

Public Act: 01-132

Bill Number: 1226

Senate Pages: 2852-2860, 2926-2927

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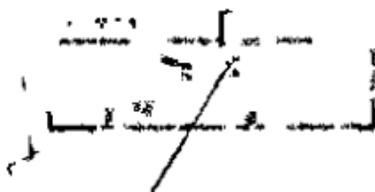
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Committee: Judiciary: 1715-1722, 1729-1730, 1731-1735, 1739-1745, 1758-1759, 1762-1766, 1844, 1845-1846, 1927, 1935, 1942-1980, 1982-1983, 2037, 2038

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do not meet the standards for copper. And requires the DPH to accelerate its adoption of the EPA's notification rule.

I want to thank the department, the water consumers and the advocates for this legislation for working together on this amendment. And I would urge its passage.

THE CHAIR:

Question is on adoption. Will you remark further?

Will you remark further? If not, I will try your minds. All those in favor indicate by saying aye.

SENATORS: Aye.

THE CHAIR:

Those opposed nay? The aye's have it. The amendment is adopted. Will you remark further on the bill as amended? Senator Peters.

SEN. PETERS:

Thank you, Madam President. The amendment becomes the bill. And if there is no objection, I would ask that this be placed on the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Calendar 358, File No. 503, Substitute for SB1226,

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An Act Adopting Revised Article 9 of the Uniform Commercial Code Concerning Secured Transactions. Favorable report of the Committee on Judiciary, and Government Administration and Elections. Clerk is in possession of one amendment.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, I move the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Question is on passage. Will you remark?

SEN. COLEMAN:

Madam President, this bill expands the scope of property and transactions covered by Article 9, of the Uniform Commercial Code. The bill resolves issues arising under current law and clarifies the rules for creation, perfection, priority, and enforcement of a security interest obtained in Connecticut.

It would provide greater certainty to financing transactions in the state. The bill is based on revised Article 9, which was recommended for adoption by the states, by the National Conference of Commissioners on uniform state laws.

A drafting committee of the Law Revision

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Commission, which consisted of practitioners, members of the Office of the Secretary of State and other interested parties, including representatives of the industry and consumers, met frequently during the interim to review and analyze the bill in detail.

As of this date, forty states, including the District of Columbia, have adopted revised Article 9. And bills are pending in ten other states, including Connecticut. Members should vote to approve the bill because the bill represents good public policy.

It provides greater certainty to financing transactions which benefits consumers, commercial financing companies, lending institutions, and commerce in Connecticut. It would, therefore, make the state an attractive location to conduct business, providing increased revenue to the state.

The bill goes a long way toward protecting the rights of consumers. And it offers protections in the bill for consumers that go further than provided by the uniform law which was adopted in most other states.

This bill would also maintain uniformity of the law regulating security interests. Most other states have adopted revised Article 9. The bill governs the methods of creating and perfecting security interests in tangible and intangible personal property and the

priority rules governing conflicts between interests of parties such as other lien creditors and properties subject to such security interests.

In this particular age of multi-state business entities and transactions, it is vital to maintain the commercial laws as uniform as possible across state lines to avoid impediments to businesses locating and operating across borders.

In addition, courts in Connecticut and in other states look to the experience of other states as well as the official comments of the drafters of a uniform law in interpreting their commercial statutes.

By enacting this bill the state would maintain its position as a leader in adopting uniform laws. SB1226 improves the law governing financing in the state. It retains the current structure of the law dealing with security interests and personal property and fixtures.

But expands its scope by adding some type of personal property collateral excluded under the current law. The bill alters the location for filing some financing statements to perfect the security interests, however, as under current law it maintains essential filing location for Connecticut debtors at the Office of Secretary of State.

The bill is widely supported by many interested

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parties, including the Secretary of State, banking institutions, businesses, litigators, consumers, and other interested parties, who are well-represented on the Law Revision Commission drafting committee that revised Article 9, of the UCC.

Many changes were made to address concerns expressed by representatives of various groups. And a broad consensus was reached that the bill would improve the financing industry for all such interested parties.

It should be noted that included among the technical items in an amendment, which I will call, is a provision that strikes the non-applicability of the bill to assignments of structured settlements, payment rights, which are governed by a separate statutory provision.

Madam Clerk, or Madam President, the Clerk has an amendment, LCO 7474. I'd ask at this time that the Clerk please call the amendment and I be granted leave to summarize the amendment.

THE CLERK:

LCO 7474, which will be designated Senate Amendment Schedule A. It is offered by Senator Coleman of the 2nd district.

THE CHAIR:

Senator Coleman.

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SEN. COLEMAN:

Madam President, I move adoption of the amendment.

THE CHAIR:

Question is on adoption.

SEN. COLEMAN:

And request leave to summarize.

THE CHAIR:

Please proceed.

SEN. COLEMAN:

Madam President, like the bill, the amendment does a number of things. But not quite as many things as the bill. First of all, it makes the bill effective date October 1st 2001, rather than February 1st 2002.

Secondly, it removes the exclusion of lottery winnings and structured settlements from the bill's scope, making them subject to the bill unless the law provides otherwise.

Thirdly, this amendment would include in the definition of proceeds, whatever is collected on collateral as in current law, and specifies that it includes whatever is distributed on account of collateral.

It also clarifies that security interests in deposit accounts that are payroll or trustee accounts, are only excluded from the bill's provisions if they are

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titled or identified as such, and eliminates the exclusion from the bill's coverage of deposit accounts that are tax accounts.

Additionally, it includes as a condition of taking consumer goods free of a security interest from a seller who bought the goods for consumer goods, that the buyer buy them before a financing statement is filed, unless the original purchase price of the consumer goods was \$3,500 or less.

Also, the amendment would eliminate the requirement that there would be a pattern or consistent practice of non-compliance in order to subject someone to the \$500 penalty for failing to send an explanation to a debtor, or consumer obligor in a consumer goods transaction after default about a surplus in deficiency, but excludes the failure to do so from certain liability under the bill's provisions.

Additionally, this amendment would clarify that electronic self-help includes using electronic means to locate collateral, and limits the use of electronic self-help to taking possession of the collateral, and without removal rendering equipment unusable and disposing of collateral on the debtors premises as allowed by the bill.

Additionally, the amendment would specify that in

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providing information on request, the filing office, in this case the Secretary of State's office, is not required to transcribe information otherwise available about the collateral.

And finally, the amendment clarifies the application of the priority rules relating to future advances. Madam President, I urge adoption of the amendment.

THE CHAIR:

Question is on adoption of Senate Amendment A. Will you remark further? Will you remark further? If not, I will try your minds. All those in favor indicate by saying aye.

SENATORS: Aye.

THE CHAIR:

Opposed nay? The aye's have it. The amendment is adopted. Will you remark further on the bill as amended? Senator Coleman.

SEN. COLEMAN:

Madam President, I just would comment that a tremendous amount of work has been devoted to this particular product. And I think all of those who were involved should be commended. And with that, I'd urge passage of the bill, Madam President.

THE CHAIR:

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Will you remark further? Senator Coleman.

SEN. COLEMAN:

If there are no further remarks, and no objection,
I would ask that this bill as amended be placed on the
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar page 18. Calendar 360, File No. 514,
SB546, An Act Concerning Case Planning Information.
Favorable report of the Committees on Children,
Education, Human Services. Clerk is in possession of
two amendments.

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

I would ask that this item be PR'd.

THE CHAIR:

The item will be passed retaining its place.

THE CLERK:

Calendar page 33. Matter previously moved from the
Foot of the Calendar. Calendar 426, File No. 646,
Substitute for SB1145, An Act Concerning Refunds of
Payments, Tax Credit Exchanges, and Certain Business Tax
Credits. Favorable report of the Committee on Finance

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SB1046.Calendar page 8. Calendar 490, Substitute forHB5914.Calendar page 9. Calendar 513, Substitute forHB5701.Calendar 515, Substitute for HB6895.Calendar page 10. Calendar 517, Substitute forHB5923.Calendar 528, Substitute for HB6589.Calendar 520, Substitute for HB6690.Calendar 521, Substitute for HB5426.Calendar page 12. Calendar 532, Substitute forHB6909.Calendar page 17. Calendar 340, Substitute forSB1129.Calendar 358, Substitute for SB1226.Calendar page 20. Calendar 450, Substitute forHB6954.

Madam President, I believe that that completes today's first Consent Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a roll call vote, the machine will be open.

THE CLERK:

The Senate is now voting by roll call on the

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Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. Clerk, please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total Number Voting 36

Those voting Yea 36

Those voting Nay 0

Those absent and not voting 0

THE CHAIR:

The Consent Calendar is adopted.

THE CLERK:

Turning to Calendar page 7. Calendar 457, File No. 212, HB5103 AN ACT CONCERNING THE PENALTY FOR ASSAULT OF CIVILIAN DETENTION OFFICERS. As amended by Senate Amendment Schedule A. Favorable report of the Committee on Judiciary.

SEN. COLEMAN:

Madam President?

THE CHAIR:

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Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not Voting	8

DEPUTY SPEAKER HYSLOP:

The bill passes.

Will the Clerk please call Calendar 588.

CLERK:

On page 18, Calendar 588, Substitute for S.B. 1226,
AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM
COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

Favorable report of the committee on Government
Administration and Elections.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Thank you, Mr. Speaker. Mr. Speaker, I move
acceptance of the joint committee's favorable report and
passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage, in
concurrence with the Senate.

Will you remark further?

REP. ABRAMS: (83RD)

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Yes, I will, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. ABRAMS: (83RD)

Mr. Speaker, this bill expands the scope of property and transactions covered by Article 9 of the Uniform Commercial Code.

It resolves issues arising under current law and it clarifies the rules for creation, perfection, priority, and enforcement of a security interest obtained in Connecticut.

It would provide greater certainty to financing transaction in this State.

I will say, Mr. Speaker, briefly what a security interest is that would be covered under this. It's essentially a mortgage on personal property. If I bought a fryilator to start a restaurant and it costs \$10,000 and I put \$1,000 down and paid off over time, the company selling me the fryilator would take a security interest and an interest in the fryilator, recorded at the Secretary of State's office and if I didn't pay it off, they would come and take it. They'd repossess it, essentially.

Also, Mr. Speaker, I would point out that this is a uniform law. Many other jurisdictions have adopted this

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law already, but many other jurisdictions don't take the critical look at uniform laws that we do in Connecticut.

So the fact that we are getting to this now is because the Law Revision Commission has taken a look at this and that a working group has taken a look at this and we've made changes to the bill, particularly changes that benefit the consumer.

Mr. Speaker, S.B. 1226 is based on revised Article 9 which was recommended for adoption by the National Conference of Commissioners on Uniform State Laws.

A drafting committee of the Law Revision Commission, which consisted of legal practitioners in the area, members of the Office of Secretary of the State and other interested parties, including representatives of the industry and consumer representative met frequently during the interim to review and analyze this bill in detail and then met during the session.

The committee deliberated and conformed the bill to UCC Code in Title 42a of the Connecticut General Statutes, other effected statutes and commercial financing practices in the State.

As I mentioned, Mr. Speaker, as of this date, over 40 states and the District of Columbia have adopted revised Article 9. It's pending in 10 other states,

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including New York and Massachusetts where it appears it will become law.

Mr. Speaker, this bill represents good public policy. It provides greater certainty to financing transactions, which will benefit consumers.

Mr. Speaker, the bill is widely supported by many interested parties. Banking institutions, business litigators, consumer representatives and other interested parties were well represented, both in the Law Revision Commission deliberations that revised Article 9 and with the working group.

The bill does not change current law, I must point out, with respect to entities in the State with bonding authority.

Section 9 of the bill states it does not apply to a transfer by a government or government subdivision or agency of this state.

The bill does not override any other statutory provision that authorizes a lien to secure obligations issued by public entities and agencies, including all authorities, public instrumentalities, and other entities issuing debt for public purposes.

The term "agency" includes all statutory entities in the State with bonding authority.

It is intended to track to current law with respect

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to statutory liens, secure and public debt. It is not intended to cause any such entity to be deemed to be an agency of the State for any other purpose.

The term, "transfer" includes liens and pledges. As in current law, transfer would include liens, pledges, grants of interest and other means of securing debt provided for in the existing bonding statutes.

Mr. Speaker, the Clerk has an amendment, LCO 7474. I ask that the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 7474, previously designated Senate 'A' and the Representative has asked leave to summarize.

CLERK:

LCO 7474, Senate "A" offered by Senator Coleman and Representative Abrams.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you, Mr. Speaker. The most element of this amendment is that it changes the effective date in the bill. It removes the effective date in the bill which was February 1, 2001, thus making the effective date October 1, 2001.

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Mr. Speaker, I move adoption.

DEPUTY SPEAKER HYSLOP:

The question is on adoption of Senate "A". Will you remark further? Will you remark on Senate "A"?

Representative Kerensky. Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. Mr. Speaker, there's a fine tradition in the Chamber that we maybe breaking today and that tradition is that the debate on the bill is inversely proportional to the length of the bill.

I think based upon that, we should have ended the debate about three minutes ago.

Let me just ask on this. I guess I have three questions.

The amendment also deletes lines 1067 through 1170.

Through you, Mr. Speaker to Representative Abrams. It is my understanding that that deletes the language on structured settlements. Could you tell us the impact of that?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Yes. Thank you, Mr. Speaker. Yes, I'd be happy to. Structured settlements are governed by a separate

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statutory provision, thus the bill will apply only to structure settlement payment rights. It does not effect the enforceability of contractual provisions of a assignability or non-assignability of structured settlement agreements made pursuant to the Connecticut Supreme Court decision in the 2000 case of Rumman vs Utica Mutual.

DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. The second question is, this bill strikes out line 7468 in the original bill.

First of all, I would comment, it's not often that we have the opportunity to strike out line 7468 in a bill, but it's my understanding that the affect of that is to delete the reference to effective date and I think you explained earlier that that would make the bill effective October 1 of this year.

Through you, Mr. Speaker, is that correct?

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you, Mr. Speaker. That is absolutely correct. The deletion of that section means that the bill will become effective October 1st.

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DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19TH)

And, through you, Mr. Speaker to Representative Abrams. It's my understanding that even though many of the bills in the other states are effective July 1, the reason we're doing that is the difficulty in the Secretary of State gearing up to make it effective October 1.

Is that correct? Through you, Mr. Speaker to Representative Abrams.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Absolutely. Through you, Mr. Speaker. Our Secretary of State -- we have what is called a "living system" and that means that many Secretary of State offices will just be able to flip a switch on July 1st because they're not as computer sophisticated as we are. Our change will take until October 1st, but I have been assured by people who know this a lot better than I do, that that three month gap between many of the states and our state, will not cause undue problems in terms of perfecting and attaching security interests.

Through you, Mr. Speaker.

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DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. One last question and I apologize to Representative Abrams. I didn't warn him this was coming, but your presentation has raised a serious question on this side, perhaps more interest to this question than to anything else in the bill.

And that question is, what is a "fryilator"?

Through you, Mr. Speaker to Representative Abrams.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you, Mr. Speaker. It's when I open my steam cheeseburger restaurant in Meriden, upon retirement, that's where I'll dump the french fries and then pull them out.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19TH)

Thank you, Mr. Speaker. Thank you, Representative Abrams. I just want to commend Representative Abrams for all the long work he's put in on this bill when it's seldom we see something of this magnitude and I think

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he's done an outstanding job.

I would urge passage of the amendment and the bill.

Thank you.

DEPUTY SPEAKER HYSLOP:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. Mr. Speaker, I just have one question, through you, to Representative Abrams.

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. PRELLI: (63RD)

Thank you. Through you, Mr. Speaker. Representative Abrams, if you answered this one with Representative Farr, I apologize, but I got -- somebody was talking to me.

In lines 11 through 17 of the amendment, you're changing a section, 1067 of the bill in getting rid of that. Why are we taking out the assignment of lottery winnings and not putting that back in with that new language?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you, Mr. Speaker. It was decided among the

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working group that that should be the structured settlement. That would have impact on structured settlements and therefore, should be placed outside. It became, if I may, through you, Mr. Speaker, something of a turf war between the insurance companies and the structured settlement people and our goal was not to effect settled law.

So that's why that was removed.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Mr. Speaker. And I thank the gentleman for his answer.

DEPUTY SPEAKER HYSLOP:

Will you remark further on Senate "A"? Will you remark further on Senate "A"?

If not, we'll try your minds.

All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

All those opposed. The ayes have it. Senate "A"
is adopted.

Will you remark further on the bill, as amended?

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Representative Abrams.

REP. ABRAMS: (83RD)

Mr. Speaker, I'd just like to add my thanks to the attorneys and staff of the Law Revision Commission, led by our own Representative O'Neill, the Secretary of State's Office, LCO, the caucus attorneys, members of the Drafting Committee, Representative Farr and Senator Coleman and particularly, two private practitioners who took a lot of time when they could have been earning money, Attorneys Neal Ossen and Thomas Welch for their tremendous work on this bill.

