature were Republican by a narrow margin. However, the vote on the Code was unanimous. In 1963 the Pennsylvania Legislature enacted the amendments which had been promulgated by the Permanent Editorial Board in the fall of 1962, thus bringing the text of its Code completely up to date. Again the Legislature was almost equally divided between the two parties but, nevertheless, the Code Bill was enacted unanimously in the Senate and with only one dissenting vote in the House of Representatives.

In state after state, whether the Governor was a member of the Democratic Party or the Republican Party, and whether the legislature was predominantly of one party or the other, the Code was considered on its merits and has never been regarded as a bill having any political implications whatever.

Another bit of history in connection with the enactment of the Code in substantially more than half of all American jurisdictions is that almost everywhere no opposition whatever has appeared to the Code's enactment.

Another remarkable Code fact is that the Code has been enacted by practically every type of American jurisdiction. It

has been enacted by the two most populous states, California and New York, by states with small populations such as New Hampshire, Rhode Island, North Dakota, Montana and New Mexico and even by the Virgin Islands with a 1960 population of only 31,904.

The Code has been enacted by states whose predominant interests are financial, such as New York, or manufacturing, such as Michigan, and by states whose interests are almost solely agricultural, such as Iowa, North Dakota and Wyoming.

A booklet published in the fall of 1964 by the Commercial Code Committee of the National Conference was entitled "Why Should *Your* State Enact the Uniform Commercial Code?". This booklet, after pointing out that the Code was then on the statute books of states containing 72% of the population of the United States, proceeded to discuss the beneficial results which might be expected from the enactment of the Code in any state by the consumer, the bank depositor, the farmer, the manufacturer, the distributor, the retailer and other groups.

As to the consumer, it is pointed out that the Sales Article of the Code furnishes better solutions of problems arising between buyer and seller than those of any previous statute, outlaws the unconscionable contract and provides means of setting it aside, and requires every seller to respond to a warranty of fitness which runs to members of the family of the purchaser and to his guests.

Also, the consumer will profit by the simplification of the manner in which he furnishes security for the price of personal property he buys, as well as by the very clear definition of his rights and duties should he be unfortunate enough to default in his payments.

As practically every adult in the nation is a consumer, these benefits are widespread.

As to the bank depositor, the pamphlet asserts that the Code's provisions state more clearly than they have ever been stated before the rules under which a check travels from bank to bank in the collection process.

The manufacturer gains substantially from the improved law of sales both as to his purchases of raw materials and as to his sales of the finished product.

The distributor, the pamphlet points out, will derive increasingly great benefits as the Code becomes the universal law of

the land. The distributor who does business in every state particularly derives a great advantage in having the same law in every state. The distributor will also benefit from the simplification of the manner of taking security in connection with sales of personal property.

The retailer, like the manufacturer and the distributor, will derive an immense satisfaction from the improved law of sales.

Finally, it is pointed out that the farmer is a consumer as well as a seller of goods and a borrower of money. Thus, he has a direct interest in the improvement of the law regulating sales, bank deposits and collections and security devices.

The pamphlet to which we have been referring is available for distribution to anyone interested in reading it as is also a companion pamphlet entitled "The Uniform Commercial Code in Pennsylvania 1954-1964 and in Massachusetts 1958-1964."

The Code is, or soon will be, in effect in all of the largest commercial centers in the nation,—New York, Chicago, Los Angeles, Philadelphia, Detroit, Baltimore, Cleveland, Washington, St. Louis, Milwaukee, San Francisco, Boston, Pittsburgh, San Diego, Buffalo, Cincinnati and Atlanta.

Can South Carolina afford to put her banks and business concerns in cities such as Columbia, Charleston and Greenville at the disadvantage which will surely be theirs if and when all of the states surrounding them have become Code states? And can South Carolina afford any longer to deny to the ordinary citizen,—the farmer, the consumer, the bank depositor,—the benefits which have resulted in such complete satisfaction with the operation of the Code in Pennsylvania?

Pennsylvania, like South Carolina, is a state of many interests,—agricultural, financial and manufacturing, among others. As the Code's chief proponent when Pennsylvania enacted it in 1953, the author would undoubtedly have been the recipient of complaints and gripes, if there were any, after the Code became effective on July 1, 1954. He can truthfully say that no really substantial complaint concerning the operation of the Code has come to his attention from any segment of Pennsylvania's diverse interests and population.

South Carolina's Legislative Council of the General Assembly has been diligently studying the Code for several years. The Code has been introduced into the Legislature as a Judiciary Committee bill. This indicates that responsible officers of South

Carolina's legislature have found after study that the statements heretofore made regarding the operation and benefits of the Code are correct.

There are many good reasons in favor of the enactment of the Code by South Carolina in 1965. We can think of no good reason to the contrary.