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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1991

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PART 15
5461-5876

tcc

House of Representatives

Wednesday, May 15, 1991

House Bill 5059, as amended by House Amendment
Schedule "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not Voting	7

DEPUTY SPEAKER MARKHAM:

The bill as amended is passed.

CLERK:

Page 8, Calendar 548, Substitute for House Bill
No. 7341, AN ACT REVISING ARTICLES 3 AND 4 OF THE
UNIFORM COMMERCIAL CODE CONCERNING NEGOTIABLE
INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS.

Favorable Report of the Committee on Judiciary.

REP. MINTZ: (140th)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

Thank you, Mr. Speaker. I move acceptance of the
Joint Committee's Favorable Report and passage of the
bill.

DEPUTY SPEAKER MARKHAM:

The question is on acceptance of the Joint

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Committee's Favorable Report and passage of the bill.

Will you remark, sir?

REP. MINTZ: (140th)

Yes, Mr. Speaker. This bill makes numerous changes to Article 3 and 4 of the Uniform Commercial Code. It defines several terms such as "cashier's check." It broadens the scope of Article 3 by loosening certain rules on negotiability. It establishes new rules for determined liability of principals and agents. It makes numerous changes in the fraud allocation rules. It establishes specific statute of limitations in other mostly technical area.

It modernizes the bill. It corrects inconsistencies in the statutes and resolves conflicting interpretations of the UCC 3 and 4. At this point I'd yield to Representative Rogg for a friendly amendment.

DEPUTY SPEAKER MARKHAM:

Representative Rogg of the 67th, do you accept the yield, sir?

REP. ROGG: (67th)

I do, Mr. Speaker. Mr. Speaker, the Clerk has an amendment, LCO6906. Would he please call and may I be allowed to summarize.

DEPUTY SPEAKER MARKHAM:

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The Clerk has an amendment, LCO6906, designated House Amendment Schedule "A".

CLERK:

LCO6906, designated House Amendment Schedule "A",
offered by Representative Rogg, et al.

DEPUTY SPEAKER MARKHAM:

The gentleman has sought leave of the Chamber to summarize. Is there objection? Is there objection? hearing none, proceed, sir.

REP. ROGG: (67th)

Mr. Speaker, the underlying bill is a very long bill, as you all know. It has very -- a great many provisions. There is one, however, I wish to take exception to and that is the fact that it appears to allow the bank to send you just a statement of checks processed without returning your actual check to you.

In the amendment in Section B spells out, "No financial institution may, as a condition of opening a new deposit account, require any deposit or prospective depositor to agree to an electronic presentment as provided in Section 77 of this act." And it goes on from there. In essence, it allows you, as a depositor, to get your checks back at the end of each accounting period.

I move for adoption, Mr. Speaker.

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DEPUTY SPEAKER MARKHAM:

The question is on adoption of House Amendment Schedule "A". Will you remark?

REP. YOUNG: (143rd)

Mr. Speaker. Mr. Speaker, a question, through you, to --.

DEPUTY SPEAKER MARKHAM:

Representative Young of the 143rd.

REP. YOUNG: (143rd)

Representative Rogg. Representative Rogg, many of the brokerage firms offer to their customers an account which has electronic checking as a normal way of doing business within that account and then if you want a check to come back to you from that account, you can get a copy of it.

Would this amendment preclude that kind of an arrangement for that kind of an account?

DEPUTY SPEAKER MARKHAM:

Representative Rogg, please don't whisper.

REP. ROGG: (67th)

Through you, Mr. Speaker, it is the intent of this amendment is to deal with checking accounts per se. We are not attempting to dictate how brokerage houses run their business. It's the checking accounts we are talking about.

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REP. YOUNG: (143rd)

Through you, Mr. Speaker, these are checking accounts. These are -- Merrill Lynch calls it an active asset account type. There are all kinds of accounts. Every brokerage firm now offers it and you have your money in your money market account. You write checks against that account. At the end of the month you get an electronic presentation of what those checks are.

You can get a copy of the check should you wish one, but that's a voluntary account which you enter into and I want to make sure, through legislative intent, that that kind of account is not covered by this amendment.

DEPUTY SPEAKER MARKHAM:

Representative Rogg.

REP. ROGG: (67th)

Through you, Mr. Speaker, it is not the intent of this amendment, as I have said earlier, to affect the brokerage accounts. It is the bank accounts we are talking about.

REP. YOUNG: (143rd)

Thank you, Mr. Speaker.

REP. MINTZ: (140th)

Mr. Speaker.

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DEPUTY SPEAKER MARKHAM:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

Yes, just one quick question to clarify something. In line 53 of the amendment, you talk about return of a check. You can't charge for that. What you mean by returning a check is not for insufficient funds returning a check, but returning the actual check itself, is that correct?

DEPUTY SPEAKER MARKHAM:

Representative Rogg.

REP. ROGG: (67th)

Through you, Mr. Speaker, that is correct. We are talking about the practice, past practice of the bank returning your cancelled checks to you as part of your statement at the end of the account period, through you, Mr. Speaker, thank you.

REP. MINTZ: (140th)

Mr. Speaker, with that clarification, I think this is a friendly amendment. It's a good amendment and we should adopt it.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the amendment?

Representative Farr of the 19th.

REP. FARR: (19th)

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Yes, thank you, Mr. Speaker. Through you, a question to Representative Rogg, for clarification purposes. I'm not exactly -- the amendment says that no financial institute may, as a condition of opening a new deposit account, require a depositor to agree to this and then it says any agreement shall be separate.