And it's a good bill, Mr. Speaker, it ought to pass in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

Representative Bernhard.

REP. BERNHARD: (136TH)

Thank you, Mr. Speaker. I rise in support of the bill and I am very grateful to the proponent of the bill for bringing it to the House Chamber.

I do have one question, through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Please phrase your question.

REP. BERNHARD: (136TH)

My question and this in response to a number of inquiries that I've gotten from practitioners over the

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last few days, is why are we delaying the effective date of this bill to February of 2002?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you, Mr. Speaker to Representative Bernhard. Actually, Representative Bernhard, in the amendment we moved the effective date up to October 1st of 2001. We stripped the February 1st effective date.

The working group, at the risk of repeating myself, the working group decided that that three month gap was not going to cause any real serious problems that the other gap might have. And also, our Secretary of State's office, because we have a sophisticated computer system, would need that period of time in which to get up to speed and be able to hit the ground running.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Bernhard.

REP. BERNHARD: (136TH)

Thank you very much for your answer.

DEPUTY SPEAKER HYSLOP:

Representative Stripp.

REP. STRIPP: (135TH)

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Thank you, Mr. Speaker. Mr. Speaker, through you, a question to the proponent of the bill.

DEPUTY SPEAKER HYSLOP:

Please phrase your question.

REP. STRIPP: (135TH)

Does this bill, in anyway, change where one would have to file in a commercial transaction? For example, if you had a Delaware corporation that was doing 99% of its business in the State, and had the assets in the State, would the bill change the places that you would have to file to perfect UCC-1 claim against the collateral?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83RD)

Through you. No, Mr. Speaker, provided that that forum has adopted revised Article 9. It does change the choice of law from the place of the location of the collateral to the place where the debtor lives.

So, but when everyone is on board with the new rules, and my understanding is that Delaware has already adopted it, then everyone will be doing the same thing.

We may, in the three month period, have a bit of a problem where we're still under the old rules,

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Delaware's under the new rules and we keep bouncing back between the two rules, but that will be solved as of October 1st.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stripp.

REP. STRIPP: (135TH)

I thank the proponent for the answer, Mr. Speaker.

Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill, a amended?

Will you remark further on the bill, as amended?

If not, staff and guest to the Well of the House.

The machine will be opened.

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.

DEPUTY SPEAKER HYSLOP:

Have all members voted? If all members have voted, please check the machine to make sure your vote is properly recorded.

The machine will be locked and the Clerk will take a tally.

The Clerk will announce the tally.

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CLERK:

S.B. 1226, as amended by Senate Amendment "A" in
concurrency with the Senate

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not Voting	5

DEPUTY SPEAKER HYSLOP:

The bill, as amended passes.

Clerk, please call Calendar 598.

CLERK:

On page 19, Calendar 598, S.B. 1069, AN ACT
CONCERNING MINOR CHANGES TO THE INSURANCE STATUTES.

Favorable report of the committee on Insurance and
Real Estate.

DEPUTY SPEAKER HYSLOP:

Representative Jarjura.

REP. JARJURA: (74TH)

Thank you, Mr. Speaker. Mr. Speaker, I move
acceptance of the joint committee's favorable report and
passage of the bill, in concurrency with the Senate.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage, in
concurrency with the Senate.

JOINT
STANDING
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DEBORAH DELPRETE SULLIVAN: And you raise a very good question, Representative Farr and in contemplation that you would raise that same question to me, I did call the Chief Public Defender and earlier and spoke to him about this.

And again, borrowing that language from the Practice Book, the same language, as to stripped files, we would be willing to look at any language that would take into consideration not only the incarceration period, but any probation or parole that the individual would still be on, once released from the Department of Correction's custody and we would be willing to work with you on language looking at that.

REP. FARR: Okay. Because -- but you're saying, of the 120, you don't know the breakdown as to how many are misdemeanors and how many are felonies?

DEBORAH DELPRETE SULLIVAN: No, I'm sorry, I don't have that information. I might be able to get that for you, though. I can try to.

REP. FARR: Okay. Thank you.

SEN. COLEMAN: Further questions? Seeing none, thank you very much.

DEBORAH DELPRETE SULLIVAN: Thank you.

SEN. COLEMAN: Tom Welsh and Scott Lessne.

THOMAS WELSH: Mr. Co-chairman and members of the Judiciary Committee, my name is Thomas Welsh. I'm an attorney practicing in Meriden, Connecticut with the firm of Brown and Welsh and I was a member of the Advisory Committee established by the Law Revision Commission on S.B. 1226 which is AN ACT ADOPTION REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE.

And I'm here testifying today, both for myself and on behalf of the Connecticut Bar Association, and its Commercial Law and Bankruptcy section, as well as an Executive Board member of the Association of Commercial Finance Attorneys.

The subject matter of this bill, it's a 255-page opus, is rather complicated Article 9 in and of itself is a complicated subject. So we have done, on behalf of the Bar Association is submitted to you background material dated March 5th which answers a number of questions, provided some cross references, both from our perspective in answering questions, as well as giving you some -- showing you some of the changes that were made in Connecticut to model laws as part of the Connecticut Law Revision process and I would ask that we --- hopefully you and to other attorneys, I would ask that that be made part of the transcript file so that people can read it in the future perhaps and it might answer some questions.

Obviously, time is short on this. But I've also submitted a letter from the president of the Association of Commercial Finance Attorneys urging prompt adoption of revised Article 9.

What is Article 9? It's the primary body of law of the Uniform Commercial Code that adopts or sets out the creation, perfection, attachment, priority, and enforcement of personal property security interests, tangible and intangible security interests of property.

It is the primary backbone for financing of businesses from the largest security syndications down to the bread and butter of growing businesses, the life blood which is accounts receivable and inventory financing right down to making your -- financing your automobiles or household appliances.

The State of Connecticut has also utilized these provisions in order to provide for perfection and other rules regarding state tax liens, municipal tax liens and post judgment remedies liens. So it's a fairly broad thing.

In the 1999 official draft that was proposed does a major rewrite. This was initially adopted in Connecticut in 1959, major rewrite in 1972, adopted in Connecticut in 1976. This one attempted to answer a lot of questions and provide more explicit

guidance. That's why the number of substantive provisions went from 55 to 126 substantive provisions.

In any event, if I may just conclude. The problem is that if we do not adopt revised Article 9 with a July 1, 2001 effective date, the other states' conflict of law -- there are strikingly different conflict of laws rules between revised Article 9 and old Article 9. Striking one being that the law which governs perfection under the Article 9 is the law of the jurisdiction where the debtor is organized and that would point, for example, where a Delaware corporation operating in Connecticut, you perfect using Delaware law, not in Connecticut.

If we do not adopt and this mismatch in law, where you (inaudible) the action would determine what the outcome would be, strikingly different, depending on what jurisdiction an action was brought in or a bankruptcy proceeding was filed in.

So it will cause tremendous concerns. It's for that reason that the Connecticut Bar Association has taken a Bar Association position and strongly supporting the prompt adoption with a July 1, 2001 effective date of Revised Article 9.

And as I said, there are other comments on the impact of the official comments and whatnot that are set out in the written materials. It's a complicated thing, but it's very, very important. As I say, it's the lifeblood of business in the State.

SCOTT LESSNE: Good afternoon, Senator Coleman, Representative Lawlor, and members of the committee.

My name is Scott Lessne. I'm the senior vice president and senior counsel in the Law Department of Fleet Boston Financial Corporation based here in Hartford and practicing commercial law here in Hartford for fifteen years. And I'm also a vice president of the Association of Commercial Finance Attorneys and I'm here to ask support of S.B. 1226, AN ACT ADOPTING REVISED ARTICLE 9 OR THE UNIFORM

COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

I'd like to echo Mr. Welsh's comments and would just like to point out that Fleet believes that there are significant issues creating uncertainty in the realm of secured transactions that will rise if Revised Article 9 is not enacted with the uniform effective date of July 1, 2001, as originally proposed by the drafters.

The complex set of rules governing the transition between existing and revised Article 9 are, in large part, dependent upon a uniform effective date of July 1, 2001 in order to ensure a smooth transition.

As a secured lender, Fleet looks to the rules of Article 9 to lend a degree of certainty and consistency with respect to how such transactions are structured and that need be enforced.

If Connecticut were to adopt Revised Article 9 with an effective date other than July 1, 2001, the certainty and stability created by uniform law such as Article 9, would be undermined.

I would just like to note that 29 other states have already adopted the Revised Article 9 with an effective date of July 1, 2001.

Therefore, Fleet Boston Financial Corporation strongly urges the enactment of the revised Uniform Commercial Code Article 9 and would ask that this committee consider an adoption date, an effective date of July 1, 2001 in Connecticut.

Thank you.

SEN. COLEMAN: Representative Farr.

REP. FARR: First of all, I want to commend you. You have the enviable task of having to take three minutes to explain a 256-page bill.

SCOTT LESSNE: We've been working on it for five years.

REP. FARR: But let me just comment on the last

question, the effective date. Historically in this committee we're very concerned about the ability of practitioners and the general public to get access to legislation when we pass it.

Historically, our bills are effective October 1. And when we've done complex bills, there have been instances in the past where we've actually made them effective January or in one case, we actually made it effective a year from July so that there was an opportunity for people to have access to the bill, but in addition to that, to have practitioners understand and learn about the changes that were in it.

What concerns me about your testimony about the effective date, is it's fine to say that this will be - will make it effective July 1, but if practitioners out there don't know all the ramifications of the new changes and I don't know how they will ever learn by July 1. I mean, when we pass bills like this, usually there are seminars that are put on for the Bar and people take some time to try to figure out all the changes. This is going to be a very difficult thing for people to digest by July 1.

SCOTT LESSNE: You are correct, Representative Farr. I can tell you as somebody whose been practicing commercial law and having learned the original Article 9 a long time ago, you're right. However, there have been, at least for practitioners, and as an in-house lawyer at a bank, we are concerned about the level of our practitioners understanding the laws that we deal with, there have been ongoing seminars, both in institutions and for practitioners ongoing on this particular issue, on this revised statute for a good two or three years now.

So clearly, there has been available to many, many practitioners and both Mr. Welsh and I have been involved in presenting and participating in those seminars and many people have been availing themselves. So this is not new news to at least the commercial law practitioners.

THOMAS WELSH: The Connecticut Bar Association also had a seminar just this last November. I was on the panel talking about exactly this topic.

The people who practice in this area know that it's coming. The most important thing is that because of the (inaudible-not speaking into a microphone) what I suggest, if the committee's inclined that has to happen is that we've got to address the conflict of law problems that result if a delay in the effective date beyond 2001. No other of the 30 states - Wyoming passed it the other day - of the 30 states that have passed is so far, all of them have July 1, 2001 as their effective date. So a Connecticut corporation, for example, operating in Wyoming or Delaware or Maine or New England, Maine and Rhode Island so far have passed it, they would be looking to the law of the State of Connecticut for a debtor corporation, if it was Connecticut corporation, for example. And in turn, Connecticut's law would send them back to Delaware or one of these Article 9 states.

So you get a circular problem and the conflict of law rules in that instance would change. It's going to be a horrendous mess. I believe the initial comments (inaudible) horrendous mess if we don't look at it.

So if we do delay, some (inaudible) conflict of laws provisions would have to be drafted to in order to try to avoid these problems --

SCOTT LESSNE: I would suggest the practitioners might have a more difficult time trying to figure out how to deal with the conflict of laws issues than if we just go ahead and then try to enact it for the uniform date.

REP. FARR: The Secretary of State had some concerns also about this. Have those all been alleviated in the final draft that we have here? Do you know?

THOMAS WELSH: I don't believe - (inaudible) to discuss this - the current draft of Article 9, as before the committee now, from the Law Revision Commission states that the enacted date is July 1, but the

effective date of the filing provisions is July 1, 2002 and there is a question as to how that works.

I understand that the Secretary of State's Office may want the effective date on July 1, 2002 which means that the horrendous complications will be before us and we have to deal with them one way or another. And certainly the Bar Association is willing to assist in the language and what have you. But it's not something where we can do nothing and avoid those complications.

SCOTT LESSNE: We're also concerned from the Bank's point of view that the extent you have non-uniform provisions on the effective date, that it may lead to increase in transaction costs for borrowers. It may lead to revisions and we're looking at deals with a different credit posture because of the uncertainty that it's going to create. We don't want that to happen. We don't want to increase transaction costs for borrowers. We don't want it to effect credit risks. It's an unnecessary burden on - we think on borrowers, on the bank's customers if that would work.

REP. FARR: But you're telling me that we haven't heard from the Secretary of State yet, but you're telling me that they may ask us to postpone some of the effective parts of this.

And so the question becomes, can we pull out some of the conflict provisions?

THOMAS WELSH: It's like brain surgery. I couldn't do it right here, but it would have to be done with appropriate experts because you run the constitutional implications because -- well, you have a uniform cross referencing of conflicts provisions. So a question comes up as to whether an individual resident or a corporation under one state, how, if they are treated differently within another state than that state treats its own.

So there maybe a wide range of implications that I think we'd have to look at. I don't think it could be done here.

REP. FARR: So not only do we have to deal with a 256 page bill, but we have to deal with complexities of effective dates.

And also, I don't know if you've talked to Representative Abrams, Jim Abrams, but he is very interested in this and I would urge you to try to make a point to talk to him because he's been sort of delegated as the Representative-member of the committee who has the most knowledge of this particular bill.

Thank you.

THOMAS WELSH: Thank you.

SCOTT LESSNE: Thank you.

SEN. COLEMAN: Further questions? Mr. Welsh, I apologize for misreading your name and considering your subject matter, probably the most simple thing that I was confronted with was reading your name correctly.

So, wish me luck in understanding the revised Article 9.

THOMAS WELSH: Thank you, Mr. Chairman. You see how it comes back from the pharmacy.

SEN. COLEMAN: Michael Jainchill. Jainchill.

MICHAEL JAINCHILL: Good afternoon. My name is Michael Jainchill and I'm here today on behalf of the Connecticut Trial Lawyers Association. I practice law here in Hartford with a firm known as Riscassi and Davis.

And I'd like to address H.B. 6773 which is the act dealing with uninsured and underinsured motorists issues. And in reality, I think I'd like to address the committee on behalf of the consumers of insurance in the State of Connecticut because this is a bill that effects, directly, the rights of consumers.

It deals with three issues, two of which have come

for whom the court has approved a permanency plan of adoption. This would allow the recruitment of adoptive families in a limited number of cases where there may be a need to initiative time sensitive recruitment efforts.

Thank you for the opportunity to testify and I'd be glad to answer any questions that you might have.

SEN. COLEMAN: QQuestions for Mr. Gilman? Seeing none, thank you.

DEPUTY CMRS. THOMAS GILLMAN: Thank you very much.

SEN. COLEMAN: Richard Smith.

RICHARD SMITH: Good afternoon, Senator Coleman, Representative Lawlor, and the rest of the Judiciary Committee members.

My name is Richard Smith and I'm here today to testify on behalf of the Connecticut Bar Association. With me to my right is Ernie Lorimer who is Chairman of the Business Law Section of the Connecticut Bar Association and he'll be speaking after I give my remarks.

I am vice-Chair of the Business Law Section and co-chair of the Business Law Section's Subcommittee on Corporate Laws.

I'll be speaking this afternoon primarily in support of H.B. 6890, AN ACT CONCERNING BUSINESS CORPORATIONS AND NONSTOCK CORPORATIONS. I intend to spend the bulk of my time addressing that piece of legislation. Ernie will address some of the other bills that our section supports.

Briefly, I'd like to mention what they are. They include S.B. 1259, AN ACT CONCERNING STANDARDS OF CONDUCT AND LIABILITY FOR CORPORATE DIRECTORS AND OFFICERS; S.B. 1322, AN ACT CONCERNING THE MERGER OF DISSIMILAR BUSINESS ENTITIES; and S.B. 1226, AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

We strongly support each of these bills and we urge

this committee to act favorably on them.

Turning then to H.B. 6890, The purpose of this bill is quite simple and I believe non-controversial. Simply stated, the bill would implement, in Connecticut, several changes to the model Business Corporation Act that have been adopted since the enactment of the Connecticut Business Corporation Act.

My written testimony includes a brief summary of the history of the model act and a brief history of its adoption here in Connecticut. In an effort to keep my time short, I won't repeat that now. For present purposes, it suffices to say that since 1997, the date on which the Connecticut Business Corporation Act and the Connecticut Revised Nonstock Corporation Act became effective in Connecticut, the model Business Corporation Act has been revised in several important respects.

H.B. 6890 would implement several of those provisions here in Connecticut.

The bill itself, as you know, is quite lengthy, but the changes fall into three general categories and can be summarized fairly succinctly.

In brief, the bill would make certain technical changes to the Connecticut Business Corporation Act in the areas of electronic filing, indemnification, adopt recent revisions to the model Business Corporation Act pertaining to directors and officers, appraisal rights, and inspection rights, notices and other miscellaneous matters, and implement corresponding changes to the relevant provisions of the Connecticut revised Nonstock Corporation Act.

