

PA 11-108

HB6274

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 6
1729 – 2054**

rgd/md/gbr
HOUSE OF REPRESENTATIVES

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May 5, 2011

REP. SHARKEY (88th):

Mr. Speaker, I would move that we pass this item temporarily.

SPEAKER DONOVAN:

Representative Hetherington, will you yield the floor?

REP. HETHERINGTON (125th):

Yes. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

The motion is to pass this bill temporarily. Any objection? Hearing none, this bill is passed temporarily.

Will the Clerk please call Calendar Number 335.

THE CLERK:

On page 22, Calendar 335, Substitute for House Bill Number 6274 AN ACT CONCERNING AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS, favorable report of the Committee on Judiciary.

SPEAKER DONOVAN:

The Chair of Judiciary Representative Gerry Fox, you have the floor, sir.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is acceptance of the joint committee's favorable report and passage of the bill.

Will you remark?

REP. G. FOX (146th):

Thank you, Mr. Speaker.

This bill comes to us from the Connecticut law revision commission. It makes mostly uncontroversial corrections and refinements of UCC Article 9.

What it -- the history behind it is that the natural -- National Conference of Commissioners on Uniform State Laws and the American Law Institute proposed certain amendments in 2002 that would be more conforming to some court decisions and some interpretations that have taken place from courts throughout the country on UCC Article 9 provisions.

And what this is intended to do is to impact them and to make ours more consistent with those decisions.

SPEAKER DONOVAN:

Thank you, Representative.

Will you remark further? Remark further?

Representative Hetherington.

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REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

I rise in support of this bill. It makes the conforming changes such as Representative Fox, Chairman Fox just described. It is important that we keep our commercial law current. It is important to business those who do business in this state and I would urge adoption.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

If I may, a couple questions to the proponent of the bill?

SPEAKER DONOVAN:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

Is there anything that would happen after this bill were enacted that would subsequently change the actual form of a UCC filing form or anything in terms of the course of action that a secured party might have

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with the secretary of state's office?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

I don't believe so, other than what would be, I think, a clarifying correction. It's a fairly long bill, but I don't believe there's anything significant along those lines.

SPEAKER DONOVAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker.

I thank the gentleman for his answers.

SPEAKER DONOVAN:

Thank you, Representative.

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

If I may, just -- I don't think I really have a question for the chair of the Judiciary Committee although I may come back to one briefly.

I'd like to point out that this is a production

that originated with the law revision commission. It's something that is, I think, one of the more important works that the law revision commission has produced in the last couple of years.

And even though the law revision commission was defunded back in the 2003 budget crunch and has not had its own staff and relies on the work from the folks at the Office of Legislative Research and LCO for staffing during the interims, it was able to do the work in a very brief period of time.

I believe we commissioned this study late last fall and was able to produce the adjustments to Article 9 during the course of a very relatively short period of time, as I said, and were able to present it to the Judiciary Committee for its consideration. And I believe that the bill passed through the Judiciary Committee with relatively little in the way of the amendment, which is testimony to the quality of the workmanship.

And I also want to give recognition to the volunteers, many attorneys from across the state of Connecticut who volunteered their time to work on the study committee that produced this change in the Article 9.

And this is something for which we mentioned earlier, the interns saved us a great deal of money, the \$300,000. I'm guessing that the attorneys who were working on the Article 9 revisions probably saved the state just as much money, or it would have cost us if we had to hire them at an hourly rate given the number of hours they had to put into this project and the relatively short time they had in which to get it done.

So I just want to bring some recognition to the fact that the law revision commission is still alive, is still producing legislative proposals, still doing the kind of work that the statute calls for it to do. And that this revision to Article 9 is, I think, a very good example of the kind of high-quality and very intensive and detailed legal work that the law revision commission is still able to sponsor and so that we can bring to the floor of the House of Representatives a piece of legislation that's going to make some important corrections and amendments to the Article 9, which is an important element in our own commercial operation.

It's not just the mortgages, the title mortgages, but it's also car loans. All sorts of business financing is really securable through Article 9. And

making sure that we have a functioning Article 9, one that works well in conjunction with those in other states because this is one of those parts of our law where it's really important that we be in tune with the other 49 states of the Union, that this helps our economy avoid any kind of glitches.