Are you -- does this mean that a bank can in fact can require this, but they have to have a separate agreement or are you saying that the bank can't require this at all unless the depositor specifically agrees to it?

DEPUTY SPEAKER MARKHAM:

Representative Rogg.

REP. ROGG: (67th)

Through you, Mr. Speaker, the intent is that the bank cannot force it upon you. If you agree to it, if you are satisfied with just getting an electronic, a listing of whatever checks there were rather than returning your actual cancelled checks as long as you agree to it, that's fine, but I -- the intent is that the bank cannot unilaterally change the practice.

DEPUTY SPEAKER MARKHAM:

Well, through you, Mr. Speaker, to Representative Rogg, it says no charge may be made. Could a bank give a discount to those people who chose not to get their

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checks back, through you, Mr. Speaker, to
Representative Rogg?

REP. ROGG: (67th)

Through you, Mr. Speaker, what the actual final
practice will be, the intent was that they cannot
charge for it, but I suppose they could give a discount
for not giving you the check back, possibly.

REP. FARR: (19th)

Thank you. With that explanation, I think I could
probably live with this. My concern is obviously it
costs banks money to do this and it would seem to me
that if some consumers decided they didn't want this
service, that if they were entitled to get a discount,
they ought to be able to get that discount. I
understand the concern about banks unilaterally telling
people you no longer are going to get the checks back,
but I guess this amendment will work then. Thank you.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the amendment? If not,
I shall try your minds. Those in favor of House
Amendment Schedule "A" please signify by saying aye,.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER MARKHAM:

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Opposed nay.

The ayes have it.

The amendment is adopted and ruled technical.

House Amendment Schedule "A":

After line 5197, insert the following and renumber the remaining section accordingly:

"Sec. 112. Section 36-26c of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Except as otherwise provided in this chapter, no financial institution shall enforce or attempt to enforce any material term, condition, duty or obligation other than those required by law, federal or state governmental regulation, rule or order, court order or clearinghouse rule on any depositor with regard to a deposit account that is opened on or after July 1, 1980, unless such term, condition, duty or obligation is included in the deposit contract governing such account. The provisions of title 42a are "required by law" for the purposes of this subsection to the extent that such provisions are not varied by agreement.

(b) No financial institution shall impose or attempt to impose any charge that is not recited in, or is in an amount greater than recited in, the current schedule of deposit account charges.

(c) No financial institution, other than a credit union or federal credit union, shall pay or attempt to pay interest at a lower effective annual percentage yield than that recited in the current schedule of interest.

(d) NO FINANCIAL INSTITUTION MAY, AS A CONDITION OF OPENING A NEW DEPOSIT ACCOUNT, REQUIRE ANY DEPOSITOR OR PROSPECTIVE DEPOSITOR TO AGREE TO ELECTRONIC PRESENTMENT, AS DEFINED IN SAID SECTION, SHALL BE SEPARATE FROM THE DEPOSIT CONTRACT AND SHALL BE EXPLAINED TO THE DEPOSITOR OR PROSPECTIVE DEPOSITOR PRIOR TO OPENING A NEW DEPOSIT ACCOUNT. NO CHARGE FOR THE PROCESSING AND RETURN OF ANY CHECK OR OTHER ITEM MAY BE IMPOSED BY A FINANCIAL INSTITUTION ON A DEPOSITOR WHO DOES NOT AGREE TO ELECTRONIC PRESENTMENT UNDER THIS SUBSECTION."

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DEPUTY SPEAKER MARKHAM:

Will you remark further on the bill as amended?
Representative Maddox of the 66th.

REP. MADDOX: (66th)

Yes, thank you, Mr. Speaker. I just have one brief question, if I may, through you, to the proponent. On lines 2026 to 2034, it's talking in there on ordinary care where shifting the burden, I'll give you an opportunity to find the section I'm talking about. We're now shifting the burden to ordinary care. What I wanted to find out here, and just for the record, to clarify in my own mind when we mean ordinary care. I have a checkbook and say it's just sitting on my desk and someone steals a check out of that and then forges that, would it be just ordinary care if where it's normally keep it or would I now have to start locking up my checkbook or something of that nature, through you, Mr. Speaker?

REP. MINTZ: (140th)

Through you, Mr. Speaker, that would be a question of fact that the trier of fact would have to determine, but in the case of those kinds of situations in the definition of ordinary care in lines 110 through 114, it talks about the banks procedures in terms of

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checking on those checks do not very reasonably, from the general banking uses and my understanding of general banking usage, it depends on the size of the check. If it's a large check, you'll still have to check the signature to see in fact if it is -- compares to the signature card and if it's a smaller check, they may not have to, but in terms of the negligence on the makers or the alleged maker's side, that would be a question for the trier of fact.

REP. MADDOX: (66th)

Okay, and just one final question, if I may, through you, on the same point. A check is, say I lose my checkbook and I call the bank and I notify them. I assume that that is all covered under this. Is that -- I would then be taking ordinary care and would not be liable?

REP. MINTZ: (140th)

Through you, Mr. Speaker, yes, that's correct.

REP. MADDOX: (66th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the bill as amended? If not, staff and guests please come to the well of the House. Members take their seats. The machine will be opened.

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CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber please.

DEPUTY SPEAKER MARKHAM:

Have all members voted? Have all members voted? Please check the roll call machine to see that your vote is properly cast. The machine will be locked. The Clerk please take a tally. Representative Polinsky.

REP. POLINSKY: (38th)

In the affirmative, sir.

DEPUTY SPEAKER MARKHAM:

Representative Polinsky casts her vote in the affirmative.

The Clerk please announce the tally.

CLERK:

House Bill 7341, as amended by House Amendment Schedule "A".