May I just finish up? The Bar Association believes that it would be important to implement these changes here in Connecticut. Accordingly, on behalf of the Connecticut Bar Association, I respectfully request that the Judiciary Committee act favorably on H.B. 6890.

If you have any questions, I'd be happy to

entertain them at this time.

REP. LAWLOR: Thank you. Did you want to go on to your portion of the testimony?

ERNIE LORINER: With your permission, yes.

REP. LAWLOR: Sure, go ahead.

ERNIE LORINER: My name is Ernie Lorimer. I'm with (inaudible) in Stamford, Connecticut and this year I'm privileged to be chair of the Business Law Section of the Connecticut Bar Association.

This is the 8th year I've testified on behalf of this section, in the past on behalf of the corporation and other business entity bills.

I wanted to speak briefly today in support of S.B. 1226, which is proposed Revised Article 9 of the Uniform Commercial Code which is contemplated for adoption uniformly throughout the United States with a July 1 effective date. A lot of legislatures are now considering it.

It has been adopted in a number of states. A number of states will be acting on it contemporaneously with Connecticut and come July 1, for transactional lawyers revised Article 9 would be a fact of life.

It is, as you know, 350 pages of an extremely complicated bill that the Commercial Recording Division of the Secretary of the State will need time to appropriately implement it, modifying computer systems and testing them doing the necessary training. And of course, the Legislature needs time to act on it. Unfortunately, we don't have a lot of time between now and July 1 and it would be unfortunate if the outcome of needing to accomplish those two paths is to put off the effective date, it will be a real head scratcher for transactional lawyers. I think the commentary to revised Article 9 says that the problems would be horrendous but we'll figure out a way, I'm sure. But it will be a burden that will fall, probably disproportionately on solo practitioners and small firms.

So, if at all possible, it would be a worthwhile thing to do to figure out how we can get this task done by July 1 and how we would avoid imposing what is a subtle, but I think a significant burden on Connecticut businesses who do that.

That concludes my testimony. I'd be happy to answer questions about revised Article 9 and also the other bills that were testified on.

REP. LAWLOR: So, on the Article 9 question, I assume other states are, in essence, in the same position we are, deciding to either take it or leave it right now and presumably their secretaries of state and others are worried about how they can comply if the start-up date is July 1st of this year.

Isn't it reasonable to think that other states might have - given the problem, might (inaudible-background crunching noise) the date, as well?

ERNIE LORINER: There will be a number of states, I'm sure, that will not have acted. And on Friday -- actually I spoke with a lawyer in Colorado who represented a (inaudible) who was based in Denver and told them that I thought his documents were interesting with a Colorado choice of law (inaudible-not speaking into the microphone) that Colorado, to our understanding, had decided not to act on it. He got off the phone very quickly with me and I think a lot of people will be scrambling to figure out how to do this.

But our understanding is that there might be something on the order of ten states that haven't acted.

REP. LAWLOR: So, are there some states that have already acted?

ERNIE LORINER: My understanding is that it has been adopted in 29 states. It is slated for action - I'm not predicting the legislative outcomes - in another 19 states currently, including Massachusetts and New York.

REP. LAWLOR: And do you over what period of time the 29 states adopted this?

ERNIE LORINER: Article 9 has been in gestation for almost ten years and was finally promulgated several years ago. So, a number of states have been adopting it in the course of the last two years.

REP. LAWLOR: Okay. And from what I understand, there's at least one proposal to amend this bill, as I understand it, to create some sort of a dual filing system. Are you familiar with this?

ERNIE LORINER: Yes, I am. And the commercial law in Bankruptcy Section will be testifying about this aspect of it later.

REP. LAWLOR: Okay.

ERNIE LORINER: One of the things that Article 9 does is make the rules much simpler about where you file and it tends to go in the direction of having just a single filing as opposed to the practice now which is to file anywhere where it possibly may be relevant.

Article 9 establishes a single rule for a single filing as a result, it's thought to be more efficient. A dual filing mechanism would be something that hasn't been adopted, so far as I'm aware, by any other state and it sort of goes in the other direction.

REP. LAWLOR: Okay. Representative Farr.

REP. FARR: The problem in terms of making - not making it effective July 1, as I understand the previous testimony, was that our present Article 9 would then look to - I think it was described as the "choice of law" problem that our existing Article 9 has a different rule as to the choice of law. Is that correct?

ERNIE LORINER: Yes, it is. It comes up in two ways. The first is that the revised Article 9 provides for a number of new rules and facilitates particular kinds of transactions.

So, for example, under current Article 9, you can't take the security interest in a deposit account. Under revised Article 9, you can. So that's a substantive law issue.

The second way it comes --

REP. FARR: But let me stop you for a minute. That problem would not be -- that wouldn't be a problem in terms of effective dates because that would effect the process in Connecticut, but it wouldn't effect our relationships with other states, right?

ERNIE LORINER: It will create problems. So, for example, under current Article 9, the parties to a transaction are allowed to pick the law that will govern their relationship, provided there's a reasonable relationship..

So in my example of deposit accounts, the bank and the depositor could choose to be governed by, say, New York law which would allow this. The difficulty then becomes what (inaudible-not speaking into a microphone-too much background noise-door slamming) the case is brought in Connecticut, a Connecticut court were to decide to follow Connecticut law rather than New York law, the parties may not have gotten the bargain that they thought.

The second problem is that there is a separate choice of law issue for the law that governs perfection, the effective perfection and priority.

So, in my example, under revised Article 9, one perfects an interest in the deposit account by having control which is something that doesn't exist in present Article 9. And as a result, if Connecticut law were to govern, and you didn't have an effective date of July 1, you now might have a relationship that was valid as to the parties, but not valid as the third parties. And depending, again, on which state.

It's a thorny issue.

REP. FARR: The other question is the filing. The Secretary of the State, I assume, is going to be --

I haven't had a chance to see their testimony -- concerned about the filing process.

And you said what this provides in the new Article 9 is unified -- one place to file.

ERNIE LORINER: One place to file.

REP. FARR: And their concern, I assume, is that they don't -- they're not ready to do that. And can we delay only that provision and make everything else effective?

ERNIE LORINER: People have considered that and I think that the body of opinion is that it would not be good to have a split effective date. It would be better to only have the single choice of law issue, if you will. (inaudible-microphone is not picking up the voice strongly enough.)

So if it has to be delayed, all of it should be delayed (Inaudible - microphone not on.)

The Secretary of the State's Office, the Commercial Reporting Division, as I understand it, will need to make changes for the computer system. They're the expert people and what they need to do and what it is going to take and they have discharged that function (Inaudible - microphone not on.) in the past and so that's something that we could (Inaudible - microphone not on.)

REP. FARR: Thank you.

REP. LAWLOR: Are there further questions? If not, thanks very much.

Next, is James Smith.

JAMES SMITH: Good afternoon, Senator Coleman, Representative Lawlor, other distinguished members of this committee.

I am opposed to the new language proposed in Section 1 of raised H.B. 6895.

REP. FARR: Mr. Smith.

JAMES SMITH: I' certainly not against talking about some modest increase in resources to help accommodate the caseload.

REP. FARR: Okay. Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much.

JAMES SMITH: You're welcome.

REP. LAWLOR: Next, is Elliot Gersten.

ELLIOT GERSTEN: Good afternoon. My name is Elliot Gersten. I'm a lawyer here in Hartford. I'm here to speak on a very discrete portion of the revised Uniform Code and if you'd be kind enough, I'm going to refer you, specifically, to pages 127 and 128 of 255, as an example of part of the problem that's been created. SB 1226

I've been involved with representing companies that are in the business of purchasing annuities and assignments of structured settlements and had the opportunity for the experience to have to participate in somewhere between 15 to 20 different kinds of litigations which have surrounded the application of the structured settlement approval statute, 52-225f.

The experience has shown, in that process, that despite what this - what the Legislature intended in terms of having the best interest of the parties involved in determining whether it be the court should give its approval and should act as a gate-keeper in giving its approval on the proposed assignment of the structured settlement transaction, we've learned that insurance companies have litigated this issue and gone in on contractual language dealing with the right to assign, the power to assign, and various other intricacies including constitutional challenges to the opportunity to people who have, first been injured having had to go through the court process to get a settlement, sometimes anywhere between two years to five years, then reaching a settlement

that's a structure settlement and then finding out that they can't get their money when they thought they were going to get their money and then finding out that they have to go to the court process to get the court approval to permit them to sell their annuity and then finding out that the insurance companies are going to then question the right of the former plaintiff, now claimant, to transfer the assignment.

What is now being raised as a problem comes up in just the subsection of the revised act. And the reason why it's coming up is it's an apparent variation from that which has been proposed and approved, as we heard of earlier today, in the other states in which the revised act has been approved.

And in particular, what is of concern is to propose language in page 128 at line 3676, if we could eliminate the reference to the "or to", that might make it clear that structured settlements are not supposed to be specifically affected by this transaction, by the code.

And secondly, the secondary part of this is, subsection 2 dealing with 52-225f, it looks like this is an exemption and what we're concerned about is that it's not necessarily an exemption, but it's an attempt to make the playing field somewhat un-level by permitting the annuity people to come back and re-litigate issues about the assignment ability of these causes.

And what we're looking for is language that makes it clear that the code, as being revised, is supposed to apply, or that the failure to include this language that exempts it properly, isn't intended to be a new defense to the assignment.

And that's the comments I have. I've tried to make is short.

SEN. COLEMAN: Are there questions? Representative Farr.

REP. FARR: I'm sorry, what line were you on again?

ELLIOT GERSTEN: At page 128, there's line 3676 through 3677 and it deals with the exemptions here. The first part deals with the Internal Revenue Code, Section 104a. And then it goes "or to" and that subsection 2 deals with structured settlements. That's a variation from the revised code that's been adopted in all the other states.

REP. FARR: And you want the "or" --

ELLIOT GERSTEN: We suggest that be deleted. The "or to" be deleted there and again where it's repeated at page 132 of the following exemption at line 3810 through 3811 where it again refers to structured settlements where it says, "or to". And we are suggesting that the "or" - the reference to "or to" be deleted.

And the other suggestion we're making goes on to the next -- the paragraph which follows dealing with the exemption clauses again and you'll see where there's reference to 52-225f and --

REP. FARR: Did you submit written testimony?

ELLIOT GERSTEN: There's written testimony submitted, as well.

REP. FARR: Oh. Thank you.

SEN. COLEMAN: Any other questions? Seeing none, thank you very much.

ELLIOT GERSTEN: Thank you.

SEN. COLEMAN: David Hemond.

DAVID HEMOND: Good afternoon. I'm Dave Hemond. I'm a staff attorney with the Law Revision Commission. I'm here to testify on behalf of the Commission in favor of S.B. 1226 which is the ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

I only have a few comments. You've already heard Tom Welsh who is on our Advisory Committee testify

on some of the details. I've submitted written testimony and a considerable volume of detailed material concerning precisely where the act came from and what it's intended to do.

So what I'd like to do is first note that the Commission, in fact, did do a line by line review of the bill, working basically on bi-weekly committee meetings beginning in May of 2000.

The act, as drafted before you, contains a number of what are limited changes, non-uniform changes to facilitate the enactment in Connecticut.

With respect to the issue that was just raised concerning structured settlements, I can say two things. First of all, there was no intent to change the existing structured settlement law at all. I believe that's how that language reads, but I have no difficulty, whatsoever, in clarifying if there is some question that there was an intent to change that law.

The issue here -- there was concern that this act not change existing Connecticut policy in areas that are not directly related to the Act. That's part of the reason we did the review. We think the Act is effective in doing that, generally, and if there's a specific issue, we'd be more than happy to address that.

There are three specific areas I'd just like to note very quickly.

First, existing Article 9 does not apply to public finance transactions. And the revised Article 9 is promulgated by the National Conference does. The Treasurer, the Office of the Treasurer asked us to preserve the status quo. This act, as drafted, does that it removes the references to public finance transactions and as it is drafted, would not apply in those cases.

It's my belief and I think over a period of time it will become apparent that revised Article 9, in fact, is beneficial when applied in those cases. However, it is not beneficial to create (inaudible)

of the act. There are people who are concerned about how it would effect bonding and other statute issues. And for current purposes, it's deleted.

Secondly, with respect to the filing issues, we tried to work very closely with the Office of the Secretary of the State. We believe that we've addressed all the various filing concerns. Obviously, filing is an important aspect to this bill.

I noted, in just in the testimony I saw, that the Secretary of the State is going to be presenting that there are a couple of other issues, concerns that they raise and they certainly should be addressed. One dealt with the fee section for that office. We have no problem with accommodating any of those interests.

The Act includes a number of provisions that try to address, facilitate its enactment in light of the fact that Connecticut has some consumer statutes. Consumer issues are not central to this act at all. This is a commercial act dealing with commercial transactions. These are very discrete provisions and they were consensus provisions and I don't think there should be any problem with those.

A number of references in the Uniform Act made reference to Article 2a concerning leases and the reason for that is that 47 states have now enacted 2a. The universe of goods transaction law that was created by the National Conference of Commissioners includes Article 2 which deals with sales of those goods, Article 2a which deals with leases of those goods and Article 9 which impacts secured interest in those goods. And it is sort of a trio of acts and they are all, to some degree, inter-related.

The fact that Connecticut has not enacted 2a required that we delete language and reveals sort of this void in Connecticut's own system of transaction law for those purposes.

It suggests to me that the time has come to look very seriously at Article 2a. Perhaps, not for the session, but certainly in the very near future and it's an issue that would make this act stronger, as

well as addressing the leasing law.

Finally, there is this very thorny issue of the effective date. I have a couple comments on that.

There are, obviously, valid interests that have been expressed and are being expressed on both sides here. The Secretary of the State clearly has to be accommodated as is necessary.

The issues that Tom Welsh and the other testifiers identified as to having a uniform date because the ramifications with respect to other states is equally legitimate. I don't have an easy solution.

One thing I will say is that the way the act is drafted, which has a bifurcated effective date, does not work. And I think because of the sort of complications you will see once you start considering that, it is not wise to try and bifurcate the effective date.

This act has a different effective date for Part 5, but the way it's drafted, it also repeals the old Part 4 filing provisions so that this act, as it sits in front of you, would have a year gap in which there was no effective filing provision at all.

This act is so complicated that that sort of problem tends to pop up just by the nature of the act when you start changing how parts of it apply and parts don't.

So I would just suggest that you keep that in mind when you try and deal with that issue.

SEN. COLEMAN: Representative Farr.

REP. FARR: I guess that leads me to my concern about when we pass a bill this big and this complicated, and make it effective July 1, then we find out all the problems that are in it. We can't get them straightened out until the following - until the next year.

And in the past when we've done major pieces of legislation, we tried to give some time advance

notice to people so they can point out any defects.

DAVID HEMOND: Let me just comment on a couple of things. The problem we have is that, first of all, the scope of law we're talking about here now really does often deal with multi-state transactions.

Surely, for the large lenders, the actual fact that there are going to be two very substantially different laws in detail between different states is going to create problems for them. I know Tom cited the conflict of laws issue, but there is a multitude of those problems that come up and that are clearly simplified by having - by everybody adhering to this particular July 1st date.

On the other hand, I think you, as a legislator, are equally uncomfortable with the fact that National Conference has sort of created this situation where there is no truly effective easy way to address it. I don't - and again, so I don't really have an answer other than to cite the fact that we really -- the concerns are legitimate and there aren't easy solutions.

REP. FARR: You're not very helpful, Dave.

DAVID HEMOND: Thank you.

SEN. COLEMAN: Any other questions? Seeing none, thank you, David.

Bob Reardon.

ROBERT REARDON: Senator Coleman, Representative Lawlor. My name is Bob Reardon. I'm a lawyer in New London and I'm here to speak in support of two bills. The first being raised H.B. 6900, AN ACT CONCERNING A CLAIM AGAINST THE STATE OF JEANNE FAIMAN.

The second being raised H.B. 6895, AN ACT CONCERNING THE DECISIONS OF THE CLAIMS COMMISSIONER.

In both instances, I support the enactment of these bills.

building has become very inaccessible to the handicapped and this Mrs. Faiman would like you to know that.

REP. LAWLOR: Thank you very much.

ROBERT REARDON: Thank you.

REP. LAWLOR: Next is Maria Greenslade. And before Maria testifies, we will acknowledge she is going to speak for (Inaudible - background noise) Senator Coleman who got phones calls yesterday from the Secretary of the State apologizing that she couldn't be here today. We certainly understand due to the postponement due to the snowstorm last week.

MARIA GREENSLADE: Yes, thank you.

REP. LAWLOR: We got that and we appreciate it.

MARIA GREENSLADE: Good afternoon, Chairman Lawlor, Chairman Coleman, and members of the Judiciary Committee.

