



UCITA FAILS TO GAIN AMERICAN BAR ASSOCIATION APPROVAL

On February 10, 2003, a resolution recommending "approval" of the Uniform Computer Information Transactions Act (UCITA) by the American Bar Association (ABA) House of Delegates at the 2003 Midyear Meeting was withdrawn by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the body responsible for drafting UCITA.

NCCUSL routinely brings proposed uniform laws to the ABA for approval, as soon as is practicable after their adoption, in keeping with a longstanding agreement between the two bodies; it is notable that NCCUSL waited three years to ask for approval of UCITA.

ABA approval signifies that an act is appropriate for consideration by state legislatures. Normally, NCCUSL partners with both the American Law Institute (ALI) and the ABA in promulgating the Uniform Commercial Code (UCC). The drafting process involves lengthy negotiations that usually lead to a consensus that facilitates approval by all three bodies. In the case of UCITA, this consensus has never existed. In fact, in an unprecedented move, the ALI withdrew from the process in 1999.

The 2003 resolution is the second UCITA resolution to reach the ABA House of Delegates. In 2001, a resolution proposing that the ABA reject UCITA was advanced by one ABA section and subsequently withdrawn when the ABA leadership appointed a working group to study the act. The UCITA Working Group report, completed in early 2002, did not recommend approval. In letters just prior to the meeting this year, seven of the nine members of the Working Group found recent amendments inadequate and advised the delegates not to support the resolution. The President of the American Law Institute also sent a letter indicating his intention, as a House of Delegates member, to vote against the proposal.

Although the resolution was ultimately withdrawn from the Midyear Meeting agenda, five ABA sections and two committees did debate substantive issues prior to the meeting and none concluded that they could support UCITA. These five sections represent over 150,000 members of the association and the vast majority of the House of Delegates. The Business Law, Intellectual Property, Litigation, Science and Technology and Tort Trial and Insurance Sections, all voted to direct their delegates to defer UCITA indefinitely. Every section except Science and Technology further voted to defeat the UCITA resolution if the vote to defer failed.

The ABA Standing Committee on Law and National Security informed NCCUSL President King Burnett (in a Feb. 6, 2003 letter) that it could not support the resolution because UCITA's provisions allowed practices that could "present a significant security concern, potentially affecting key aspects of our nation's critical infrastructure."

After ten years of drafting, three years of legislative effort, and late efforts to amend UCITA, NCCUSL decided to withdraw the resolution to avoid the prospect of outright rejection. The UCITA resolution generated intense debate within the ABA and, despite powerful lobbying on the part of the proponents, no sections approved it- certainly a clear signal that UCITA is not fit for approval anywhere else.