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not Voting	6

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DEPUTY SPEAKER MARKHAM:

The bill as amended is passed.

CLERK:

Page 9, Calendar 55, Substitute for Senate Bill 234, AN ACT CONCERNING THE PROTECTION OF PUBLIC DEPOSITS. (As amended by Senate "A").

Favorable Report of the Committee on Appropriations.

REP. RITTER: (2nd)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Ritter of the 2nd.

REP. RITTER: (2nd)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER MARKHAM:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate. Will you remark, sir?

REP. RITTER: (2nd)

Yes, Mr. Speaker. This is a very important bill, one that we spent last year studying and indeed could have been the first bill this whole Legislature was to vote on because this really could have determined the

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House of Representatives

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machine will be opened.

CLERK:

The House of Representatives is voting by roll.

Members to the Chamber, please. Members to the Chamber, please. The House is voting by roll call.

SPEAKER BALDUCCI:

Have all the members voted and is your vote properly recorded? If all the members have voted, the machine will be locked. The Clerk take a tally. The Clerk please announce the tally.

CLERK:

House Bill 6914 as amended by House Amendment "A", "B" and Senate Amendment "B".

Total number voting	140
Necessary for passage	71
Those voting yea	140
Those voting nay	0
Those absent and not voting	11

SPEAKER BALDUCCI:

The bill as amended is passed.

CLERK:

Calendar 548 on Page 16, Substitute for House Bill 7341, AN ACT REVISING ARTICLES 3 AND 4 OF THE UNIFORM COMMERCIAL CODE CONCERNING NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS, as amended by House "A".

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Favorable Report of the Committee on Banks. The Senate rejected House "A" on June 3rd.

REP. RITTER: (2nd)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Ritter of the 2nd.

REP. RITTER: (2nd)

I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

SPEAKER BALDUCCI:

The question is on passage. Will you remark?

REP. RITTER: (2nd)

Mr. Speaker, at this time, I'd like to yield to Representative Moukawsher, please.

SPEAKER BALDUCCI:

Representative Moukawsher of the 40th, do you accept the yield?

REP. MOUKAWSHER: (40th)

Yes, Mr. Speaker, thank you. Would the Journal please note that I'll be absenting myself from the Chamber for a possible conflict of interest on this bill. Thank you.

SPEAKER BALDUCCI:

The Journal will note, Sir.

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REP. RITTER: (2nd)

Mr. Speaker, I would also like to yield to Representative Wilber, please.

SPEAKER BALDUCCI:

Representative Wilber of the 133rd, do you accept the yield, Madam?

REP. WILBER: (133rd)

Yes, Mr. Speaker. It's late in the morning. Mr. Speaker, may I be excused on a possible conflict of interest.

SPEAKER BALDUCCI:

The Journal will note, Madam.

REP. RITTER: (2nd)

I think that's it, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Ritter.

REP. RITTER: (2nd)

Yes, thank you, Mr. Speaker. We've already passed this bill concerning Article 3 and Article 4 as the work of the Law Revision Commission.

When the bill was before us before, we added House "A". The Senate rejected it and I talked to the proponent of House "A" and he believes that we should go ahead in concurrence with the Senate, and with that, Sir, I move its passage.

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SPEAKER BALDUCCI:

The question is on passage. Will you remark?
Representative Ritter, House "A" was rejected by the
Senate on June 3rd.

REP. RITTER: (2nd)

Mr. Speaker, the Clerk has LCO Number 6906. If he
may call, and I be allowed to summarize.

SPEAKER BALDUCCI:

The Clerk please call LCO6906 previously designated
House Schedule "A".

CLERK:

LCO6906, House "A" offered by Representative Rogg
et al.

SPEAKER BALDUCCI:

The question is on summarization. Is there
objection? Representative Ritter.

REP. RITTER: (2nd)

Yes, Mr. Speaker. As I said earlier, this is the
amendment which, particularly Representative Rogg
worked hard on, but at this point, I move its
rejection, Sir.

SPEAKER BALDUCCI:

The question is on rejection. Will you remark? If
not, all those in favor of rejection, signify by saying
aye.

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REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed, nay. The ayes have it. House "A" is
rejected.

House Amendment Schedule "A".

After line 5197, insert the following and renumber
the remaining section accordingly:

"Sec. 112. Section 36-27c of the general statutes
is repealed and the following is substituted in lieu
thereof:

(a) Except as otherwise provided in this chapter,
no financial institution shall enforce or attempt to
enforce any material term, condition, duty or
obligation other than those required by law, federal or
state government regulation, rule or order, court order
or clearinghouse rule on any depositor with regard to a
deposit account that is opened on or after July 1,
1980, unless such term, condition, duty or obligation
is included in the deposit contract governing such
account. The provisions of title 42a are "required by
law" for the purposes of this subsection to the extent
that such provisions are not varied by agreement.

(b) No financial institution shall impose or
attempt to impose any charge that is not recited in, or
is in an amount greater than recited in, the current
schedule of deposit account charges.

(c) No financial institution, other than a credit
union or federal credit union, shall pay or attempt to
pay interest at a lower effective annual percentage
yield than that recited in the current schedule of
interest.