For the record, my name is Maria Greenslade. I'm the Deputy Secretary of the State and as Chairman Lawlor has just explained, I'm here today to testify on behalf of the Secretary of the State Susan Bysiewicz who could not personally appear you today.

HB 6898 HB 6893 SB 1316 HB 6890 SB 1322
I'm going to testify on seven bills. The first bill would be S.B. 1226, AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

Over the last year, the Law Revision Commission has chaired the Study Committee which our office was a member of that Committee. The Commercial Recording Division within the Office of the Secretary of the State is a filing repository for all liens filed under Article 9. Therefore, we have a very strong interest in passage of the - and insuring that the language regarding the filing provisions is very acceptable.

The filing provision language, as set forth in the

bill, receives our approval with a few minor modifications.

The first one is in the fee section where some of the terminology that is set forth in the bill as it is drafted today does not match the new terminology under revised Article 9. It is exact terminology that has been removed under the old Article 9. So we would the terminology to match the new terminology under revised Article 9.

We also have a minor modification in the information section. If you request information from our office, there is a small change in that language.

And also we'd like a modification in the effective date of the bill. I know there's quite some talk about the effective date. Our office is requesting that the entire bill, because we do understand the concerns regarding splitting the effective date. So we are requesting that the entire bill become effective January 1, 2002. We believe this will give us ample time to make our computer changes, to train our staff, and also to do some public education.

Unfortunately, when you put through a new revised bill, there is a lot of training that needs to be done on the public side of the house. The last thing we would like to do is to get into a situation where we are rejecting a majority of the liens coming through the door rather than accepting.

We also want to note that the Office of the Secretary of the State is not requesting additional state funding to implement the revised Article 9. Our office has been taking all appropriate steps in order to ensure that that's done within the state resources available already to the Commercial Recording Division.

The second bill I'd like to testify on is H.B. 6898, AN ACT CONCERNING AN AMNESTY PROGRAM FOR FOREIGN LIMITED LIABILITY COMPANIES AND FOREIGN CORPORATIONS.

we'd be more than happy to answer any questions that you may have.

REP. LAWLOR: Representative Farr.

REP. FARR: One. Let's see, S.B. 1316, you said you needed - there is some language problems with that one?

MARIA GREENSLADE: Uh-hum.

REP. FARR: It seems like these are more than just language issues. Some of it, for example, the filing of - it's got to be original signatures and then it's electronic filing and what do we do with that.

But are you going to get us some language that you would recommend or suggest that might work?

MARIA GREENSLADE: We could do that for you, absolutely. I would recommend that we mirror it with the Business Model Act that is in place today that has some electronic language in there. We'll work on that.

REP. FARR: The Article 9 issue. Obviously, you heard SB 1226 the previous testimony and the dilemma we're faced with is the legal community is saying that if we don't put this in effect in July 1, then we have inconsistencies with other states in terms of choice of law and there may be things in our act that say that you use the law, and in another state, their act will say to use the law in Connecticut with no resolution.

So they're very concerned about passing this on July 1. And you're saying that from your point of view, obviously, you would like more time, as I think we would like too.

But the question we have to ask is how much chaos does it cause you if we pass it effective July 1 versus how much chaos does it cause in the marketplace, in the real world out there?

And could you just describe what problems would you have

if we made it effective July 1?

MARIA GREENSLADE: In the event that the bill becomes effective July 1, normally and I've been testifying and working at the Secretary of State's Office for a little over 15 years now, and I was here when we passed the Model Business Act with an effective date three years out.

In the event the bill is brought on the floor of the House and then on the floor of the Senate, and passed into law, perhaps the first week in June, last week in May, that would give us just under 20 days to make computer changes, revised forms, train the staff, and get the word out to the legal community and the business community that this Article has now been repealed -- Article 9 has been repealed with a new Article coming in.

The computer changes that we're talking about are lengthy, but I can try to summarize.

The first piece would be that it is a open drawer policy for the filing of these UCC liens. So today, you would have an initial financing statement filed. You would have an amendment. You would have a continuation. You would have a termination, etcetera. They have very specific words attached to those financing statements.

Tomorrow, under Revised Article 9, you have your initial financing statement, and then anything subsequently modifying that initial financing statement is called an amendment. So we would have to make all those changes.

We would also have to make a change that our office would no longer tell you that that lien continues to be active, lapsed, terminated, etcetera. It would just be initial financing statement, name of the secured party and debtor on the initial financing statement. All modifications are made by referencing the initial financing statement number only and then it would be up to each of the attorneys involved in a commercial transaction to obtain copies and review everything that came in because our office would just list amendment,

amendment, amendment.

So those changes need to be made.

REP. FARR: But you've known this is coming for a while.

MARIA GREENSLADE: Yes, we have. Yes.

REP. FARR: And I would assume somebody is looking at what they need to do to make that program change?

MARIA GREENSLADE: Yes. We have been looking at that. The one thing we did not want to do was make program changes, have those prepared to go, and then there are some language change that was made in Revised Article 9 and we'd have to re-program the same program again.

We had been looking at the system. We do know what changes need to be made. However, changes do take time to actually type in, program, and test.

REP. FARR: So if we pass the bill real quickly, would that help you?

MARIA GREENSLADE: Yes. Yes, it would.

REP. LAWLOR: Can I just add -- on that question, wouldn't it be safe -- I mean, have you heard anything that would lead you to believe that either this year or next year this bill is -- I mean this law -- this is going to happen, right? It's not really a question of there's a one in ten chance it will become the law of the State of Connecticut? I mean, it's probably going to happen. The only real issue is this July 1st or next July 1st, so why not just begin, assuming now that it's going to take effect on July 1st and you may catch an extra year to get ready, but maybe not.

But why not begin the preparations now rather than wait until what the Legislature is --

MARIA GREENSLADE: We have begun preparations. We just have not done the actual programming of the particular models in the event the language changes in any fashion. Then we would have to re-program

what we just did. So the work would have to be done twice if the language changed at all.

So we do know exactly what needs to be done and we're prepared to move as quickly as we can. As soon as you pass the legislation, we will move because we can understand what the law says.

REP. LAWLOR: Okay. But my sense is that whatever version emerges from the Judiciary Committee, it's probably a 99.9% chance of being the total, final, that's it because I can't even imagine who is going to read it, let alone try to amend it. So, why not just play it safe and just get the ball rolling now? Because the arguments in favor of doing it ASAP from the point of view of just being consistent with the rest of the country, seem to be pretty compelling. And I think your logistical concerns are very legitimate, but why not just start now, assuming it's going to go the way it's written now? Because I really haven't heard anybody make a good case why we should change it other than the effective date.

MARIA GREENSLADE: Right. The only thing that has come up is the - what you had mentioned earlier about the dual filing. That would substantially change the filing part and again, do we do it for - do we make the program changes for dual filings? Do we make it for a single filing? I mean, Connecticut has historically been a single place of filing. It has only been in the Secretary of State's office.

REP. LAWLOR: Does your office have a position on the dual filing issue?

MARIA GREENSLADE: The dual filing issue - we'll work closely with the Committee. I haven't seen any language specifically about it. My understanding is it's mostly for the foreign corporation who has come into Connecticut and now the Uniform Commercial Code, under Revised Article 9, would require that the UCC follow the State of organization of that business and not where the collateral is located.

So, I'm assuming that's what the dual filing is

trying to fix. I'm not 100% certain.

REP. LAWLOR: Well, maybe it would be a good idea, for a variety of reasons, to try and get closure on that issue right away.

MARIA GREENSLADE: And then we can get started.

REP. LAWLOR: Because I think your logistical concerns are very legitimate, but maybe we can all do everybody a favor, just kind of get the decision made soon. Whether the bill becomes final technically, until down the road is another issue, but I think we can pretty much to rest now in terms of what the content will be and --

MARIA GREENSLADE: If we could put that issue to rest and pretty much move the language the way it is, I think we can get started.

REP. LAWLOR: Okay. Okay.

MARIA GREENSLADE: Okay.

REP. LAWLOR: Thank you. Anyone else? Thank you very much.

MARIA GREENSLADE: Thank you.

REP. LAWLOR: Jim Lottstein. Is Jim Lottstein here? Mike Maglio. Is Mike Maglio here? Jon Shorhorn.

JON SHOENHORN: Senator Coleman, Representative Lawlor, members of the Judiciary Committee, my name is Jon Shoenhorn. My name is spelled wrong on the list there.

I'm a lawyer, practicing law here in Hartford and I'm here to speak for the Connecticut Criminal Defense Lawyers Association against S.B. 149.

The Connecticut Criminal Defense Lawyers Association is an organization of about 300 lawyers, mostly private practice criminal defense lawyers, but also public defenders, as well.

I'm going to term this bill, S.B. 149 the creation

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This is in the best interest of the plaintiffs, as well as the court system because if you can get a settled case, you take it off the court docket and the plaintiff will have money in their pocket that much sooner.

I would be glad to answer any questions. I've been trying to keep this as short as possible, but if you do have any questions, I'd be glad to try to respond.

REP. LAWLOR: Are there any questions? If not, thank you, Jay.

JAY JACKSON: Thank you very much.

REP. LAWLOR: Next is Raphie Podolsky.

RAPHAEL PODOLSKY: Thank you, Mr. Chairman.

My name is Raphael Podolsky and I am an attorney with the Legal Assistance Resource Center of Connecticut.

I want to speak briefly to four bills. And I'll just go through them as quickly as I can.

HB 6891 SB 1226 SB 1314

The first is H.B. 6858, which deals with the theft of services statute. We oppose this change, certainly the way it's written. The existing statute has a fairly complicated and, in some ways, peculiar set of presumptions.

In the existing statute, the relevant part of the statute deals with tampering with utilities. And there's a rebuttable presumption, apparently from the tampering, that one can imply that the tampering was done by the person to whom the service was billed.

What H.B. 6858 does is it changes that to say that you may presume instead that the tampering was caused by the occupant. That is to say, the person receiving the service.

In many cases, the occupant and the person to whom

it's billed will be the same person. For example, if it's a single-family house or a single apartment, it's the same person. But the problem is that in a master-metered building in which the property owner pays for the service, this bill seems to say that any tenant, any occupant in the building is presumed to have tampered, even though none of the occupants are liable for the bill, rather than the person whose liable for the bill.

It doesn't make sense. It doesn't reflect any kind of reality. There's no logical incentives there and therefore, it seems to me it's inappropriate. I'm told by the - I guess the proponent, that they actually had a different problem in mind and perhaps if they're going to submit different language, at least that could be addressed. But I'm really speaking to the bill that's in front of you, which I think simply doesn't work.

The second bill I would comment on is H.B. 6891 which deals with commitments of children to the Department of Children and Families. And the part that I am most concerned about is the fact that it changes the annual commitment into an indefinite commitment. While we're uncomfortable with this, I think we feel that that can be lived with, but what is important, however, is to make absolutely clear that the burden of proof for maintaining the commitment remains on DCF.

And in my written testimony I have suggested a sentence that should be added at line 78. I am told by the Department that they do not have an objection to this. So I would hope you would make that change in the bill.

The third bill I want to speak to is S.B. 1226, which is the amendments to Article 9. I was a member of the Advisory Panel to the Law Revision Commission which tediously went through the entire statute, made a number of changes that I suppose could be called non-uniform changes in recognition of consumer interests.

While I didn't get many of the things we proposed, I feel that on balance it is a good bill and I

support the entire package.

Of the changes that were made, I would simply call to your attention one that I think is most important which is making clear, in the section of Deficiency Judgments, that courts, in a sense, are encouraged to look to the case law under the Retail Installments Sales Financing Act when in interpreting the Uniform - Article 9 of the Uniform Commercial Code which I think is a positive change from the Uniform Act.

And finally, on S.B. 1314 which deals with Article 2A. My suggestion to the committee is that you ought to put this off until next year, but you ought to explicitly request the Law Revision Commission to convene an advisory committee and produce a recommended draft for you next year.

Thirteen years ago, the Law Revision Commission started this process, spent a number of meetings, surveyed its Advisory Committee, and as a result, decided not to proceed. This was in 1988 and 1989.

It seems to me now that nearly all other states have an Article 2A. It really is time to get something in place.

Part of the problem, though, is Connecticut has never adopted a consumer leasing act. And Article 2A assumes that states have a consumer leasing act so that it can defer to the State's consumer leasing act and consumer contracts.

In the absence of a consumer leasing act, it's important that Article 2A make some adjustments and modifications in the act to consumer interests the same way that Article 9 does that.

In theory, you could do that during the session and have something before the session is over. Except, it is a long, slow, tedious process and as a practical matter, it's extremely difficult to do.

So it seems to me that the more orderly and sensible approach is to just get this thing done by next year.

TESTIMONY
ELIZABETH E. GARA
ASSOCIATE COUNSEL
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE
JUDICIARY COMMITTEE
LEGISLATIVE OFFICE BUILDING
MARCH 12, 2001

My name is Elizabeth (Betsy) Gara, associate counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents over 10,000 employers across Connecticut. Our membership includes firms of all sizes and types, the vast majority of which are small businesses with fewer than 100 employees.

I am here on behalf of CBIA to testify in *opposition* to the following bills:

- SB-1183, An Act Concerning Disclosure of Public Hazards;
- SB-1184, An Act Concerning Sealing of Court Records;
- SB-1185, An Act Concerning Majority Verdicts in Civil Actions;
- SB-1262, An Act Concerning Consumer Recovery for Antitrust Violations;
- SB-1263, An Act Concerning Antitrust Investigations;
- SB-1315, An Act Concerning Fraud Against the State;
- HB-6657, An Act Prohibiting Exploitation of Immigrant Labor;
- HB-6857, An Act Concerning Loss of Life or Permanent Injury of a Family Member.

I would also like to testify in *support* of the following bills:

- HB-6890, An Act Concerning Business Corporations and Nonstock Corporations;
- SB-1226, An Act Adopting Revised Article 9 of the Uniform Commercial Code Concerning Secured Transactions;
- SB-1316, An Act Concerning the Filing of Limited Liability Documents with the Secretary of State;
- SB-1322, An Act Concerning the Merger of Dissimilar Business Entities;
- SB-1111, An Act Concerning Fairness in Medical Examinations.

SB-1183. An Act Concerning Disclosure of Public Hazards

CBIA *opposes* SB-1183, An Act Concerning Disclosure of Public Hazards and SB-1184, An Act Concerning Sealing of Court Records, which limit the ability of the

mother experienced as a result of an alleged wrongful termination of employment. Consequently, the court concluded that the balance of interest lies in declining to recognize a cause of action for loss of parental consortium.

We urge the committee to reject this measure and instead address ways of restoring fairness and balance to our civil justice system.

CBIA supports HB-6890, An Act Concerning Business Corporations and Nonstock Corporations

CBIA supports HB-6890, which updates Connecticut's corporate governance laws to conform to changes in the Model Business Corporation act involving electronic filings, indemnification, inspection rights, notices and appraisal rights. Continuing to adopt changes consistent with the Model Business Corporation Act will keep Connecticut companies in the economic mainstream and make Connecticut a more attractive place to incorporate and do business.

CBIA supports SB-1226, An Act Adopting Article 9 of the Uniform Commercial Code Concerning Secured Transactions

CBIA supports SB-1226, which revises Article 9 of the Uniform Commercial Code to improve secured financing between creditors and debtors by 1) allowing additional kinds of property to serve as collateral, 2) simplifying the paperwork for these transactions, 3) simplifying public notice that helps avoid bankruptcy risk, and 4) providing fairer and more efficient enforcement when a secured debt is in default.

CBIA supports SB-1316, An Act Concerning the Filing of Limited Liability documents with the Secretary of State.

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WRITTEN STATEMENT OF THE
NATIONAL ASSOCIATION OF SETTLEMENT
PURCHASERS REGARDING
CONNECTICUT SENATE BILL 1226
March 12, 2001

The National Association of Settlement Purchasers (NASP) has worked with the members of the Connecticut Legislature, including the Judiciary Committee, over the past several years in connection with legislation related to the secondary market for structured settlements. NASP members are involved in the secondary market for structured settlements by providing individuals who are receiving monetary payments under a structured settlement that may stretch out over a period of 20, 30, 40 years much needed and desired flexibility and liquidity options in connection with said payment streams. Specifically, NASP members allow individuals to monetize these long-term payment streams through secured loans and assignments in return for lump sum payments. These liquidity options allow individuals who are receiving these long term payment streams the needed flexibility to address a family or personal emergency, a distressed financial situation, or some other unforeseen change in their life, personal, or financial circumstances.

The Structured Settlement Act (of 1998)

In 1998 NASP worked with the Connecticut Legislature in drafting and enacting an Act Concerning Structured Settlements (P.A. No. 98-238, S.H.B. No. 5548), which is codified at 52-225f (the "Structured Settlement Act"). Briefly, the Structured Settlement Act sets forth procedures and requirements for the "transfers" of structured settlement payment rights. "Transfer" is defined under the Structured Settlement Act as a "sale, assignment, pledge, hypothecation or other form of alienation or encumbrance made for consideration." The Structured Settlement Act requires that consumers be provided detailed, written disclosures regarding the primary terms of the contemplated transaction and requires all such transfers of structured settlement payment rights, whether by way of a sale or in the form of a secured loan, to be approved by a court. In order to approve the transfer, the reviewing court must find that the transfer is "in the best interest of the payee [the consumer] and is fair and reasonable to all interested parties under all of the circumstances then existing."