It helps us avoid people saying, well, we can't do business in Connecticut because they haven't updated Article 9. They haven't brought it into compliance with what's going on in the rest of the country.

So with that, Mr. Speaker, I would urge adoption and hope that everyone will vote yes.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

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

THE CLERK:

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

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board to make sure your vote has been properly cast. If all the members have voted the machine will be locked. The Clerk will please take a tally. Will the Clerk please announce the tally.

THE CLERK:

House Bill 6274.	
Total Number voting	143
Necessary for adoption	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

SPEAKER DONOVAN:

The bill passes.

Will the Clerk please call Calendar 378.

THE CLERK:

On page 26, Calendar 378, Substitute for House Bill Number 6646, AN ACT MAKING MINOR, TECHNICAL AND CONFORMING CHANGES TO CERTAIN STATUTES CONCERNING CRIMINAL AND CIVIL LAW AND PROCEDURE, favorable report of the Committee on Judiciary.

SPEAKER DONOVAN:

Once again, Representative Gerry Fox.

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STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 6
1626 – 1949**

2011

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going to these meetings because we have an opportunity -- I'm the only one if I can remember who's there who is not a member of the panel. And when I say fun, it's because there are serious policy issues, as you might imagine, that come up. And it's nice to be able to have a voice, but it's also nice to be able to have a voice that counts when decisions are being made.

SENATOR KISSEL: And are you aware of any opposition to that?

KAREN GOODROW: No. Kevin Kane likes to agree with me most of the time so he -- like if he's still in the room, he might actually just think it's fine.

SENATOR KISSEL: He's in the room.

KAREN GOODROW: I'm aware of no opposition.

SENATOR KISSEL: And that is all part of the record. Thank you, Mr. Chairman.

KAREN GOODROW: Thank you.

REP. FOX: Thank you. Any other questions? Thank you for your testimony.

Next we will go back to public officials. Secretary Denise Merrill had been here. I see Attorney Klaskin's here on her behalf.

SETH KLASKIN: Good afternoon, Chairman Fox and members of the Committee. My name is Seth Klaskin. I'm the director of the Commercial Reporting Division at the Office of the Secretary of State, testifying on behalf of the Secretary of the State, Denise Merrill, who was in attendance. And it was her intention to testify concerning Raised Bill 6274, AN ACT

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CONCERNING AMENDMENTS TO ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURE TRANSACTIONS. Unfortunately she was called away and she asked me to testify on her behalf and to apologize for her. Thank you for this opportunity to testify.

As you may know, the Commercial Recording Division in the Office of the Secretary of the State is the main filing office for liens and secure transactions records under the revised Article Nine of the Uniform Commercial Code. Last fall the cochairs of the law revision Commission Advisory Committee, Neal Ossen and Thomas Welch invited myself and a staff attorney from our office to sit on the Advisory Committee that adopted the amendments urged by this bill. The Secretary appreciates the committee's commitment to gathering the prospective of the filing office and the drafting fees rather than as an afterthought.

With input from the outset, the Office of the Secretary is happy to support raised Bill 6274. While drafting, the Advisory Committee was called upon to select from among two alternatives for debtor party name conventions under the new amendments. Alternative A would have required debtor party names to match the names of individuals as listed on their state issued drivers licenses or ID cards. Alternative B allows the debtor party names to match the drivers license as one criterion yet does not limit the naming standard to an exact match with that singular form of identification.

This foundational choice was of paramount important to our filing office. The commercial recording division had influential input into the selection of Alternative B for our state, which renders the drivers license only one form

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of acceptable identification rather than making it the sole form of identification.

Alternative B will work better for Connecticut for many reasons. The chief reason is that the state's DMV database and the UCC database are not linked. And it would be prohibitively expensive to cross reference them at this time. Moreover any time either the DMV or the CRD would change its system such a change would then require an expensive corresponding technical enhancement at the other agency.

Significantly, the DMV currently is in the midst of a driver's license program automation overhaul that make take several years to complete. So trying to match names would also prove to be a moving target.

Finally, research into driver's license naming conventions at the Connecticut DMV and in other states revealed that the history of naming convention is fraught with hyper technicality, with flux and with many errors. Therefore, while it still makes sense to allow the driver's license to serve as an indicator of the debtor's name, it makes no sense whatsoever to allow -- or to cause the license name to serve as the only form of a name acceptable for filing purposes.