(d) NO FINANCIAL INSTITUTION MAY, AS A CONDITION OF
OPENING A NEW DEPOSIT ACCOUNT, REQUIRE ANY DEPOSITOR OR
PROSPECTIVE DEPOSITOR TO AGREE TO ELECTRONIC
PRESENTMENT, AS PROVIDED IN SECTION 77 OF THIS ACT.
ANY AGREEMENT FOR ELECTRONIC PRESENTMENT, AS DEFINED IN

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SAID SECTION, SHALL BE SEPARATE FROM THE DEPOSIT CONTRACT AND SHALL BE EXPLAINED TO THE DEPOSITOR OR PROSPECTIVE DEPOSITOR PRIOR TO OPENING A NEW DEPOSIT ACCOUNT. NO CHARGE FOR THE PROCESSING AND RETURN OF ANY CHECK OR OTHER ITEM MAY BE IMPOSED BY A FINANCIAL INSTITUTION ON A DEPOSITOR WHO DOES NOT AGREE TO ELECTRONIC PRESENTMENT UNDER THIS SUBSECTION."

SPEAKER BALDUCCI:

Will you remark further on the bill? Will you remark? If not, staff and guests to the well. Members please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members please report to the Chamber. The House of Representatives is voting by roll call. Members to the Chamber, please.

SPEAKER BALDUCCI:

Have all the members voted and is your vote properly recorded? If so, the machine will be locked. The Clerk take a tally. Representative Parker of the 95th.

REP. PARKER: (95th)

Thank you, Mr. Speaker. In the affirmative.

SPEAKER BALDUCCI:

Representative Parker in the affirmative. The Clerk please announce the tally.

CLERK:

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House Bill 7341:	
Total number voting	142
Necessary for passage	72
Those voting yea	142
Those voting nay	0
Those absent and not voting	9

SPEAKER BALDUCCI:

The bill is passed.

CLERK:

Page 11, Calendar 462, top of the page, Substitute for House Bill 5030, AN ACT CONCERNING RECYCLING OF ANTIFREEZE, as amended by House "B". Favorable Report of the Committee on GAE. The Committee recommends passage with House "B".

REP. SAMOWITZ: (129th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Samowitz of the 129th.

REP. SAMOWITZ: (129th)

Thank you, Mr. Speaker. I move for adoption and acceptance of the Joint Committee's Favorable Report as amended by House "B".

SPEAKER BALDUCCI:

The question is on passage. Will you remark?

REP. SAMOWITZ: (129th)

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SENATOR O'LEARY:

Calendar 483 is marked Go. Calendar 484, HB6459, I refer to the Committee on Finance.

THE CHAIR:

Is there any objection in placing Senate Calendar 484, HB6459 to the Committee on Finance? Any objections? Hearing none, so ordered.

SENATOR O'LEARY:

Page 15, Calendar 487 is marked Passed Temporarily. Calendar 488, Substitute HB7341 I refer to the Committee on Banks.

THE CHAIR:

Is there any objection in placing Calendar 488, Substitute HB7341 to the Committee on Banks? Any objections? Hearing none, so ordered.

SENATOR O'LEARY:

The next two items for the Consent Calendar. Calendar 489, Substitute HB7345 and Calendar 490, Substitute HB7118, I move to the Consent Calendar.

THE CHAIR:

Is there any objection...yes, Senator Freedman.

SENATOR FREEDMAN:

Yes, may we remove 490 from the Consent Calendar, please?

THE CHAIR:

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THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Senate Calendar 475, SB938 as amended. The machine is on. You may record your vote. All Senators voted that wish to vote. Have all Senators voted that wish to vote? The machine is closed.

The result of the vote.

26 Yea

9 Nay

1 Absent

The bill passes.

Mr. Clerk.

THE CLERK:

Calendar Page 19, Calendar 488, File 647,
Substitute HB7341, AN ACT REVISING ARTICLES 3 AND 4 OF
THE UNIFORM COMMERCIAL CODE CONCERNING NEGOTIABLE
INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS. As
amended by House Amendment Schedule "A". Favorable
Report of the Committee on BANKS. Committee recommends
passage with House Amendment "A". Clerk is in
possession of three more amendments.

THE CHAIR:

Thank you very much. The Chair recognizes Senator
Casey.

SENATOR CASEY:

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Thank you. I move acceptance of the Joint Committee's Favorable Report and passage of the bill and in concurrence with the House and I also ask the Clerk to call LC07315, first.

THE CLERK:

LC07315 designated Senate Amendment Schedule "A"
offered by Senator Casey of the 31st District.

THE CHAIR:

Thank you very much. Senator Casey.

SENATOR CASEY:

Thank you, Madam President. I move the amendment and ask the reading be waived.

THE CHAIR:

Thank you. Please proceed.

SENATOR CASEY:

Thank you, Madam President. This would make sure that no bank may as a condition of opening up a new deposit account require any depositor or prospective depositor to agree to an electronic presentment unless the depositor has entered into an agreement for electronic presentment which shall be separate from the contract, it shall be explained to the depositor or the prospective depositor prior to opening the account. Also it makes sure that the credit unions would be exempt from this section.

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THE CHAIR:

Thank you very much, Senator. Would anyone else wish to remark on LC07315? Any further remarks? If not, please let me know your mind on Senate Amendment Schedule "A", LC07315. All in favor please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? The ayes have it. The Amendment is adopted. Mr. Clerk. No further amendments?

SENATOR O'LEARY:

Madam President.

THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

Could I ask that the matter be Passed Temporarily.

THE CHAIR:

Alright. You are in full stride. Senator Aniskovich.

SENATOR ANISKOVICH:

Madam President, I was out of the Chamber during the roll call vote on Calendar 475, Substitute SB938 and I would like to be recorded in the affirmative.

THE CHAIR:

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their time and it would allow beer samples to be offered in package stores of beer that is brewed in the state the same way that we currently can distribute wine and cocktails and other kinds of things in the state, new products.

It is a very good bill, Madam President and I would suggest that we adopt it as is.