Since 1998, the Structured Settlement Act has created quite a bit of litigation, as some insurance companies have opposed such transactions, not on the basis that the transfer was not in the best interest of the consumer or that the transfer was not "fair and reasonable," rather some insurance companies have sought to oppose the transaction based on the presence of boiler-plate, anti-assignment language in the underlying settlement documents and/or annuity contract issued to fund the structured settlement.

It would be inaccurate (and unfair) to say that all insurance companies are routinely opposing transfers under the Structured Settlement Act. Many insurance companies do not oppose the transactions as long as the provisions of the Structured Settlement Act are complied with. Nevertheless, whether the consumer can secure court approval of the transaction in a timely and economical manner more often than not comes down to the identity of the insurance company who is obligated to make the future payments under the structured settlement instead of the circumstances of the consumer

who is seeking to make the transfer. Unfortunately, where the focus of the Court review, as contemplated by the Structured Settlement Act, was originally intended to be the needs and best interest of the consumer and whether the transaction was fair and reasonable, the ultimate success or failure of the transaction now depends on whether the insurance company chooses to oppose the transaction. Insurance companies obviously can, and often do, outspend consumers in litigation of this nature and the mere threat that they will appeal any cases they lose and effectively tie up the consumers in litigation for years and drive the cost of securing court approval through the roof, often make these transactions impractical in terms of time and cost.

Consumers are basically at the mercy of the insurance company when they seek court approval of these transactions under the Structured Settlement Act. This is despite the fact that the insurance companies who are responsible for making the payments are not prejudiced or adversely affected in any way by virtue of a court-approved transfer of said payments. This is also despite the fact that the initial drafts of the Structured Settlement Act in 1998, which had been originally promoted by the insurance industry as "consumer-protection" legislation, had included provisions requiring the consumer to secure the insurance company's consent to the transfer. Although that requirement was eliminated by the Connecticut Legislature during the legislative process as too onerous and restrictive, as a practical matter if the insurance company chooses to oppose the transaction through aggressive litigation tactics, the consumer has great difficulty in connection with these transactions.

SB 1226 -- Revisions to UCC Article 9 Relating to Secured Transactions

SB 1226 seeks to rewrite Article 9 of the Uniform Commercial Code. This legislation has been making its way through the various State Legislatures for the past couple of years. Revised Article 9 is universally supported across the country by Bar groups, the National Conference of Commissioners on Uniform State Laws (NCCUSL), the American Law Institute, business groups, etc.

NASP supports Revised Article 9 and believes that Connecticut should join other States in enacting this very important piece of commercial legislation. NASP does not oppose Revised Article 9, but NASP **does oppose** three provisions of SB 1226. It is important to note that the portions of SB 1226 that NASP is opposed to are **non-uniform** amendments of the Revised Article 9 legislation. These provisions were not included in the original drafts of Revised Article 9 promulgated by the American Law Institute and NCCUSL. In addition, the provisions in question have little impact or effect on commercial law or secured transactions, but they do have a dramatic and devastating effect on structured settlement transfers in Connecticut under the Structured Settlement Act.

Specifically, section 42a-9-109(d)(15) provides, in relevant part that Article 9 of the Connecticut UCC does not apply to:

"..... an assignment of a structured settlement payment right governed by section 52-225f."

As indicated above, section 52-225f is the Structured Settlement Act.

In addition, sections 42a-9-406 and 42a-9-408 references rights to receive payments under structured settlements. Specifically, section 42a-9-406(i)(1) provides that this section does not apply to:

"(B) An assignment or transfer of or creation of a security interest in:
(i) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2), as amended from time to time, or....."

Section 42a-9-408(f)(1) provides that this section does not apply to an assignment or transfer of or creation of a security interest in:

"(i) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2), as amended from time to time, or....."

As 42a-9-109 is currently drafted, transfers of payments due under a structured settlement are excluded from the entire scope of Revised Article 9. That is a very bad result, for consumer/debtors and secured parties/creditors. Article 9 provides a comprehensive statutory scheme to govern commercial and secured transactions. Due to the nature of modern commercial transactions, uniformity between the states is important, particularly in Revised Article 9. SB 1226, in its current form, will adversely affect the "uniformity" of the Uniform Commercial Code.

Suppose an individual who lives in New Jersey is receiving structured settlement payments from a Connecticut insurance company and takes out a five year loan from an New Jersey bank, secured by the structured settlement payments. The bank perfects its security interest in the collateral by filing a UCC Financing Statement in New Jersey, which is the state of the borrower/debtor's residence. Suppose that the debtor moves from New Jersey to Connecticut two years later, with three years remaining on the loan. Under the UCC, the bank would have just a few months to perfect its security interest in the debtor's new state - Connecticut. Normally, that would be a simple procedure of filing a UCC-1 in Connecticut. However, because of the impact of SB 1226, the UCC arguably would not apply to the transaction and the bank could not perfect its security interest in Connecticut. The bank would have little choice, other than to lose its secured status or accelerate the loan and file suit against the debtor, simply because the debtor was moving to Connecticut.

Obviously, it will be difficult, if not impossible, for any financial institutions to make a secured loan to a Connecticut resident secured by structured settlement payments

because the institution could not perfect its security interest under the UCC. Amongst other things, the bankruptcy risk in such a situation would be impossible to overcome.

The UCC is a comprehensive scheme of laws that governs secured transactions and the rights, duties, and obligations between secured creditors and debtors and amongst competing creditors. While the Structured Settlement Act governs the dealings by and between a payee and a transferee when the transaction is initiated, the UCC continues to govern the relationship by and between said parties throughout the term of the transaction and beyond. The proposed amendment of the UCC removes structured settlements from the scope of the UCC, meaning that once the transfer of structured settlement payments is completed in accordance with the Structured Settlement Act, there would be no body of law that would govern the relationship between said parties beyond the initial stage. Again, the uncertainties arising in connection with a potential bankruptcy or claims of competing creditors would make such transactions very difficult to complete in the future.

The UCC provides the means to put the world on notice of one's interest, as a secured party or an assignee, in property and collateral. There would be no central filing repository where one could check to determine whether structured settlement payments were subject to a security interest. It would be impossible to verify who was claiming an interest in such collateral or determine the nature, extent, or validity of such claims and interests.

A secured transaction involving structured settlement payments would be difficult in Connecticut were SB 1226 to pass in its current form and would have severe and widespread ramifications for all types of interstate secured transactions and would have a profound effect on the rights, duties, and obligations of debtors and secured parties and other creditors in Connecticut

In addition, sections 42a-9-406 and 42a-9-408 of SB 1226 relate to, among other things, the enforceability of contractual anti-assignment provisions. In essence, these two sections make contractual anti-assignment restrictions unenforceable. The rationale for doing so is that free alienability of property is an important property right that should be protected and preserved and individuals should be permitted to make decisions about the disposition and control and alienability of their property free from the interference of third parties, through the imposition or attempted enforcement of contractual anti-assignment and anti-encumbrance provisions.

NASP urges the Connecticut Legislature to amend SB 1226 to eliminate these non-conforming, non-uniform amendments to the Revised Article 9. These non-conforming amendments (in 42a-9-109(d)(15), in 42a-9-406(i)(1), and in 42a-9-408(f)(1)) will have an undeniable chilling effect on the ability of Connecticut residents to complete and consummate "transfers" of their structured settlement payment rights by way of a sale, assignment, or secured loan in a timely and cost-efficient manner. The Connecticut Legislature has addressed this issue in the Structured Settlement Protection Act and the message was clear. . In order to enter into and close these types of transactions,

consumers must be provided detailed disclosures in connection with these transactions and must convince a court that such transfers are "in their best interest" and that the terms of such transfers are "fair and reasonable." If SB 1226 passes in its current form, the insurance industry will have succeeded in getting what they were denied in 1998 in connection with the Structured Settlement Act; that is the ability to block these transactions anytime they want.

NASP believes that if a Connecticut consumer complies with the provisions of the Structured Settlement Act in connection with a transfer of structured settlement payments, and goes through the time and expense of a court proceeding, as contemplated in the Structured Settlement Act, and convinces a court that the proposed transfer is in their best interest and is fair and reasonable, that that consumer will be able to complete such a transaction, notwithstanding the recalcitrance or opposition of the insurance company who is obligated to make the structured settlement payments. NASP is prepared to offer some very slight amendments to SB 1226 to insure that the provisions of the Structured Settlement Act are not usurped.

Should you have any questions, please do not hesitate to contact Jim Leahy @ 860-541-6438 (in Hartford) or Robin Shapiro @ 212.984.1489 (with Ovation Capital, a member of NASP) in New York.

Legal Assistance Resource Center

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S.B. 1226 -- Article 9 of the Uniform Commercial Code Judiciary Committee Public Hearing -- March 12, 2001

Recommended Committee action: APPROVAL OF THE BILL

This bill enacts the new version of Article 9 of the Uniform Commercial Code. It is the product of the Law Revision Commission's advisory committee on Article 9, which reviewed the uniform draft with great care and was able to reach consensus on a number of modifying amendments which adapt the uniform act to Connecticut law and practice. I was a member of the Advisory Committee, and I support the package endorsed by the Law Revision Commission and the advisory committee.

Article 9 deals with what happens when the debtor under a contract is in default. In particular, it governs repossession and deficiency judgments. By its terms, Article 9 yields to specific consumer protection statutes; but many areas of consumer law are not covered by specific statutes and Article 9 is therefore controlling. It is thus very important for consumers that Article 9 treat consumer debtors fairly. Because Article 9 is commercial in nature, its underlying principles assume that the parties, being businesses, have equal bargaining power and are capable of protecting themselves. Consumer transactions, however, are usually governed by what are called "contracts of adhesion," i.e., boilerplate contracts prepared by the creditor; and the consumer has little choice and often little awareness of what they say. As a result, consumer law commonly protects consumers by regulating what may be included in a consumer contract.

The uniform Article 9 recognizes this problem and excludes consumer transactions from a number of its provisions. The advisory committee was able to reach agreement on a small number of additional changes to reflect consumer needs, and those changes are incorporated into S.B. 1226. For example, Section 123(b) of the bill (l. 5605-5615) makes clear that deficiency judgments in consumer contracts are to be governed by case law under the Retail Instalment Sales Financing Act -- which prohibits deficiencies if the creditor fails to comply with statutory requirements -- rather than the deficiency judgment rule contained in Section 123(a) of Article 9. While a number of other consumer proposals were not included, I believe that, on balance, the end product represents a fair compromise among diverse interests and ought to be adopted.

-- Prepared by Raphael L. Podolsky

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Testimony of David L. Hemond
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to the Judiciary Committee

in favor of Senate Bill 1226

An Act Adopting Revised Article 9 of the Uniform Commercial Code
 Concerning Secured Transactions

March 5, 2001

The Connecticut Law Revision Commission recommends enactment in the 2001 legislative session of Senate Bill 1226 to enact Revised Article 9 – Secured Transactions – of the Uniform Commercial Code.

The Connecticut Law Revision Commission, at a meeting on March 21, 2000, pursuant to a request of the Cochairs of the Judiciary Committee, undertook a review of the revisions to Article 9, Secured Transactions, of the Uniform Commercial Code that were promulgated by the National Conference of Commissioners on Uniform State Laws at its July 1998 Annual Conference. After review, the Commission voted, at a meeting on December 19, 2000, to recommend enactment of Revised Article 9 in accordance with the language now contained in Senate Bill 1226. The bill reflects the draft as promulgated by the National Conference with a number of discrete changes recommended by the Commission to facilitate its enactment in Connecticut.

The Commission review was conducted by a Commission subcommittee chaired by Mary Anne O'Neill and including Commission members Robert W. Grant and Joseph J. Selinger. The committee met regularly with a group of advisors to prepare recommendations concerning the proposed revisions. The committee reviewed the proposal line by line together with available commentary and nonuniform amendments that have been enacted in other states. The committee found, and the Commission concurs, that Revised Article 9 is a largely uncontroversial extension and clarification of existing law. Because of strong interests in uniformity in this commercial

area and because most states are expected to have the act in place as of July 1, 2001, the Commission recommends enactment of Revised Article 9.

In the course of its deliberations, the committee prepared a number of amendments that are necessary to conform the Uniform proposal to existing Connecticut laws and practices. The changes, in particular, reflect filing concerns raised by the Secretary of the State. The bill also includes discrete language changes intended to address concerns raised by our consumer advisors. Article 9 is largely concerned with commercial, not consumer, matters and those changes, which are peripheral to the act, are intended to ensure that commercial policies are not inappropriately applied in consumer contexts that are largely governed by other law.

As noted in the revision commentary to the Official draft, Article 9 provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. That law is complex and intricate. Because the proposed revisions are to existing Article 9, which Connecticut has substantially enacted, the summary of the proposed revision that is set out in the commentary to the Official draft applies to the Connecticut draft except with respect to the limited nonuniform amendments noted below. The Commission has submitted both the Official Uniform draft with commentary and a substantial amount of supplemental commentary. The Commission work relied on and acknowledges the relevant commentary prepared by the National Conference that accompanies the Uniform draft. The introductory commentary to the Official draft provides an overview of the revisions. With respect to proposed revisions to particular sections, resort should be made to the official comments to those sections in the Official draft.

The changes proposed by the Law Revision Commission to the Official draft can briefly be summarized as follows:

1. Public financing transactions. In accordance with existing Connecticut law, the Commission draft deletes public financing transactions from Article 9. This is a change from the Official draft but not from current law. Concerns were raised by the Office of the Treasurer over language in the Official draft that expanded its scope to include public financing transactions. The Official draft proposal is intended to facilitate codification of Article 9 principles for those transactions. However, the proposed language is controversial and only peripheral to the focus of the act and was deleted to avoid enactment concerns. Enactment of those provisions may be appropriate in a future legislative session.
2. Nonassignment. Existing Connecticut law restricts the assignment of lottery winnings, workers' compensation benefits, and structured settlement payment rights. Because Article 9 generally prohibits restrictions on assignments, language was added to the draft to protect the existing legislative policy restricting assignment in those specified areas.
3. Uniform Commercial Code Article 2A - Leases. Connecticut is one of only two states that has not enacted Article 2A of the Uniform Commercial Code. Article 2A provides a commercial legal structure for the numerous transactions that create a lease. The proposed Official draft of Revised Article 9 assumes that Article 2A is enacted and references that Article freely. The proposed Connecticut draft deletes the numerous Article 2A references that are in

the Official draft because the references do not have a clear meaning in the Connecticut context. While those references must be deleted for enactment of Article 9 in this session, the better solution to this anomaly in the long term may be enactment of Article 2A in this, or in a subsequent, legislative session. Article 2A has been raised as Senate Bill 1314 and is being heard today.

4. Filing issues. The Official draft recognizes that the law and practice concerning filing varies considerably among the states. The draft therefore provides considerable latitude to accommodate state practices. Existing Connecticut law requires enactment of some nonuniform language to reflect the practice in this state with respect to local and state filings. In particular, changes are made to allow local filing offices to continue to file by "book and page" and to accommodate concerns expressed by the Secretary of the State concerning required forms and a provision for the adoption of regulations. The Connecticut draft also deletes a provision in the Official draft that would require some unspecified government official or agency to report on the operation of the filing office. None of these changes affect core substantive Article 9 issues such as how Article 9 interests are created or what rules govern perfection and priority.

5. Consumer issues. The Official draft contains provisions that ensure that the commercial policies applied by Article 9 do not inappropriately leak over into consumer transaction areas. Those provisions reflect a bargained compromise entered into at the Uniform Laws deliberative sessions. However, they are notable at times for their lack of specificity. For example, section 9-626 of the Official draft sets out rules concerning deficiencies, but explicitly states that those rules do not necessarily apply to consumer transactions. The draft intends "to leave to the court the determination of the proper rules in consumer transactions" and indicates that courts "may continue to apply established approaches". In the Connecticut context, many, but not all, of those consumer transactions will be expressly governed by the Retail Instalment Sales Financing Act, sections 36a-770 et seq. The Commission draft includes language that provides more explicit guidance to the court when it determines the proper rule for such a consumer case.

6. Retention of the policy reflected in existing section 42a-9-209. Existing section 42a-9-209 contains a Connecticut non-uniform amendment to existing Article 9 concerning an agreement for a security in household furniture. It reflects a policy that the Commission determined should be continued. However, because revised Article 9 uses that section number for a provision containing an unrelated subject matter (repealing the section as it applies to securities for household furniture), retaining the policy of old section 42a-9-209 requires reenactment of the provision as a new section. The proposed draft reenacts old section 42a-9-209 as a new bill section. The provision should be appropriately codified by the Legislative Commissioners' Office within revised Article 9, perhaps as a new "section 42a-9-206a" within the subpart concerning effectiveness and attachment. (Because of interests in uniformity, the provision should not be assigned a section number that displaces a uniform provision. That is, this provision should not be assigned the section 42a-9-207 because, within the universe of the Uniform Commercial Code, section 42a-9-207 will be understood to contain the substantive provisions of the Uniform Draft Section 9-207.)