Hence, we chose Alternative B and feel confident that many other states will as well when weighing the two alternatives and adopting their amendments to revised Article Nine.

The amendments to revised Article Nine were developed and vetted nationally by a joint committee of the American Law Institute and the Uniform Law Commissioners. The Connecticut Advisory Committee adopted the amendments in the form submitted as Raised Bill 6274 and the

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Secretary and I respectfully submit our approval and support for this bill. Thank you and I'd be happy to answer any questions you might have.

REP. FOX: Thank you, Attorney Klaskin. Are there any questions from members of the committee? Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Just a comment. Seth, you're a very distinguished constituent of mine and I compliment you on the great job you've done having the business section of the Secretary of State's office and just wish you a lot of continued success. And thanks for your testimony here. I think most of the members of the Judiciary Committee are going to agree with you.

SETH KLASKIN: Thank you.

REP. FOX: Any other questions from members of the committee?

Thank you very much.

SETH KLASKIN: Thank you.

REP. FOX: Next we have Chief Anthony Salvatore. Good afternoon.

JAMES STRILLACCI: Good afternoon, Representative Fox, members of the committee. I'm Jim Strillacci, police chief from West Hartford, Tony Salvatore Chief from Cromwell, we represent the Connecticut Police Chiefs Association. We're here to speak on several bills today.

First, the Connecticut Chiefs support House Bill 6368. This was our suggestion. This is about returning stolen property. Under current

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significant amount of Superior Court cases that have held that those bills should also be coming in and be reduced.

SENATOR COLEMAN: Are there other questions? Seeing none, thank you.

Thomas Welch is next.

THOMAS WELCH: Senator Coleman and members of the Judiciary Committee, good afternoon. My name is Thomas Welch. I'm testifying in support of House Bill 6274, AN ACT CONCERNING AMENDMENT TO ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURE TRANSACTIONS. For disclosure, I'm an attorney and principal of the law firm of John Welch, PC, in Meriden. I'm also an elected member of the American Law Institute and hold positions in the ABA and the Connecticut Bar Association.

It was my honor to be appointed this past year by Speaker Donovan as a Commissioner of the Law Revision Commission. And thanks to the chairman of the commission, Representative O'Neill, a panel was created by the Law Revision Commission which Attorney Neal Ossen and I were asked to co-chair relating to the 2010 revisions of Article Nine of the Uniform Commercial Code.

We had a wonderful, wide ranging group of advisors selected on the basis of their expertise in commercial law transactions, real estate law, consumer representatives, we had a Representative of the Connecticut Bankers Association, and the Office of the Secretary of the State participated significantly in assisting us in this.

Also the Office of Legislative -- I'm sorry, the Legislative Commissioner's Office. So Rick

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Taft sat on the panel and with his help and some extensive work by the committee, we drafted the extent of the bill that became 6274 that is before you today.

I've submitted a copy. The Law Review Commission as a whole approved the report of the Advisory Committee on January 4th and I've submitted that to you all in testimony today.

Very briefly, Article Nine of the UCC deals with the creation and perfection and enforcement of security interests in personal property, both tangible and intangible. It really is the underlying law that deals with commercial finance, particularly accounts receivable, inventory, equipment, consumer finance. So it's a very important piece of legislation both in the state of Connecticut and adopted in all 50 states in the United States.

This -- Article Nine was revised substantially in 2001. In fact, I had -- I had the great honor then of helping Senator Coleman who introduced the bill and -- and the Law Revision Commission at that point in adopting this 400 page tome. And since then we've revisited it in Connecticut a couple of times in 2003 and 2004 to tweak it a bit with respect to its interplay with other Connecticut statutes.

These amendments, however, in 2010 were revisions that were looked at at the national level to see how Article Nine worked, what happened in practice. And it was a result of certain problems that seemed to pop up in the courts and -- as a result of which, some non uniform amendments began appearing around the country. And so the national folks began to look at it.

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While the vast majority of the changes that are in there -- there's quite a host of them, but they're -- most of them are technical, they're not controversial and not worthy of the time of this committee.