THE CHAIR:

Thank you. Does anyone else wish to remark on Senate Calendar 291, Substitute HB6877? Are there any further remarks? If not, Senator Allen.

SENATOR ALLEN:

Yes, Madam President, if there is no objection I would like to move that this item be placed on the Consent Calendar.

THE CHAIR:

Thank you. Is there any objection placing Senate Calendar 291, Substitute HB6877 on Consent? Is there any objection? Hearing none, so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 19, Calendar 488, File 647, Substitute HB7341, AN ACT REVISING ARTICLES 3 AND 4 OF THE UNIFORM COMMERCIAL CODE CONCERNING NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS. As amended by House Amendment Schedule "A". Favorable

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Report of the Committee on BANKS. Committee recommends passage with House "A". When the matter was before us moments ago the Senate adopted Senate Amendment Schedule "A" as well. It's LCO7315.

THE CHAIR:

Thank you. Senator Casey.

SENATOR CASEY:

I would move reconsideration of the vote on Senate "A".

THE CHAIR:

Were you on the prevailing side?

SENATOR CASEY:

Yes, I was.

THE CHAIR:

Thank you. You have before you a motion to reconsider Amendment "A" on Senate Calendar 488. Would anyone like to remark on the motion to reconsider only? Anyone wish to remark on it? Senator Casey do you have any remarks you would like to make?

SENATOR CASEY:

Certainly, Madam President, the reason I am asking the Circle to do that is because Senate "A" corrects House "A" and I think at this late date in the Session it would be best to take both this amendment off and the House "A" off and send this bill back to the House

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as it came from Committee.

THE CHAIR:

Thank you. You have before you the motion to reconsider. All those in favor please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? The ayes have it. You now have before you Senate Amendment "A".

SENATOR CASEY:

I would like to withdraw...

THE CHAIR:

No, it's been acted on, you have to move to reject it.

SENATOR CASEY:

Oh, I'm sorry. I move to reject the amendment.

THE CHAIR:

Thank you. You now have a motion before you to reject Senate Amendment Schedule "A", LCO7315. Would anyone wish to remark on that motion to reject? If not, then please let me know your mind. All in favor please signify by saying aye.

SENATORS:

Aye.

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THE CHAIR:

Opposed? The ayes have it. The motion is carried.
You now do not have any Senate Amendments attached to
this bill.

SENATOR CASEY:

Thank you, Madam President. I would now move to
reject House Amendment "A".

THE CHAIR:

Thank you very much, Senator. You now have a
motion to reject House Amendment Schedule "A" on Senate
Calendar 488. Would you care to remark? Any further?
Senator Casey.

SENATOR CASEY:

Thank you, Madam President. Only that this
amendment is defective and it deals with electronic
presentment. It's a very complicated issue and I
would ask the Circle to reject the amendment.

THE CHAIR:

Thank you. Would anyone else wish to remark on the
rejection of the motion to reject House "A"? Anyone
else wish to remark? If not, please let me know your
mind. All those in favor of rejecting House Amendment
Schedule "A" please signify by saying aye.

SENATORS:

Aye.

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THE CHAIR:

Opposed? The ayes have it. The amendment is rejected. Consequently there are no amendments attached to Substitute HB7341.

SENATOR CASEY:

Thank you, Madam President. If I may, this bill makes numerous changes to Article 3 and 4 of the Uniform Commercial Code. These Articles define the legal rules for negotiable instruments like checks, drafts and promissory notes and provide the legal structure that governs the bank collection of checks and other items. If there are no objections I ask that it be placed on the Consent Calendar.

THE CHAIR:

Thank you very much, Senator. Would anyone else wish to remark on Senate Calendar 488, Substitute HB7341 without any amendments? Would anyone else wish to remark? If not, is there any objection in placing Senate Calendar 488, Substitute HB7341 on the Consent Calendar? Is there any objection? Hearing none, so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 23, Favorable Reports, matters reported in accordance with petition, Calendar 560, File 872, Substitute SB892, AN ACT CONCERNING GRANTS

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Thank you very much, Mr. Clerk. Mr. Clerk, would you be good enough to read the items that have been placed on Consent Calendar #1.

THE CLERK:

Madam President, the first Consent Calendar begins on Calendar Page 1, Calendar 588, HJ131. Calendar Page 2, Calendar 589, HJ132. Calendar 56, Substitute HB5497. Calendar Page 6, Calendar 551, Substitute HB5600. Calendar Page 7, Calendar 572, Substitute HB7192.

Calendar 573, Substitute HB6825. Calendar 575, Substitute HB6097. Calendar Page 8, Calendar 576, Substitute HB7101. Calendar 577, Substitute HB5379. Calendar 579, Substitute 5479. Calendar Page 12, Calendar 603, Substitute HB7377.

Calendar Page 15, Calendar 617, Substitute HB7184. Calendar Page 17, Calendar 443, Substitute SB964. Calendar Page 18, Calendar 444, Substitute SB856. Calendar Page 19, Calendar 488, Substitute HB7341. Calendar Page 20, Calendar 95, Substitute SB633. Calendar 160, Substitute SB792.

Calendar Page 21, Calendar 200, SB632. Calendar 267, Substitute SB683. Calendar...correction, that was Calendar 237, Substitute SB863. SB683. It must be after eight. Calendar 239, Substitute SB347. Calendar

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291, Substitute HB6877.

Calendar Page 22, Calendar 306, Substitute SB860.
Calendar 350, Substitute SB917. Calendar Page 23,
Calendar 560, Substitute SB892. Madam President, that
completes the first Consent Calendar.