7. Electronic self-help. The Commission finds that the traditional Article 9, Section 9-609, "self-help" provisions raise new concerns where self-help is exercised with respect to electronic

media. In that case, the Commission believes that any such self-help should be subject to appropriate limitations that require express authorization for use and that require notice to the debtor.

8. Technical drafting issues. A variety of drafting issues inevitably arise in a bill of this length and complexity. I have been working closely with LCO Attorney Rick Taff to ferret out those issues and recently shared with him a list of several possible glitches. I believe that those changes will be made by the LCO. In addition to those purely technical matters, two other possible drafting changes were brought to my attention by Edwin Smith, one of the Uniform Laws Commissioners involved in drafting of the bill. Those suggestions are as follows and, I believe, should be made for technical consistency. I recommend that the Judiciary Committee include them in the substitute bill as reported:

at line 1065 Add after "agency" "of this state" (This suggestion reflects the intent of the act to exclude transfers by government units of this state, but not to affect a valid Article 9 security interest that arises under the law of another state. We intend our Article 9 to apply to a valid Article 9 security interest that arises under another state's law if that law does apply to security interests that reflect a government transfer by an entity of that state. We do not want it to apply to transfers by government units of our state.)

at lines 2080-2085 Another issue picked up by Ed Smith. Language at 2080 beginning "but during any period...." through phrase at 2085 "...that person as debtor," should be deleted because that issue is covered by other language at subsection (d) of that section. The language to be deleted was from an old non-uniform Connecticut provision that was addressed in the new act.

9. The effective date. The bill as drafted includes a delayed effective date for the part 5 filing provisions, apparently to accommodate concerns raised by the Secretary of the State. I would like to make two points.

First, the Uniform Laws Conference has been pushing states hard to comply with a July 1, 2001 enactment date to avoid uniformity problems that will occur if some states have enacted the act and some states have not. While I do not think that the Uniform Laws Conference should be able to mandate the schedule under which legislatures operate, their uniformity concerns are legitimate and should be met if that is reasonably possible. On the other hand, the bill does impose new obligations on the Secretary of the State that cannot be instantly implemented. In short, the legislature should comply with the July 1, 2001 effective date if that can be done with the consent of the Secretary of the State. If that is not possible, the effective date should be delayed as necessary.

Second, the effective date should be uniform for the whole act. If it is to be delayed, it should be delayed for all of Article 9, rather than for just part 5. As drafted, delaying the effective date for only part 5 would deprive the state of any Article 9 filing rules for the period of the delay between the effective date for the act generally and the effective date for part 5. The existing filing rules are in part 4 and would be repealed by the implementation of the part 4 provisions. Delaying the effective date for part 5 would mean that the new filing rules in part 5 that replace

the old part 4 rules would not yet be in place. In a bill this complex, we need to keep the implementation and effective date provisions as simple as possible to avoid this sort of unintended consequence.

Finally, the Commission acknowledges the difficulties of accessibility that Article 9, and particularly Revised Article 9, presents for a layperson or even an attorney who lacks experience in the field of secured transactions. Unfortunately, the subject matter is inherently complex. However, the Commission's advisory committee includes a number of attorneys who are highly articulate with respect to the nuances. Commission advisors, not coincidentally, provided the faculty for a recent bar association seminar on Revised Article 9. Moreover, at the national level, drafters of the revised act have been active in addressing concerns. Should concerns arise that are not addressed by the material, the Commission can provide expertise as necessary to provide articulate answers. If you have questions, please give me a call.



Connecticut Bar Association

BACKGROUND MATERIAL CONCERNING SENATE BILL No. 1226

AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL
CODE ON SECURED TRANSACTIONS

Prepared By

Thomas J. Welsh, Esq.

On Behalf of

THE CONNECTICUT BAR ASSOCIATION

March 5, 2001

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BACKGROUND MATERIAL CONCERNING SENATE BILL No. 1226

AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL
CODE ON SECURED TRANSACTIONS

Prepared By

Thomas J. Welsh, Esq.
On Behalf of
The Connecticut Bar Association

March 5, 2001

I. INTRODUCTION

- A. Introduction to Article 9: Article 9 of the Uniform Commercial Code (generally referred to herein as "Article 9") states the law regulating security interests in personal property and with the sales of accounts, contract rights and chattel paper. It states the methods of creating and perfecting security interests in tangible and intangible personal property and the priority rules governing conflicts between interests of parties, such as other lien creditors, in property subject to such security interests. Article 9 is enacted as part of the Uniform Commercial Code in Title 42a of the Connecticut General Statutes.

Article 9 has been adopted by all of the states in the United States and the provisions of Article 9 are the primary basis upon which financing of personal property by borrowers within the United States is accomplished. However, in addition, after the initial enactment of Article 9 other statutory schemes were enacted in Connecticut using the Article 9 filing system for perfecting and establishing the priority of interests not created under Article 9. These non-Article 9 liens include state tax liens (under CGS §12-35a), municipal tax liens (under CGS §12-195a et seq.), federal lien registration (under CGS §49-32a), judgment liens on personal property (under CGS §52-355a) and numerous other provisions regarding financing by state agencies and authorities and coordination of lien provisions scattered throughout the General Statutes.

- B. General Legislative History of Article 9: Article 9 was originally enacted in Connecticut as part of the Uniform Commercial Code in 1959 as P.A. 133. The last major revision to Article 9 was proposed in 1972 and enacted in Connecticut in 1976 as P.A. 76-369. Since that date minor amendments were enacted to conform Article 9 provisions with changes to other Articles of the Uniform Commercial Code, however, no major revision was contemplated until the preparation and the approval by the American Law Institute and the National Conference of Commissioners of Uniform State Laws in 1998 of the subject major revision.

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C. General Legislative History of Revised Article 9: In 1990, as part of the continuing review and revision of the Uniform Commercial Code, the Permanent Editorial Board of the Uniform Commercial Code, with the support of the American law Institute and the National Conference of Commissioners of Uniform State Laws, appointed a study committee to review Article 9 and the case law and issues that arose since its enactment and to recommend whether revisions should be made to correct any problems which were identified. In 1993, in response to the report of the Article 9 study committee, a drafting committee was appointed, which sought and incorporated the views of a wide variety of affected parties, interest groups, professional associations and academic leaders. The drafting committee met periodically and drafted, what can be best characterized as, a total re-write of Article 9. The apparent thrusts of the revision were to correct problems and uncertainties in the scope of Article 9, to bring Article 9 into the internet age by making its provisions "medium neutral" and to provide more explicit rules for many transactions, so to reduce the considerable volume of litigation relating to Article 9 provisions. [As a non-scientific illustration, note that the Uniform Commercial Code Digest, a publication that reports on cases under the Uniform Commercial Code throughout in the United States, currently consists of 37 volumes, of which 13 volumes, or approximately 35%, is devoted to cases under Article 9 alone.] In May and July of 1998, the American Law Institute and the National Conference of Commissioners of Uniform State Laws, respectively, approved the drafting committee's draft on revised Article 9 (referred to herein as "Revised Article 9"), final drafting committee comments were then prepared, and Revised Article 9 was submitted in 1999 to the states for approval. Revised Article 9 was drafted with a uniform effective date of July 1, 2001, to permit all of the states to enact Revised Article 9 before it became effective. Based upon information from the National Conference of Commissioners on Uniform State Laws, as of this writing twenty nine (29) jurisdictions have adopted Revised Article 9¹ and Revised Article 9 has been introduced and is currently pending in another nineteen (19) states², including Connecticut.

In March of 2000 the Judiciary Committee of the Connecticut General Assembly requested the Connecticut Law Revision Commission to study revised Article 9 and to report to it for the 2001 session. The Advisory Committee was established with members of the Bar from the commercial law and bankruptcy, real property and consumer sections of the Connecticut Bar Association, as well as affected interest groups and departments and agencies of the State Government agencies, including the Office of the Secretary of the State. The Committee met, generally on a bi-weekly basis, from May, 2000 through January 11, 2001, reviewed Connecticut law impacts as well as revisions in the other

¹ States that have adopted Revised Article 9 are Alaska, Arizona, California, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and West Virginia. The District of Columbia has also adopted Revised Article 9.

² States in which Revised Article 9 has been introduced and are pending are Alabama, Arkansas, Colorado, Connecticut, Georgia, Idaho, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Wisconsin and Wyoming. Enactment is also pending in the U.S. Virgin Islands.

states that had adopted revised Article 9, and prepared recommended text for adoption in Connecticut. The Law Revision Commission approved the Advisory Committee's recommended text and referred it to the Judiciary Committee. This is, essentially, the subject proposed Bill.

II. OVERVIEW OF REVISED ARTICLE 9

- A. Overview of Official Version of Revised Article 9: The following discussion in this sub-section is reprinted, with permission, from the web site of the National Conference of Commissioners of Uniform State Laws, at www.nccusl.org/uniformact_summaries/uniformacts-s-uccra9st1999.htm:

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing-statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the

interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1999. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. **The Scope Issue:** The 1999 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.
2. **Perfection:** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.
3. **Choice of Law:** In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1999 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection, and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by

registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. **The Filing System:** Improvements in the filing system in the 1999 revisions to Article 9 include a full commitment to centralized filing--one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1999, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. **Consumer Transactions:** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1999 revisions to Article 9 than it was pre-1999. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1999 revisions to Article 9.

6. **Default and Enforcement:** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

B. **Notable Connecticut Law Revision Commission Changes to Official Draft:** Following are a number of the more significant changes made by the Connecticut Law Revision Commission (the "Commission") as the result of the Advisory Committee recommendations and comments received. The following is not intended to be a complete list or discussion of these changes, reference should be made to the Commission report for a complete list of changes from the Revised Article 9 Official Draft and reasons for such changes.

1. **Scope Changes:** In response to comments by the Office of the Treasurer, the Commission excepted public finance transactions from Article 9 by deleting Revised Article 9 §9-109(c)(2) and adding a new Revised Article 9 §9-109(d)(14) to preserve the existing exception in Article 9. Exceptions to the scope of Revised Article 9 were also added in Revised Article 9 §§9-109(d)(15), 9-406(i), 9-408, and elsewhere in Revised Article 9, for assignments of lottery winnings, workers compensation payments and structured settlement payments pursuant to other state statutes and mirroring changes made by other states.

2. **Real Estate Interests:** Numerous changes were made throughout Revised Article 9 to conform it to the Connecticut "title" theory of real estate mortgages. For example, a change was made to Revised Article 9 §9-607(b), relating to enforcement of assigned real estate interests by power of sale, to permit such enforcement only if power of sale provisions are permitted under other Connecticut law, which is not currently permitted – all such enforcement actions are currently pursuant to a foreclosure action in Connecticut Superior Court.

3. **Article 2A References:** References to Article 2A of the Uniform Commercial Code were deleted in the Commission draft, since Connecticut has

not adopted Article 2A. The Advisory Committee felt that Connecticut should adopt Article 2A, since it is the only remaining state to do so, however such recommendation was beyond the scope of the Advisory Committee mandate. However, in the event that Connecticut adopts Article 2A, in this legislative session or after, changes will be required to Revised Article 9 to restore the deletions.

4. **Changes to Consumer Provisions:** The following changes were made to the Revised Article 9 to satisfy the concerns of consumer representatives on the Advisory Committee and to make clear to practitioners the interplay between Revised Article 9 and Connecticut consumer protection statutes, such as the Retail Instalment Sales Financing Act (CGS §36a-770 et seq., cited as Part XI of Chapter 669 in the Commission draft).

- a. **Payment Allocation Provisions for Consumer Purchase Money Security Interests:** Revised Article 9 § 9-103(2) was added to the Commission draft incorporating rules for allocation of payments in consumer transactions, which among other things, extinguishes interests with purchase money priority first. This is similar to the provision adopted in Tennessee.
- b. **Cumulative Exercise of Remedies:** An amendment to revised Article 9 §9-601(c) negates the ability to cumulatively exercise remedies in a consumer transaction if law other than Revised Article 9 provides such a restriction. This permits other state statutes, such as the Retail Instalment Sales Financing Act, to limit such cumulative exercise of remedies if provided in such statutes.
- c. **Agreement of Standards of Performance:** Revised Article 9 §9-605(a) permits the parties to agree upon the standards by which fulfillment of duties under Revised Article 9 are fulfilled. Revised Article 9 permits such standards if they are not "manifestly unreasonable". The Commission modified Revised Article 9 §9-605(a) in consumer cases to allow invalidation of such agreed standards if they are merely "unreasonable".
- d. **Evidence of Actual Agreement to Retain Collateral In Satisfaction of Obligation:** Revised Article 9 §9-620(b) does not permit a secured party to be "deemed" to have accepted collateral in satisfaction of its indebtedness unless it is set forth in an agreement authenticated by the secured party and the other requirements of the section are met. The Commission draft adds a new sub-section (h) permitting a consumer to prove such an actual agreement by the secured party by evidence other than an authenticated agreement.

- e. **Deficiencies:** Revised Article 9 generally adopts the “rebuttable presumption” rule in the event of secured party noncompliance with Revised Article 9, but leaves the rule in consumer cases to other law. [Connecticut cases had adopted the “rebuttable presumption” rule under Article 9, so this does not result in a change from current law.] The Commission draft cross-references the Retail Instalment Sales Financing Act as one source of such other law in consumer cases in Revised Article 9 §9-626(b) and in a new §9-627(e).
- f. **Secured Party Penalty for Failure to Send Deficiency or Surplus Notice:** The Commission draft deletes Revised Article 9 §9-628(d), which excepted secured parties from the consumer penalty provisions for failure to send required notices of surplus or deficiency.
- g. **Restriction of Security Interest in Household Furniture:** The Commission draft recommends that the Connecticut non-uniform provision in CGS §42a-9-209 be retained. This provision restricts security interests in household furniture to purchase money security interests in such goods.
5. **Duties of Secured Party to Apply Interest:** The Commission draft of Revised Article 9 §9-207(c) expressly permits agreements, other than by consumers, for the secured party to hold interest or other money constituting proceeds of collateral as additional collateral without applying such proceeds to the indebtedness. The Advisory Committee wanted to be sure that the current practice of using cash collateral or pledge accounts would not be changed by Revised Article 9.
6. **Additional Time to Discover Collateral Moved to New Jurisdiction:** The Commission draft adds a new Revised Article 9 §9-207(c) allowing a secured party up to one (1) year to discover and to perfect its security interest in collateral moved to a new jurisdiction. This change is the same as the provision adopted in Maryland and make it clear that the secured party has one (1) year to perfect, regardless of whether the party in possession of the collateral becomes an “obligor” under the security agreement.
7. **Duty to Forward or Return Payment Received After Assignment:** An amendment to Revised Article 9 §9-406(a) imposes a statutory duty on a former secured party that receives a payment from an account debtor (not limited to consumers) after notice of an assignment of the obligation to another party was given to the account debtor to either forward that payment to the new secured party or to return the payment to the debtor. Since the account debtor would remain liable to the new secured party notwithstanding such payment, the Advisory Committee recommended that such a statutory obligation be expressly provided, notwithstanding the availability of common law remedies, such as unjust enrichment, to achieve the same end.

8. **Damage Due to Removal of Collateral:** The Commission draft changes Revised Article 9 §9-335, relating to accessions, and §9-604(d), relating to real property or fixtures, to require the secured party to pay the debtor, as well any other party, for the repair of any physical injury to the remaining property resulting from such removal. The Advisory Committee felt that this provision would reduce waste or "spite" enforcement by a secured party.

9. **Filing Provisions:** A number of changes were made by the Commission to Part 5 of Revised Article 9 relating to the filing provisions to conform them to the Connecticut filing offices and real property recording practices. The Commission draft amended Revised Article 9 §9-521 to permit the Secretary of the State to adopt and to change the required forms by regulation, rather than requiring amendment of the statute, in accordance with the approach also adopted in several other states. Sections 5-519 and 9-520 were also modified to permit the Office of the Secretary of the State up to five (5) business days, rather than three (3) business days, to perform its obligations under those sections.

10. **Limit on Exculpation If No Address of Debtor or Obligor:** Revised Article 9 §9-605(b) excuses the secured party from liability if the secured party does not know how to communicate with the debtor or obligor. The Commission draft added a sub-section (b) to this section, making it clear that the knowledge of the secured party of such address is subject to the general obligation of good faith under the Uniform Commercial Code, so the secured party cannot escape liability by acting in bad faith -- for example, by ignoring change of address notices. This change is not limited to consumer debtors or obligors.