I do want to point out, however, that there's one issue -- and you heard about that this morning from the Secretary of the State's Office and that is the states were given the option of selecting one of two alternatives for how to describe the name of an individual person on a financing statement. What's the right name? And one of those alternatives or so called Alternative A which is being pushed by the National Banking Association says it's only the drivers license of wherever the person resides. The drivers license name or state issued ID is the only name that works. Alternative B states the drivers license name is one of the names that could be used and it's whatever the name is but it's given a safe harbor status.

After consideration, the committee strongly recommended that the option in Connecticut of Alternative B, saying it's -- it is a safe harbor, not a drivers license only and for a couple of very good reasons. First of all, drivers license only name is a change in the law. If you adopt that and you forgot the middle initial that's on the driver's license, four months later somebody's unperfected. And it's -- there doesn't seem to be any good policy reason for doing that.

Second of all, in the big technical problem that we have is that the Office of the Secretary of the State's system -- computer system and the DMV are two separate systems. They have different character sets, different field size designations. I've had discussions

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with the DMV office relating to this as well. That they are telling me that there are -- their system is going to be in great flux over the next several years to implement federal mandates. So even their system is going to be changing enormously. So there's no consistency between the two. So you could have an instance where you have a proper name that is on the DMV motor -- operators license that can't be searched or entered in the Office of the Secretary of State system. That is a small disaster.

As a result of that the Secretary of the State took the position that if you're going to do this we're going to have to harmonize the two data -- the two systems. That is a -- involves a relatively significant amount of money and they could not recommend that at this time.

So for all of those really good reasons we said no. In Connecticut, we believe, we recommend to you this Alternative B, make it a safe harbor and that's what we think works here.

I was advised yesterday afternoon and then this morning however, that the banking -- the bankers -- Connecticut Bankers Association on behalf of the national association will be filing testimony in opposition in writing saying that they prefer the Alternative A approach. We, obviously, as the Law Revision Commission and my committee will remain available to the Judiciary Committee or to them if there's any discussions that have to occur or revisions of text to be done. And we stand ready to assist the Judiciary Committee in any way that you would like.

So given that, those are the highlights and I don't want to belabor this further. Thank you.

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SENATOR COLEMAN: Thank you, Mr. Welch and thank you for reminding me about our work on Article Nine. I think the most I've ever known about Article Nine was when you were helping to prepare me with regard to a bill some years ago. And thank you and the rest of the Law Revision Commission for the very important work that you do including buttressing legislators. Any questions? Seeing none, thank you very much.

Andrew Schneider is next. Long time, no see.

ANDREW SCHNEIDER: Good afternoon, Senator Coleman and members of the Judiciary Committee. My name is Andrew Schneider. I'm executive director of the ACLU of Connecticut. And I'm here before you today to express our view that House Bill 6489, AN ACT REQUIRING THE COLLECTION OF DNA FROM PERSONS ARRESTED FOR A SERIOUS FELONY should be vigorously opposed on grounds of constitutionality, safety and cost.

The cornerstone of the American legal system, that a person is innocent until proven guilty is turned on its head when innocent people are included in a criminal data bank. There's a vast difference between using DNA as a tool in investigations, both to catch the guilty and exonerate the wrongly accused and storing the most intimate biological information of persons who have not been convicted of any crime, even if it is only stored for the duration of the legal proceedings that ends in acquittal, which can sometimes take years.

DNA is much more than a fingerprint in that it contains some of the most private information about a person. Our genetic code which is contained in our DNA determines a great deal about susceptibility to disease as well as information about one's family history. This

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groups. And it's only now that that has been completed that the amendments are being proposed in bill form, in the form that you have it and being introduced in all 50 states.

It's important to note that the Uniform Commercial Code is a uniform act. And it works best when all states are similarly situated and when the laws in all states are the same or as close as they can be. When that's not the case, there's the potential for confusion which results in unnecessary costs and expense, not only to lenders, but also to businesses and consumers.

So without repeating the testimony that was given before, I think from our section's perspective it's important that this bill be passed in its current form for a couple of basic reasons. One -- and I'll be quick -- that our laws reflect the latest and best thinking of the law, and, two, that we're in step and in agreement with the other states that will be passing this bill. If we're not, then again, we run the risk of confusion and making it more difficult to do business in Connecticut.

Thank you very much and happy to entertain any questions.