THE CHAIR:

Thank you, Mr. Clerk, you did a fine job. You have
heard the items that have been placed on Consent
Calendar #1 for the date, June 3, 1991. The machine is
open. You may record your vote. Thank you very much.
The machine is closed.

The result of the vote.

36	Yea
0	Nay
0	Absent

The Consent Calendar is adopted.

And just for the record, Senate Calendar 239,
Substitute SB347 now has been passed, now constitutes a
Committee on Conference.

THE CLERK:

Madam President, returning to the Calendar,
Calendar Page 2, Calendar 75, File 57, Substitute
HB5570, AN ACT CONCERNING ADMINISTRATIVE PROCEDURES OF
THE DEPARTMENT OF PUBLIC UTILITY CONTROL AND THE
STATUTORY DEFINITIONS OF ELECTRIC COMPANY, GAS COMPANY

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in the French Court enjoining the Connecticut Courts and all you get is a fight and cheapening of the respect for law.

The other bill that I'm here on is HB7341, provisions to Uniform Commercial Code Articles 3 and 4. I've submitted written testimony which I believe is hopefully adequate. The only thing I wish to -- two comments I wish to make is, one, to let all those people know who have been introducing over the years variable interest rate amendments to say that variable interest rate notes are negotiable within the Uniform Commercial Code who have dropped those at my request and urging that at long last we have the product which does what I promised to a number of legislators three and four years ago to say that variable interest rates notes are non-negotiable which means you can have a holder in due course. That is not presently the law in Connecticut.

The other comment is not in my written testimony. It appears on Page 83. I always shudder when I think that there's a bill that's 83 pages long. Lines 2793 and lines 2797 through 2802 should be deleted. We've recommended that Alternative A be enacted concerning items payable at a bank, that it should be construed as a draft when you say payable at on an instrument.

At the moment the bill lists both alternatives and I think that -- I just know that you'll have to make a decision on which alternative you want.

REP. TULISANO: Okay, remind me.

ATTY. HOUSTON LOWRY: I will. The last things are two comments --.

SEN. AVALLONE: This is a decade's worth of work.

ATTY. HOUSTON LOWRY: Well, I started getting involved in 1985 on the ABA's Advisory Committee and then I was --.

SEN. AVALLONE: Yes, but your problem is I just got involved in it.

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ATTY. HOUSTON LOWRY: I'd be happy to answer any questions you have.

REP. TULISANO: No, it's okay. Anything that long is okay.

SEN. AVALLONE: It better be after I finish reading it.

ATTY. HOUSTON LOWRY: The two personal comments that I have that are outside of my various hats as I wear as a Bar Association member, on HB5085, you reference on line 27 that you can get a judgment -- a deficiency judgment if an action -- a foreclosure action was commenced more than 12 months under the last uncured default.

I just want to let you know the last uncured default if someone stops paying and they never start paying again, there is no last uncured default that's more than 12 months out. If you mean the oldest uncured default, and I kind of guess that's what you mean, you might want to change that language to reflect that.

REP. MINTZ: Thank you.

ATTY. HOUSTON LOWRY: The other one was just a brief comment on HB7373. We testified in support of the Hague Conference on -- a convention on the recognition of trusts that's implemented in Connecticut and I just wanted to say that we approve of the bill and urge your support and I'm sorry I've taken so much time.

REP. TULISANO: No, you didn't the last time. We've got to learn all this stuff.

ATTY. HOUSTON LOWRY: I will be happy if any committee members has questions or if I can meet with anyone individually, I'd be happy to go over anything that needs going over.

REP. TULISANO: And the brief you've submitted deals with just the international obligations and --

ATTY. HOUSTON LOWRY: I've submitted a separate bit of testimony on Articles 3 and 4 that I trimmed down to five pages that talked about 29 changes in

HB 7364

HB 7341

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current law and Attorney Tim Fisher is also here who will be talking about some clarification to make regarding the law of check fraud.

REP. TULISANO: Okay, thank you.

ATTY. HOUSTON LOWRY: Thank you.

REP. TULISANO: Any questions anybody, international law or whatever?

ATTY. HOUSTON LOWRY: Just one comment, if I could. In case you think that people pay attention to what you're doing here, the State Department has been particularly interested in your work on child support. They expect that they will be putting out a request in the Federal Register for comment that the State of Hawaii and I understand the State of New Jersey is also going to be enacting --

HB 7364

REP. TULISANO: Apparently an international bill?

ATTY. HOUSTON LOWRY: They've modeled on your international resolution on child support as did the Oregon Legislature and there's been California and Arizona also considering it. So I want to let you know what happens on international issues goes beyond the four walls of this room and beyond --

(cass 6) (cassettes 5 and 6 don't connect, small gap)

REP. TULISANO: -- I think -- we had hoped that would be -- I guess we do about one a year at least now.

SEN. AVALLONE: I thought you said you were putting out a contract on Richard.

REP. TULISANO: Oh, no. We're getting a whole section of the statutes now devoted to this. The books are being printed. Thank you. Tom Cooper. Tom, my glasses are broken. I see two of you. Who are you? Are you Mr. Cooper? Who is Mr. Cooper?

THOMAS COOPER: Good evening, Representative Tulisano.

REP. TULISANO: Really, who are you? Your name.

\$900 and in fact I think one of the reasons you went from \$1,500 to \$2,000 was because in the Housing Court there were maybe 20 percent of the cases pushing the maximum. I bet you if you go back and check now, there's going to be nothing pushing the maximum of \$2,000.

ATTY. RAPHAEL PODOLSKY: The second bill I want to mention is HB7341 which is the one that deals with Article 3 and Article 4 and there I just want to make one comment. I did no written testimony on this. That's the one that changes -- modifies the law of negotiable instruments. I don't understand the bill. I assume that there are a small number of people who do understand it.

