

## Amendment No. 288

Senate Amendment to Senate Bill No. 201

(BDR 8-357)

**Proposed by:** Committee on Judiciary**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend sec. 15, page 11, by deleting lines 1 through 44 and inserting:

**“Sec. 15. 1. Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.**

**2. In the absence of an agreement effective under subsection 1, and except as otherwise provided in subsection 3, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.**

**3. If one of the following provisions of the Uniform”.**

Amend the bill as a whole by adding a new section designated sec. 85.5, following sec. 85, to read as follows:

**“Sec. 85.5.** NRS 104.9207 is hereby amended to read as follows:

BAW

Date: 4/15/2005

S.B. No. 201—Revises provisions of Articles 1 and 7 of Uniform Commercial Code.



104.9207 1. Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. Except as otherwise provided in subsection 4, if a secured party has possession of collateral:

(a) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) The secured party may use or operate the collateral:

(1) For the purpose of preserving the collateral or its value;

(2) As permitted by an order of a court having competent jurisdiction; or

(3) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

3. Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under NRS 104.9104, 104.9105, 104.9106 or 104.9107 ~~[-]~~ ***or section 30 of this act:***

(a) May hold as additional security any proceeds, except money or funds, received from the collateral;

(b) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(c) May create a security interest in the collateral.

4. If the secured party is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor:

(a) Subsection 1 does not apply unless the secured party is entitled under an agreement:

(1) To charge back uncollected collateral; or

(2) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(b) Subsections 2 and 3 do not apply.”.

**If this amendment is adopted, the Legislative  
Counsel's Digest will be changed to read as follows:**

**Legislative Counsel's Digest:**

The Uniform Commercial Code is a set of uniform laws governing commercial transactions, which was originally adopted by the National Conference of Commissioners on Uniform State Laws in 1951. Article 1 of the Uniform Commercial Code sets forth the definitions and other general provisions that, in the absence of any conflicting provision in the Code, apply as default rules for transactions and matters otherwise covered in other Articles of the Code. Article 1 of the Code was enacted in 1965 in Nevada and is codified as NRS 104.1101-104.1208.

This bill repeals and replaces the provisions of Article 1 by enacting new general provisions relating to the construction, application and subject matter of the Uniform Commercial Code. Many of the changes to Article 1 in this bill are nonsubstantive technical changes such as reordering and renumbering sections and adding gender neutral terminology. However, other changes are substantive clarifications and revisions.

Existing law contains substantive requirements relating to the statute of frauds that affect transactions that are not governed by the Uniform Commercial Code. Existing law also addresses the interrelationship between substantive principles of law and the Code and its purposes and policies.

This bill deletes the provisions in Article 1 relating to the statute of frauds and specifically states that the substantive rules of Article 1 only apply to transactions that are within the scope of other Articles of the Uniform Commercial Code. The bill also clarifies that, unless a specific provision of

the Uniform Commercial Code provides otherwise, the Code preempts principles of common law and equity that are inconsistent with the provisions of the Code or its purposes and policies.

Under existing law, the general definition of “good faith” in Article 1 of the Code only encompasses objective honesty.

This bill expands that definition to include the element of commercial reasonableness, which is used in other Articles.

Existing law provides that, absent express terms in an agreement to the contrary, course of dealing and usage of trade may be used in interpreting agreements.

This bill also authorizes use of course of performance in interpreting agreements, in the absence of express terms in the agreement to the contrary.

Article 7 of the Uniform Commercial Code governs the transfer of documents of title, such as warehouse receipts and bills of lading, which are commonly used in the shipment and storage of goods. Adopted by the National Conference of Commissioners on Uniform State Laws in 1951 and enacted in Nevada in 1965 (NRS 104.7101-104.7603), Article 7 has not been revised in any significant manner since its promulgation.

This bill repeals and replaces the provisions of Article 7 and enacts new provisions to provide rules for electronic documents of title. These rules address the recognition of electronic documents of title, the extension of statute of fraud requirements to electronic records and signatures, the establishment of the authenticity of electronic documents of title and the interchangeability between electronic and tangible documents of title. This bill provides that, to the extent possible, the rules relating to electronic documents of title are identical to or similar to the rules for tangible documents of title. This bill also modernizes other provisions of Article 7.

This bill makes various other technical changes to other Articles of the Uniform Commercial Code that are necessary as a result of the revisions to Articles 1 and 7 of the Code.