

Ohio's Logistics Laws Finally Enter the 21st Century

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On March 30, 2011, Ohio Governor John Kasich signed House Bill 9, which permits Ohio to catch up with the rest of the country by modernizing the laws governing Ohio's critical warehousing, transportation, and logistics industries. Specifically, the legislation revised Article 7 of Ohio's version of the Uniform Commercial Code ("UCC Article 7"). UCC Article 7 is the lifeblood of the warehousing, transportation, and logistics industry. Among other things, UCC Article 7 defines what constitutes a document of title, allocates the commercial risk of loss if goods are damaged or lost, and governs the circumstances under which warehouse operators and trucking companies can place a lien on inventory or goods being transported.

These revisions to UCC Article 7 were vital for a number of reasons.

First, the revised UCC Article 7 harmonizes Ohio law with current commercial practices. UCC Article 7 has not been revised since 1951. A great deal has happened since that time with respect to the storage and transportation of goods. For instance, over the past twenty (20) years, commercial parties have begun to use electronic warehouse receipts and electronic bills of lading. While these mechanisms are currently used in practice, they were not expressly addressed under Ohio law. The revised UCC Article 7 unequivocally recognizes and governs electronic documents of title. Therefore, the revised UCC Article 7 promotes economic activity in Ohio by permitting those who wish to do business in Ohio to do so with greater predictability and security.

Second, the revised UCC Article 7 updates antiquated means of limiting liability. For instance, the former UCC Article 7 required parties to limit liability by setting forth a specific liability "per article or item" or "value per unit of weight" on a warehouse receipt. Therefore, contractual limitations of liability that use other reference points (such as a multiple of the storage costs, multiples of pallets or containers, etc.) were arguably ineffective. In short, the revised UCC Article 7 permits parties to agree to a limitation of liability that is expressed in plain and practical language rather than through formulaic, boilerplate text.

Third, the revised UCC Article 7 broadens the circumstances under which a warehouse operator or a trucking company may impose a lien on property in its custody. Under existing Ohio law, a warehouse operator only has a lien on inventory if certain language appears on its warehouse receipt. However, the revised UCC Article 7 permits liens to be created by the plain language of a storage agreement. In other words, commercial parties will now more readily understand the circumstances under which a lien will be effective.

Of course, the revised UCC Article 7 addresses a number of other substantive and non-substantive changes to the law as well. The law becomes effective on June 29, 2011.

In summary, the revised UCC Article 7 will substantially benefit both the providers of warehousing and transportation services as well as the users of such services by improving the predictability of the business environment in Ohio in general. Companies located outside of Ohio need to know what rules will apply if their goods are stored or transported in Ohio. Moreover, companies located in Ohio need to be able to operate in an environment where the law accurately reflects commercial reality.

Forty (40) states have adopted the revised UCC Article 7 and similar efforts to update the law are underway in a variety of others states. Ohio has finally caught up with the rest of the country.

** Marc Blubaugh, Co-Chair of Benesch's Transportation & Logistics Practice Group, was instrumental in the effort to enact revised UCC Article 7 in Ohio.*

Additional Information

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