There's one issue that I hope you will make sure if you do pass the bill, that it comes out the way I think it should and that is from the consumer perspective, in terms of consumer protection, when you pay bills you will sometimes put on the bill what it's for and the general rule is if the check and taken and cashed it binds you. I cannot figure out whether that is or is not the rule in this bill. It's possible it's not addressed, but in any event, I would hope if you do pass the bill you would just make sure that that's -- that that doesn't change that underlying principle.

SEN. AVALLONE: Rick, have you got that?

ATTY. RAPHAEL PODOLSKY: HB5085 is the one that deals with mortgage foreclosure protections. I've submitted some written testimony in which I suggest a number of changes. There are three or four brief points I want to make on it. Number one, two months ago you had a hearing on HB5089 which is a much better bill because it deals more effectively with the interim period when someone is trying to restructure a mortgage. That's the one that includes the Mortgage Assistance Fund which happens to be funded and allows you to pay on an interim basis 35 percent of your income.

It really makes it possible for the mortgagor in distress to survive that period and get back on his feet. This bill says you must pay, to get more than 45 days you must pay the full payment. That is going to be tremendously burdensome. Forty-five

HB5085

From the very beginning, we have insisted that Living Wills can only lead to euthanasia and things certainly seem to be headed that way. The attitude favored by the Living Will, more properly called a death wish, has helped us bring us Dr. "Killer" Kavorkian and the doctor who wrote, "It's over, Debby," and the doctor who in this month's New England Journal of Medicine tells us of how he prescribed the pills which he knew his patient was going to take to commit suicide.

Our present Living Will permits a doctor to withhold care, providing the patient has such a will and that he is terminal, but it permits -- it prohibits the withholding of food and water. Last year we saw how a patient from Danbury who had no Living Will and was not terminal yet had food and water withheld until she died from starvation and dehydration. What good is a new law if its provisions are not followed?

The bill describing Power of Attorney states that this substitute for a helpless patient may order withholding of care, but not food and water, but what assurance have we that interpretation of the bill won't permit him to go ahead and withhold it anyway?

If the past teaches us anything, it is this. Connecticut, which last year gave us the most permissive abortion bill in the country is well on its way to bringing the joys of an untimely death, to our elderly, our handicapped and inform. Thank you.

REP. MINTZ: Thank you. Any questions? Thank you very much. And now for the UCC -- the award. The envelope please.

ATTY. TIM FISHER: Thank you and good evening. I'm Tim Fisher. I practice at Robinson & Cole. With me is Sue Lawshe who has helped in preparing the outline which I've given to the Clerk and I think you have --

REP. MINTZ: Robinson & Cole. You were supposed to testify yesterday. I'm sorry.

HB 7341

ATTY. TIM FISHER: I'm a litigator and I practice in the area of check fraud and I've been doing that for about --.

SEN. AVALLONE: You better be real good. You better be real good.

ATTY. TIM FISHER: That's right. That's right. There's always business in this field. Most of my work, most of my clients are banks. I have represented plaintiffs as well. I'm here speaking on my own behalf. I've taught in this area. I've written a manual on the area of check fraud and I've been watching these revisions as they've come out in separate iterations over the last four or five years from the uniform -- the commissioner's uniform laws and I am wholeheartedly in favor of the bill as written. I don't have any changes that I'm going to be suggesting to you.

The bill is necessary because the Uniform Commercial Code, Articles 3 and 4, when they were written back in the 1950s were written by two different committees. The two articles do not line up and one of the advantages of these revisions is that, as you can see, Articles 3 and 4 are going to be made consistent where they're not now. I'm sorry. It's HB7341, Raised Bill.

And so right now you can have Article 3 and Article 4 give two different solutions to the same fact pattern when they both apply and so what happens is lawyers have an option of going one way or the other and the people who have better educated lawyers get better results instead of people with the same facts getting the same results which is the way it ought to be.

That's an example of one of the many kind of loopholes or inconsistencies or omissions that these revisions are going to change. By and large, there are no social policy moves in this bill. There are some pro-bank changes. There are some pro-consumer changes. By and large, they balance out. The first one I mentioned here is comparative negligence. This is just a modernization thing. A lot of the defenses that are in there right now for banks when they're sued on checks that bear forged

endorsement are contributory negligence-type defenses and for the same reason that I think the courts of the Legislature in the Tort field wanted to move away from that, it was all or nothing. We ought to move away from it for the same purposes in the field of check fraud.

There are gradations of negligence on the part of a bank and there are gradations of negligence on the part of an employer because usually the employer is the plaintiff in these cases because most check frauds are by somebody in bookkeeping or accounts receivable or accounts payable. That's where the big numbers are and that's where the big litigation is.

The ordinary care standard is made more uniform. Right now there are three different standards. One is called negligence, one is called reasonable commercial standards, one is called ordinary care found in different parts of the statute in the two different articles. It makes no sense to have three different terms. It gets made uniform and it's got a good definition.

The objective element to bank good faith, this is a pro-consumer change. Basically, what it is is that good faith is an element of the defenses the bank has to prove. Under the UCC traditionally, good faith is purely subjective. In the case of a bank, it's easy to be in good faith because you hide behind your tellers. Tellers don't know anything about the underlying transaction, say, if it's a check that pays a loan and there's something wrong with the loan. Maybe there's a lender liability.

Any defense that might exist on the bank's part that should be repudiated by the bank's bad faith, the bank can say, "Hey, the person who knew the check came in, wasn't the person who knew the transaction was fishy to begin with."