11. **Electronic Self Help:** The Commission draft adds a new Revised Article 9 §9-609(d) restricting the right of the secured party to take any action to enforce its rights by "electronic self help" until fifteen (15) days advance notice is given to the debtor of its intention to take such action, the nature of the claimed default and the name and contact information for a person with whom the debtor may discuss the matter. This section also permits consequential damages for violations of such restrictions by a secured party. This restriction is not limited to consumers.

C. **Notable Connecticut Law Revision Commission Changes to Other Statutes:** Following are a number of the changes to other Connecticut Statutes utilizing the Article 9 filing system and priority provisions to establish or determine rights:

1. **Connecticut State Tax Liens:** CGS §12-35a and CGS §12-195b(a) would be amended to allow a filing in the Office of the Connecticut Secretary of the State to perfect a tax lien on personal property located within the State of Connecticut. This was necessary since Connecticut enactment of Revised Article 9 would not permit the filing or perfection by filing in the UCC records of another

state. This is in accordance with the approach taken by other states that have adopted Revised Article 9.

2. **Municipal Tax Liens**: The same approach, perfecting municipal tax liens on property located in the State of Connecticut by filing in the Office of the Connecticut Secretary of the State is adopted for municipal tax liens under the proposed amendment to CGS §12-195e.

3. **Post-Judgment Liens**: Judgment liens on tangible personal property located within the State of Connecticut may be perfected by filing in the Office of the Connecticut Secretary of the State under the proposed revisions to CGS §52-355a(a). Priorities would be established based upon the date and the time of such filing, although enforcement of such liens would only be by execution, as provided under CGS §52-355a(c).

III. CRITICAL NEED FOR ENACTMENT OF REVISED ARTICLE 9 WITH JULY 1, 2001 EFFECTIVE DATE OR NEED FOR STOP-GAP LEGISLATION

Revised Article 9 §9-701 contains a uniform effective date of July 1, 2001. The Official Comments to Revised Article 9 §9-701 state that "horrendous complications" will result if Revised Article 9 is not uniformly enacted by this date. The problem stems from the fact that strikingly different conflicts of law rules exist between Article 9 and Revised Article 9.

The problem can be illustrated by the example of a debtor corporation that is formed under the law of Delaware (which has adopted Revised Article 9 with the July 1, 2001 effective date) that is doing business within the State of Connecticut. If the State of Connecticut does not adopt Revised Article 9, or delays its effective date or the effective date of its filing provisions beyond July 1, 2001, the issue of whether a security interest is perfected would be governed by different law depending upon which state was the forum for the litigation. If litigation was commenced in Delaware, or in any other jurisdiction that had adopted Revised Article 9, Revised Article 9 §9-301(1) would use the law where the debtor was organized (i.e. Delaware) to determine whether the security interest was perfected. If, in this example, the action was litigated in Connecticut or in any other state operating under the current Article 9, the current rules, generally pointing to the law of the State of Connecticut would be applied to determine whether the security interest was perfected. The result would then turn on where the action was litigated. Further, in this example, the debtor, or a creditor with an intervening lien, such as the Internal Revenue Service, could shop for the most advantageous forum to file a bankruptcy proceeding or otherwise to litigate the perfection issue – the one certain thing is that Connecticut, in this example, would not be the forum of choice. One effect would be to allow additional bankruptcy "strong arm" attacks on perfection – directly contrary to the policy of Revised Article 9 to expand the reach of perfection so to preserve security interests from avoidance in bankruptcy.

The expected response of secured lenders to this situation is obvious. Financing entities with operations in, or organized under, jurisdictions with differing law will become difficult and more expensive to obtain, since lenders will insist upon complying with both the current Article 9 and Revised Article 9 rules and each such loan will require greater scrutiny by counsel for lenders and consequent increased costs to debtors. Secured parties may also require, as a condition of their loans, that debtors "redomesticate" into more favorable jurisdictions.

Simply delaying the effective date of the filing provisions, alone, will result in worse problems, since with respect to foreign entities the conflicts of law problem will remain and the problem will be compounded by the fact that the law will be applicable to transactions wholly within the State of Connecticut and that the provisions which do go into effect will be inconsistent with the old statutory filing system. An example of one inconsistency is that the Secretary of State will have to reject financing statements not signed by the debtor, under current CGS §42a-9-401, even though "authentication" of the filing of such financing statements is provided for the security agreement and is contemplated in the remainder of the Revised Article 9. Another example is that a delay in the effectiveness of the filing provisions alone, will limit the one-year "safe harbor" provided in the Revised Article 9 transition rules. Revised Article 9 §9-703(b) allows one year of continued perfection after the "effective date" of Revised Article 9 to avoid unfair surprise and to allow secured parties to make appropriate filings to continue the perfection of their security interests. Delay in implementing the filing provisions will not delay the running of this "safe harbor" period, even though appropriate transition filings will not yet be permitted in Connecticut.

In short, uncertainty and legal challenges will result from failure to adopt Revised Article 9 with the uniform effective date – currently July 1, 2001. Although complex "stop-gap" conflict of law provisions might be able to be drafted to lessen the impact of failure to adopt Revised Article 9, it is clear that the "horrendous complications", including uncertainty and increased costs, will be upon us if Connecticut does not adopt Revised Article 9 with the uniform effective date.

For the foregoing reasons, the Board of Governors of the Connecticut Bar Association and the Executive Committee of the Commercial Law and Bankruptcy Section and the Business Law Section have taken positions supporting the adoption of Revised Article 9 and urge such adoption with a July 1, 2001 effective date. Since discussions with the Office of the Secretary of the State indicate that implementation on July 1, 2001 is possible provided that there is sufficient lead time between passage of the Bill and the effective date, we urge that Revised Article 9 be adopted early in the legislative session as possible, to permit implementation in time for the uniform effective date.

IV. RESPONSE TO SPECIFIC QUESTIONS RAISED TO DATE RELATING TO ENACTMENT OF REVISED ARTICLE 9

A. Effect of Drafting Committee Official Comments: Although the Connecticut General Assembly does not adopt the Official Comments to the Uniform Commercial Code as part of the adoption of specific Articles, the Commission draft of revised Article 9 noted that

... Because the proposed revisions are to existing Article 9, which Connecticut has substantially enacted, the summary of the proposed revision that is set out in the commentary to the Official draft applies to the Connecticut draft except with respect to the limited nonuniform amendments noted [in the Commission draft]. The introductory commentary to the Official draft provides an overview of the revisions. With respect to proposed revisions to particular sections, resort should be made to the official comments to those sections in the Official draft. ...

The Official Comments are particularly important with respect to Revised Article 9, since a number of problems presented in case law, as well as guidance to courts and attorneys as to the proper interpretation of the Official draft, are contained in the Official Comments. For example, in the Connecticut case of Dick Warner Cargo Handling Corp. v. Aetna Business Credit, Inc., 746 F.2d 126, 39 UCC Rep. Serv. 762 (2d Cir, 1984), the United States Court of Appeals for the Second Circuit stated that "the conclusion is irresistible that a drafting failure occurred with respect to §9-301(4)" of Article 9, as adopted in Connecticut – this problem was addressed in Comment 4 to the Official Comment to Revised Article 9 §9-323.

B. Loss of Filing Revenue: Questions have been raised as to the negative impact upon the UCC filing office of the Office of the Connecticut Secretary of the State resulting from the loss of revenue from the change in place of UCC filings in Revised Article 9³. Based upon my years of practice and review of the provisions of Revised Article 9, I do not believe that the impact will be significant for several reasons. First, the vast majority of corporations, limited liability companies and limited partnerships in Connecticut have been organized under the law of the State of Connecticut and would not be subject to this change – individuals, general partnerships, trusts and similar non-registered entities located in Connecticut would continue to require filings in Connecticut. Second, Revised Article 9 adopts an "open file" concept, in which additional filings, such as correction statements, partial assignments and amendments are permitted – these additional filings should provide additional volume for the Connecticut filing offices. Third, as noted above, post-judgment lien filings, state and municipal tax liens and similar non-UCC liens will continue to be filed in Connecticut for property located in the state, regardless of the location of the organization of the debtor. Finally,

³ Please note that the provisions for filing of fixture filings in the office of the Town Clerks for fixtures or other real estate interests located there has not changed, so Revised Article 9 should not have an impact upon the filing volume in the office of the Town Clerks.

for the foreseeable future, it is likely that secured parties will adopt a "belt and suspenders" approach to filing of financing statements, requiring filings under the new and the old Article 9 schemes, particularly if adoption has not occurred in all jurisdictions in the United States.

C. **Dual Filing Requirement:** A question has been posed as to the advisability of requiring filing of a financing statement in Connecticut, in addition to the requirements for filing in the jurisdiction in which a registered organization debtor is organized. Such a requirement would likely not be effective and could lead to significant problems. Since Revised Article 9 provides that the law of the jurisdiction where the registered organization debtor is organized governs perfection, Connecticut's provision would not be applicable to foreign organizations – it would only be applicable to organizations located within or organized under the laws of the State of Connecticut, where such a requirement is not necessary. In addition, such a requirement would lead to uncertainty if the debtor fails to file such a financing statement in Connecticut – such a failure would constitute a failure to perfect and would allow the same forum-shopping and bankruptcy or lien creditor invalidation of perfected security interests that would occur if Connecticut were to fail to adopt Revised Article 9. If Connecticut attempts to amend these conflict of law rules, the same problem will occur. Finally, such an action might impel other states to pass similar laws, restricting perfection with respect to Connecticut entities unless a financing statement is filed there. In short, this would create a considerable mess.

D. **Consumer Provisions:** A concern has been expressed that Revised Article 9 is less "consumer friendly" than the current Article 9. This is not so. The Official Drafting Committee, after significant debate and compromise, adopted the consumer protection provisions which were present in current Article 9 and explicitly excepted consumer transactions from new rules for determination of deficiencies and other enforcement matters for commercial transactions – these consumer provisions were left to other state case law and statutes relating to consumers. The Connecticut Commission draft, as noted from the extensive discussion of Connecticut revisions in section II. B.4 above, added significant nonuniform amendments protecting consumers and debtors – these provisions were extensively discussed and afford consumers far greater protections than most other states adopting Revised Article 9 have enacted.

E. **No Unfair Surprise to or Burden on Debtors From Filing Changes:** Debtors will not be unfairly surprised by enactment of Revised Article 9 with a July 1, 2001 effective date. As noted above, the transition rules provide a period of at least one (1) year from the effective date of continued perfection during which filing of financing statements or other required actions can be taken by secured parties to continue the perfection of their security interests. Further, since Revised Article 9 provides that by signing a security agreement the debtor authorizes the *secured party* to file financing statements to perfect its interest, the burden is on the secured party, not the debtor, to properly perfect within the applicable one-year (or longer) time frame.

V. CONCLUSION

Article 9 is a complex body of commercial law underlying a vast array of financial and business transactions. Revised Article 9 has been drafted to correct problems experienced during the last 30 years of its existence, to simplify procedural and filing requirements and to anticipate the age of electronic documents and paperless commercial transactions. However, given the changes in scope and more detailed rules for specific situations the drafting of Revised Article 9 is more complicated than current Article 9.

The Connecticut Law Revision Commission draft of Revised Article 9 incorporates the efforts of experienced practitioners of commercial law and bankruptcy, as well as consumer interests and the needs of state agencies. The limited nonuniform amendments in the Commission draft of Revised Article 9 reflect their concerns and properly incorporate Revised Article 9 into the body of Connecticut law.

As noted above "horrendous complications" will result from failure of Connecticut to adopt Revised Article 9 or to delay its effective date or the effectiveness of its filing provisions. For this reason the Connecticut Bar Association as a whole, as well as its Commercial Law and Bankruptcy Section and Business Law Section, urge the adoption of Revised Article 9 with the uniform effective date of July 1, 2001. We recommend adoption of Revised Article 9 as early in the legislative session as possible to permit the Office of the Secretary of the State to implement the filing provisions on that date, as well as to permit the members of the Bar and businesses sufficient time to become acquainted with its provisions.

THE ASSOCIATION OF COMMERCIAL FINANCE ATTORNEYS, INC.

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Membership Chairman

PAUL D. HAHN

March 9, 2001

Judiciary Committee
Legislative Office Building
Hartford, CT 06106

RE: Revised Article 9 of the Uniform Commercial Code

Dear Honorable Members of the Judiciary Committee:

The Association of Commercial Finance Attorneys, Inc. is a professional association of approximately 300 attorneys (many of whom practice in Connecticut), which has been in existence for over forty years. Its members represent major asset based lenders, who make loans secured by personal property collateral pursuant to Article 9 of the Uniform Commercial Code.

This letter is in support of the immediate enactment of legislation adopting Revised Article 9 in Connecticut, which would have a uniform effective date of July 1, 2001 in all states that have adopted it.

Revised Article 9, which was promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and which has been adopted in 29 states and introduced in the legislatures of 19 additional states, is the result of years of study, clarifies many issues that have been the source of controversy under existing Article 9, significantly expands the scope of Article 9 and simplifies many aspects of the process of perfecting security interests.

Since the adoption of the original Article 9 starting in the 1950's, there has been a significant expansion of lending secured by personal property collateral, which has substantially benefitted Connecticut based lenders and borrowers. This expansion has been the direct result of the uniformity of applicable law among the 50 states that was brought about by Article 9.

We are now on the threshold of a new phase of asset based lending, which will be ushered in by Revised Article 9. In order to minimize the difficulty of moving from existing Article 9 to revised Article 9, the drafters used the device of a uniform effective date of July 1, 2001, among the 50 states.

A delay by Connecticut in adopting Revised Article 9 until after July 1, 2001, will add to the complexity of making asset based loans because of the need to observe two substantially different bodies of law in transactions with borrowers having operations in more than one state, which are quite common. This will put Connecticut lenders and borrowers at a disadvantage. In addition, types of collateral and methods of perfection

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THE ASSOCIATION OF COMMERCIAL FINANCE ATTORNEYS, INC.

Judiciary Committee
March 9, 2001
Page 2

of security interests available under Revised Article 9 will not be available for loans to Connecticut borrowers.

For the above reasons, the Association of Commercial Finance Attorneys, Inc. supports the immediate adoption of Revised Article 9 in Connecticut.

While we recognize the need for some departure from uniform state law to take account of Connecticut variations in existing Article 9, we hope that Connecticut will adopt the national version of Revised Article 9 (as promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws) without additional modification.

Sincerely



Chester P. Lustgarten
President

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Connecticut Bar Association

TESTIMONY IN SUPPORT OF SENATE BILL No. 1226
AN ACT ADOPTING REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL
CODE ON SECURED TRANSACTIONS

Presented By

Thomas J. Welsh, Esq.
 On Behalf of
 The Connecticut Bar Association

March 5, 2001

Good afternoon, my name is Thomas J. Welsh and I am a principal of the law firm of Brown & Welsh, P.C. located in Meriden, Connecticut. I am member of the Executive Board of the Association of Commercial Finance Attorneys and was a member of the Law Revision Commission Advisory Committee on Revised Article 9 that prepared the draft which became the text of SB-1226. I am also testifying on behalf of the Connecticut Bar Association and as the designated representative of the CBA Commercial Law and Bankruptcy Section.

The subject matter of this Bill is quite complex and voluminous and my testimony today is limited in time, so I have prepared and submitted more extensive written materials for your consideration and inclusion in the record (referred to herein as the "CBA Background Material")¹.

I. INTRODUCTION

A. Introduction to Article 9 of the Uniform Commercial Code in Connecticut: Article 9 states the law regulating the methods of creating and perfecting security interests in tangible and intangible personal property and the priority rules governing conflicts between interests of parties in property subject to such security interests. Article 9 is enacted as part of the Uniform Commercial Code in Title 42a of the Connecticut General Statutes and was originally enacted in Connecticut as part of the Uniform Commercial Code in 1959. The last major revision to Article 9 was proposed in 1972 and enacted in Connecticut in 1976. Connecticut statutes also use the Article 9 filing system for perfecting and establishing the priority of interests not created under Article 9, such as state tax liens, municipal tax liens, federal lien registration and judgment liens on personal property.

¹ These written materials are dated March 5, 2001 and are titled "Background Material Concerning Senate Bill No. 1226 – An Act Adopting Revised Article 9 of the Uniform Commercial Code On Secured Transactions".

C. General History of Revised Article 9: The 1999 Official Draft re-wrote Article 9 to correct problems and uncertainties in the scope of Article 9, to bring Article 9 into the internet age by making its provisions "medium neutral" and to provide more explicit rules for many transactions, so to reduce the considerable volume of litigation relating to Article 9 provisions. Twenty-nine (29) jurisdictions have adopted Revised Article 9² and it has been introduced and is currently pending in another nineteen (19) states³, including Connecticut.

In March, 2000 the Judiciary Committee requested the Connecticut Law Revision Commission to study revised Article 9 and to report to it for the 2001 session. An Advisory Committee was established with members of the Bar, as well as affected interest groups and departments and agencies of the State Government agencies, including the Office of the Secretary of the State. The Advisory Committee met from May of 2000 through January 11, 2001 and the resulting text is essentially the subject proposed Bill.

II. OVERVIEW OF REVISED ARTICLE 9 AND CONNECTICUT LAW REVISION COMMISSION CHANGES TO REVISED ARTICLE 9

A more detailed discussion of Revised Article 9 and Connecticut changes is included in the CBA Background Material. In short, the Law Revision Commission Draft contains a number of scope restrictions, filing system changes and numerous consumer provisions and provisions protecting debtors, as the result of input from experienced attorneys, consumer representatives and state agencies. The Law Revision Commission draft also made conforming changes to other statutes – including changes to state and municipal tax lien and post-judgment lien statutes to permit filing in the Office of the Secretary of the State.

III. CRITICAL NEED FOR ENACTMENT OF REVISED ARTICLE 9 WITH JULY 1, 2001 EFFECTIVE DATE OR NEED FOR STOP-GAP LEGISLATION

The Official Comments state that "horrendous complications" will result if Revised Article 9 is not uniformly enacted by the uniform effective date of July 1, 2001, since strikingly different conflicts of law rules exist between Article 9 and Revised Article 9. Examples of problems if Connecticut does not adopt Revised Article 9, or delays the effective date, are:

- Perfection would be governed by different law depending upon which state was the forum for the litigation – the result would depend on where the action was litigated.
- Bankruptcy "strong arm" attacks on perfection would arise.

² States that have adopted Revised Article 9 are Alaska, Arizona, California, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and West Virginia. The District of Columbia has also adopted Revised Article 9.

³ States in which Revised Article 9 has been introduced and are pending are Alabama, Arkansas, Colorado, Connecticut, Georgia, Idaho, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Wisconsin and Wyoming. Enactment is also pending in the U.S. Virgin Islands. Reportedly Revised Article 9 was also recently passed by the Wyoming legislature and on March 1, 2001 the bill was delivered to the Governor for signature.

- Lenders will comply both the current and Revised Article 9, at borrowers' expense.
- Lenders may require debtors to "redomesticate" into more favorable jurisdictions.
- Delaying the filing provisions, alone, will result in problems – for example, in-state transactions will be inconsistent with the old filing system and the delay in filing system will limit the one-year "safe harbor" in the Revised Article 9 transition rules.

IV. RESPONSE TO SPECIFIC QUESTIONS RAISED TO DATE RELATING TO ENACTMENT OF REVISED ARTICLE 9

A. Effect of Drafting Committee Official Comments: The Law Revision Commission Report noted that "[w]ith respect to proposed revisions to particular sections, resort should be made to the official comments to those sections in the Official draft" – since a number of problems in case law, and guidance to courts and attorneys as to the proper interpretation, are contained in the Official Comments.

B. Loss of Filing Revenue: Impact should not be significant since the vast majority of borrowers are organized in Connecticut, so there would be no change. Also, the "open file" concept in Revised Article 9 creates additional filings offsetting the impact.. Lenders are also likely to initially take a "belt and suspenders" approach, requiring filings under the new and the old Article 9 schemes, which will make any reduction more gradual.

C. Dual Filing Requirement in Connecticut: Would likely not be effective and could lead to significant problems, since Connecticut's provision would only apply to Connecticut organizations, where the requirement is not necessary, and since similar forum-shopping and bankruptcy problems could arise, as discussed above.

D. Consumer Provisions: The Connecticut draft, added nonuniform amendments giving consumers greater protections than in most other states adopting Revised Article 9.

E. No Unfair Surprise to or Burden on Debtors From Filing Changes: Revised Article 9 transition rules allow at least one (1) year from the effective date for secured parties to file or otherwise perfect. Revised Article 9 authorizes the *secured party* to file financing statements to perfect its interest so the burden is on the secured party, not on the debtor.

V. CONCLUSION

As noted above "horrendous complications" will result from failure of Connecticut to adopt Revised Article 9 or to delay its effective date or the effectiveness of its filing provisions. For this reason the Connecticut Bar Association as a whole, as well as its Commercial Law and Bankruptcy Section, urge the adoption of Revised Article 9 with the uniform effective date of July 1, 2001. We recommend adoption of Revised Article 9 as early in the legislative session as possible to permit the Office of the Secretary of the State to implement the filing provisions on that date, as well as to permit the members of the Bar and businesses sufficient time to become acquainted with its provisions.



FLEETBOSTON FINANCIAL CORPORATION'S
TESTIMONY IN SUPPORT OF SB 1226
AN ACT ADOPTING REVISED
UNIFORM COMMERCIAL CODE ARTICLE 9

Scott A. Lessne, Esq.
FleetBoston Financial Corporation
March 12, 2001

Good afternoon Senator Coleman, Representative Lawler and members of the Committee. My name is Scott Lessne. I am a Senior Vice President and Senior Counsel in the FleetBoston Financial Corporation Law Department based here in Hartford. I have practiced commercial law in the State of Connecticut for over 15 years. I am here today on behalf of Fleet to speak in support of **Senate Bill 1226, An Act Adopting Revised Article 9 of the Uniform Commercial Code on Secured Transactions.**

FleetBoston Financial Corporation is a global diversified financial services company with Fleet National Bank as one of its affiliates. Fleet's capital resources enable it to deliver sophisticated financial solutions to individuals, businesses, governments, and institutions across the United States, throughout Latin America, and in other selected markets. Fleet often makes loans secured by various kinds of personal property. As such a lender, Fleet is very concerned about Uniform Commercial Code Article 9,¹ which governs secured transactions.

Uniform Commercial Code Article 9 governs the creation, perfection, and liquidation of security interests in tangible and intangible personal property as well as priority among creditors having a security interest in the same collateral. Connecticut statutes also use the Article 9 filing system for perfecting and establishing the priority of interests not created under Article 9, such as state tax liens, municipal tax liens, federal lien registration and judgment liens on personal property.

In 1999, the American Law Institute and the National Conference of Commissioners on Uniform State Laws presented Revised Article 9 to the various states for their consideration and adoption. The revision re-wrote existing Article 9 to correct problems and uncertainties in the scope of Article 9, to bring Article 9 into the internet age by making its provisions "medium neutral", to provide more explicit rules for many types of transactions and to reduce the considerable volume of litigation relating to Article 9 provisions. To date, twenty-nine (29) states have adopted

¹ The Uniform Commercial Code is jointly drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

Revised Article 9.² It has been introduced and is currently pending in another nineteen (19) states³. This revised text is expected to be enacted in substantially all of the United States by July 1, 2001.

Significant issues creating uncertainty in the realm of secured transactions will arise if Revised Article 9 is not enacted with a uniform effective date of July 1, 2001 as proposed by the drafters. The complex set of rules governing the transition between existing and Revised Article 9 are in large part dependent upon a uniform effective date of July 1, 2001 in order to ensure a smooth transition to the new law. As a secured lender, Fleet looks to the rules of Article 9 to lend a degree of certainty and consistency with respect to how such transactions are structured, and if need be, enforced. If Connecticut were to adopt Revised Article 9 with an effective date other than July 1, 2001, the certainty and stability created by a uniform law such as Article 9 would be undermined.

FleetBoston Financial Corporation supports enactment of the Revised Uniform Commercial Code Article 9 and strongly urges this Committee to adopt an effective date of July 1, 2001 in Connecticut.

Thank you.

² Revised Article 9 was adopted in Alaska, Arizona, California, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and West Virginia.

³ Revised Article 9 is pending in Alabama, Arkansas, Colorado, Connecticut, Georgia, Idaho, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Wisconsin, Wyoming and United States Virgin Islands.



Susan Bysiewicz
 SECRETARY OF THE STATE
 CONNECTICUT

March 12, 2001

Testimony of Secretary of The State Susan Bysiewicz Before the Judiciary
 Committee

HB 6898 HB 6893 SB 1316 HB 6890 SB 1322

Good Afternoon Chairman Lawlor, Chairman Coleman and members of the Judiciary Committee. For the record, my name is Susan Bysiewicz, Secretary of the State.

I appear before you today to testify in support of several bills on your agenda that impact my office. As you know, the Secretary of the State is the filing repository for all business forms regarding Limited Liability Companies, Non-stock & Stock Corporations, Limited Partnerships, Business Trusts, Limited Liability Partnerships, all liens received under Article 9 of the Uniform Commercial Code (UCC), Trademark and Service Mark filings, writs summons and complaints on businesses, as well as a variety of other business filings. Therefore, we are testifying on the following bills:

S.B. 1226: An Act Adopting Revised Article 9 of the Uniform Commercial Code Concerning Secured Transactions

Over the last year, the Law Revision Commission chaired a Study Committee on Revised Article 9 of the Uniform Commercial Code. The Secretary of the State's Office was a member of this committee. I commend my staff and all of the members of the committee for debating such a complex issue.

The Commercial Recording Division, within the Office of the Secretary of the State, is the filing repository for all liens filed under Article 9 of the Uniform Commercial Code. Therefore, we have a strong interest in ensuring that language regarding the filing provisions is acceptable. The filing provision language as set forth in this bill receives our approval with modifications regarding the fee section, information provided to a requesting party and the effective date of this bill.

Specifically, we recommend that the terminology used within the fee section be changed to reflect the terminology used throughout Revised Article 9. For example, modifications filed against an initial financing statement will now be referred to as amendments rather than a continuation statement, termination statement, etc. Also, after careful review of our files, we have determined that copies of UCC financing statements should be changed from a variable fee to a

flat uniform fee of \$20 dollars for a plain copy and \$25 dollars for each certified copy, regardless of the number of pages. I have attached suggested language that addresses these modifications.

In addition, I would also respectfully request that the Committee consider amending S.B. 1226 so that the entire bill becomes effective January 1, 2002. Not only would this give my office ample time to implement all of the changes found in the filing provision section of the bill but, it would also eliminate confusion businesses might face with a "split" effective date for the other provisions.

As Secretary of the State, I want to do my part to make Connecticut an even better place to do business. However, my staff and I want to ensure that all statutory changes are implemented properly and that speedy service to our customers continues.

Although Revised Article 9 requires my office to conduct additional staff training, public education, computer changes and form revisions, the Secretary of the State's Office will not be requesting additional state funding. My Commercial Recording Division staff has been working hard and have taken the appropriate steps in order to prepare for the implementation of Revised Article 9.

H.B.: 6898: An Act Concerning an Amnesty Program for Foreign Limited Liability Companies and Foreign Corporations

This bill reflects a proposal by the Secretary of the State's Office in order to allow foreign LLC's that have been illegally doing business in the State of Connecticut to come forward. The bill would provide an amnesty program for foreign LLCs and foreign corporations conducting business within the State of Connecticut who have not legally registered or obtained a certificate of authority. Of course, these businesses would continue to be responsible for any and all back license fees for each year they were not legally registered or had obtained a certificate of authority. A similar program was established during the 1994 legislative session for the calendar year commencing January 1, 1995 and proved to be highly successful. H.B. 6898 would allow businesses that voluntarily come forward to be exempt from the \$165 per month penalty currently assessed. I urge the Committee's support of this bill.

H.B.: 6893: An Act Concerning Service of Process on a Foreign Limited Liability Company

This is also a proposal put forward by my office that would clarify the statutory procedure for service of process on a foreign LLC's transacting business without authority. As the statute reads today, there is no clear authority for our office to

Attachment to the Secretary of the State's Testimony

Suggested Language for S.B. 1226

Line 4646: Sec. 94

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than six business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor;

(B) Has not lapsed under section 86 of this act with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 86 of this act and a record of which is maintained by the filing office under subsection (a) of section 93 of this act;

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement except information as to collateral.

(f) At least [weekly] monthly, the Secretary of the State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under sections 42a-9-501 to 42a-9-507, inclusive, of the general statutes, as amended by this act, and sections 79 to 97, inclusive, of this act, in every medium from time to time available to the filing office described in subdivision (2) of subsection (a) of section 42a-9-501 of the general statutes, as amended by this act.

Line 4708: Sec. 96.

(a) The Secretary of the State shall charge and collect the following uniform fees: (1) for filing and indexing an initial financing statement, [a continuation statement, a termination statement, a separate written statement of assignment] a correction statement or an amendment, twenty-five dollars; [(2) for filing and noting a statement of release, twenty-five dollars.] No fee shall be charged (A) to the state when the initial financing statement, [continuation statement, termination statement, statement of assignment,] correction statement or amendment [or statement of release] is filed by or at the request of the Attorney general or an assistant attorney general or by a duly authorized official of the state or any of its agencies, boards, or commissions acting in an official capacity, or (B) to a municipality when the initial financing statement [continuation statement,

termination statement, statement of assignment,] correction statement or amendment [or statement of release] is filed by a tax collector or other municipal officer of such municipality pursuant to the provisions of sections 12-195a to 12-195g, inclusive, of the general statutes, as amended by this act, or for any filing accomplished solely by electronic means and without the physical submission of any document, instrument, or paper, in accordance with a plan approved by the Secretary of the State.

(b) The uniform fee for responding to a request for information from the filing office, including issuing a certificate showing whether there is on file, on the date and hour stated therein, any financing statement naming a particular debtor and any [statement of assignment] amendment thereof and, if there is, giving the date and hour of filing such [statement] amendment and the name and address of each secured party named therein, is twenty-five dollars. Upon request, the filing officer shall furnish a photographic or electronic copy of any filed financing statement, [continuation statement, termination statement, statement of assignment or statement of release] or amendment for a uniform fee of [five dollars and, if such statement consists of more than three pages, an additional uniform fee of five dollars for the fourth page and each succeeding page] twenty dollars regardless of the number of pages: for affixing his certification and official seal thereto, five dollars. No fee shall be charged to the state when a certificate showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any [assignment or]amendment thereof, is requested by the Attorney General or an assistant attorney general or by an authorized official of the state or any of its agencies, boards or commissions acting in an official capacity, and no fee shall be charged to a municipality when such certificate is requested by the tax collector or other municipal officer of such municipality pursuant to the provisions of sections 12-195a to 12-195g, inclusive, of the general statutes, as amended by this act.



Connecticut Bar Association

Testimony of Richard S. Smith, J. SB 1259 SB 1322
 Vice-Chair, Business Law Section of the Connecticut Bar Association and SB 1226
 Co-Chair, Sub-Committee on Corporate Laws of the Business Law Section
 of the Connecticut Bar Association Concerning
House Bill No. 6890, An Act Concerning Corporations and Nonstock Corporations

Judiciary Committee
 March 12, 2001

Senator Coleman, Representative Lawlor, Members of the Judiciary Committee, thank you for the opportunity to appear before the Committee to comment on House Bill No. 6890, **An Act Concerning Business Corporations and Nonstock Corporations.**

I am speaking this afternoon on behalf of the Connecticut Bar Association. I am the Vice-Chair of the Business Law Section and Co-Chair of the Business Law Section's Subcommittee on Corporate Laws. The Business Law Section of the Connecticut Bar Association is comprised of over 700 lawyers who specialize, to one degree or another, in the area of business law. As a group, we represent all kinds of businesses, many of which are closely held and family owned. We also represent charitable and other not-for-profit organizations. These businesses and organizations, in turn, are responsible for much of the economic activity taking place within the State of Connecticut. Because our law practices involve the representation of businesses and charitable organizations, we are very interested in any legislation affecting the legal entities used to conduct these activities.

I am here today to speak primarily in support of House Bill No. 6890, An Act Concerning Business Corporations and Nonstock Corporations, and I intend to spend the bulk of my time addressing that piece of legislation. Before I address House Bill No. 6890,

however, I would like to take a brief moment to note for the record that the Business Law Section also supports three other bills under consideration this afternoon. They are:

- ♦ Senate Bill No. 1259, An Act Concerning Standards of Conduct and Liability for Corporate Directors and Officers;
- ♦ Senate Bill No. 1322, An Act Concerning the Merger of Dissimilar Business Entities; and
- ♦ Senate Bill No. 1226, An Act Adopting Revised Article 9 of the Uniform Commercial Code Concerning Secured Transactions.

We strongly support each of these bills, and we urge the members of this Committee to act favorably on them.

My colleague and Co-Chair of the Sub-Committee on Corporate Laws, James I. Lotstein, Esq., will be testifying separately on Senate Bill No. 1259, and other members of the Bar Association will be testifying separately on Senate Bill No. 1226. I want to limit my remarks this afternoon to House Bill No. 6890.

House Bill No. 6890 was prepared by the Business Law Section's Sub-Committee on Corporate Laws, the complete membership of which is set forth as an attachment to my testimony. As Co-Chair of the Sub-Committee, I would like to thank the members of the Sub-Committee for their hard work on this project. They all participated as volunteers, and they devoted a significant amount of time and energy to the project.

The purpose of House Bill No. 6890 is quite simple and, I believe, non-controversial. Simply stated, the bill would implement in Connecticut several changes to the Model Business Corporation Act that have been adopted since the enactment of the Connecticut Business Corporation Act.