What this revision does is it introduces an objective feature to it which is reasonable standards of fair dealing in this area which is a good idea.

A pro-bank feature is the universal three-year limitation period. Right now a plaintiff with a check fraud case who has no privity with the bank, if they have an average lawyer, they find a Cause of Action with a three-year Statute of Limitations and conversion, but there are some lawyers in the state who know how to make it a six-year Statute of Limitations by using a Cause of Action called Money Had and Received which ties back into the old rules of assumpsit which Sue has determined carries a six-year Statute of Limitations probably. That will be ended under this statute. It will be one uniform three-year Statute of Limitations period.

So the idea is that instead of giving a premium to people who spend extra time on lawyers or more expensive lawyers, it's going to be -- the facts are going to be treated the same on every single case.

SEN. AVALLONE: I thought (inaudible, mic not on)?

ATTY. TIM FISHER: This is not a lawsuit against the defrauder. This is which of two innocent parties will bear the loss, the employer whose employee took the money or the bank.

SEN. AVALLONE: (inaudible, mic not on).

ATTY. TIM FISHER: And in fact these revisions don't do a whole lot with going after the forger and in fact there's not a lot of check fraud litigation against the defrauder. There are not many legal questions involved.

Articles 3 and 4 are consistent, as I mentioned. The last is missing signatures, missing endorsements. That was never really addressed by the Uniform Commercial Code in the manner adopted back in the late 1950s, early 1960s. Case law developed splits of authority all over the place. These revisions give us a consistent answer.

The handout I've sent in is about four pages long. It gives you a flavor of the kind of thing that's addressed by the revisions. The only other one I'll draw your attention to is the bottom of the first page, there's a provision that'll have an

impact on attorney fraud and it has to do with when would a bank have notice that a lawyer is converting proceeds of, say, a settlement that's jointly payable to the lawyer and the client or payable to the lawyer, as trustee.

This new provisions, it will be new 3-307, if you adopt this legislation. It clarifies when the bank will be deemed to have knowledge that the lawyer has committed a fraud or it's any fiduciary, but in particular, of course, lawyers and it'll at least give us some answers there, so it helps in that field in defining the law.

SEN. AVALLONE: Ask him a lot of questions.

REP. MINTZ: I've got a few. On line 1752. I've got to tell you, when this bill comes out on the floor of the House, you're looking at the person that'll probably have to bring it out and my desk is right in the front and I want you sitting right below me because Representative Rennie, who is not here, has already said that he's got a whole line of questioning he'd like to ask me on this bill.

SEN. AVALLONE: This would go on Consent.

REP. MINTZ: That's right. So this 119-page bill, one serious question. When you balance the bank versus the consumer, this bill is about equal?

ATTY. TIM FISHER: That's correct. Now please keep in my my field is the check fraud litigation. There is a lot in Articles 3 and 4 apart from check fraud schemes. Houston Lowry, when he spoke earlier today, he's really more familiar than I am with the balance of it.

With respect to check fraud, which is the area that I've studied, yes, it's even -- there's a general modernization, closing of loopholes and, by and large, the pro-bank elements match out with the pro-consumer elements.

REP. MINTZ: Do you know Neil Ossen?

ATTY. TIM FISHER: Yes, I do. I saw him earlier today.

REP. MINTZ: That surprised me. Okay. This is --.

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SEN. AVALLONE: Are you finished?

REP. MOUKAWSHER: I have a question. I missed Houston Lowry's testimony. Can you remind us who he was speaking on behalf of and what his area of expertise is?

ATTY. TIM FISHER: Sure, the Commercial Law Section of the Connecticut Bar Association and he was urging the adoption of it basically as written. He pointed out one area where both of the two alternatives to legislation are still in there.

Oh, and I should mention one other thing. Raphie Podolsky raised a question about whether this statute will preclude somebody writing a check from designating what debt it applies to when they owe a bank money to open this account and that account. I talked to Raphie about that for about a half hour earlier today. As best I can figure out, this doesn't address it. The existing UCC doesn't address that. The revisions don't address it. That's common law contract between two parties not involving the bank. We're going to confirm that and we're going to give Raph a call once we make sure.

REP. MINTZ: So when somebody writes on the check payment if full for rent --. If somebody cashes that, is that good enough?

ATTY. TIM FISHER: You're mixing two different things. The accord and satisfaction element is addressed in here.

REP. MINTZ: Okay.

ATTY. TIM FISHER: And it says and this statute will say that if there is a bona fide dispute as to the amount or it's unliquidated, then you can say on the check or in an accompanying letter, this is in full satisfaction and that's binding if the person cashes it and doesn't return the money.

As to Raphie's question which is which debt do we apply it to --, all right, no dispute as to whether money is owed, it's just the consumer wants to pay

on their car loan and they don't want to pay on their credit card, maybe one has heavier default clauses or something.

If the consumer is clear about designating which it is, is that binding on the payee if they cash the money without protesting or anything? As best I could tell, that's just common law and not addressed by this.

REP. MINTZ: Okay, Susan, do you want to say anything?

SUSAN LAWSHE: I think you've covered everything.

REP. MINTZ: Okay, thank you.

SEN. AVALLONE: I would like to suggest, and I know that after all the work that you've done to be available. This is a 119-page bill is not going anywhere unless a whole bunch of us are comfortable with what it does and what it doesn't do and we will be in touch.

ATTY. TIM FISHER: Good, yes.

REP. MINTZ: Anyone else? Any other questions? Thank you. Anyone else wishing to testify? Suzanne? Raphie, do you want to come back. I declare the public hearing closed. Thank you.