SENATOR COLEMAN: Are there any questions for James?
Seeing none, thank you.

JAMES SCHULWOLF: Thank you very much.

SENATOR COLEMAN: Christopher Duby.

CHRISTOPHER DUBY: Good afternoon, Senator Coleman.
My name is Christopher Duby. I'm a lawyer that practices in North Haven, Connecticut. I'm here today on behalf of the Connecticut

HB6489



DENISE MERRILL
SECRETARY OF THE STATE
CONNECTICUT

Judiciary Committee Public Hearing
March 9, 2011
HB 6274

Good morning, Chairman Coleman, Chairman Fox, and members of the committee.

My name is Denise Merrill, and I am the Secretary of the State of Connecticut.

Thank you for the opportunity to testify before you this morning.

I am here today to support Raised Bill 6274, "An Act Concerning Amendments to Article 9 of the Uniform Commercial Code Concerning Secured Transactions."

As you may know, the Commercial Recording Division in the Office of the Secretary of the State is the main filing office for liens and secured transaction records under Revised Article 9 of the Uniform Commercial Code.

Last fall the co-chairs of the Law Revision Commission Advisory Committee, Neal Ossen and Thomas Welsh, invited the Director and a Staff Attorney from the Commercial Recording Division to sit on the Advisory Committee that adopted the amendments urged by this bill.

I appreciate the committee's commitment to gathering the perspective of the filing office in the drafting phase rather than as an afterthought.

With input from the outset, my office is happy to support Raised Bill 6274.

While drafting, the Advisory Committee was called upon to select from among two alternatives for debtor party name conventions under the new amendments.

Alternative A would have required debtor party names to match the names of individuals as listed on their state issued Drivers' Licenses or ID cards.

Alternative B allows the debtor party names to match the Drivers' License as one criterion, yet does not limit the naming standard to an exact match with that singular form of ID.

This foundational choice was of paramount importance to the filing office.

Our Commercial Recording Division Director and Staff Attorney had influential input into the selection of Alternative B for our state, which renders the Drivers' License only one form of acceptable name identification, rather than making it the sole form.

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HB 6274 Continued
Denise Merrill, Secretary of the State

Alternative B will work better for Connecticut for many reasons. The chief reason is that the state's DMV database and UCC database are not linked and it would be prohibitively expensive to cross-reference them at this time.

Moreover, any time either the DMV or the CRD were to change its system, such a change could require an expensive corresponding technical enhancement at the other agency.

Significantly, the DMV currently is in the midst of a Drivers' License program automation overhaul that may take several years to complete, so trying to match names would also prove to be a moving target.

Finally, research into Drivers' License name conventions at the Connecticut DMV and in other states revealed that the history of naming conventions is fraught with hyper technicality, flux and many errors.

Therefore, while it still makes sense to allow the Driver's License to serve as AN indicator of a debtor's name, it makes NO sense whatsoever to allow the license name to serve as the only form of a name acceptable for filing purposes.

Hence, we chose Alternative B and feel confident that many other states will, as well, when weighing the two alternatives.

The amendments to Revised Article 9 were developed and vetted nationally by a joint committee of the American Law Institute and the Uniform Law Commissioners.

The Connecticut Advisory Committee adopted the amendments in the form submitted as Raised Bill 6274 and I respectfully submit my approval of and support for this bill.

Thank you, and I would be happy to answer any questions you might have.



CONNECTICUT BANKERS ASSOCIATION

March 9, 2011

To: Members of the Judiciary Committee

Fr: Connecticut Bankers Association
Contact: Tom Mongellow, Fritz Conway

Re: H.B. No. 6274 AN ACT CONCERNING AMENDMENTS TO ARTICLE 9 OF
THE UNIFORM COMMERCIAL CODE CONCERNING SECURED
TRANSACTIONS.

Position: Support with Changes

The CBA is generally supportive of H. B. 6274, which adopts provisions of Article 9 of the Uniform Commercial Code (UCC).

We are however, opposed to the provisions in Section 10 of the bill which deals with how the "name" of the debtor is detailed on the loan document or "financing statement" as it is referred to in UCC 9. The name issue is particularly important to lenders from both the perfection and priority of a security interest.

Of the two name options proposed by the National Conference of Commissioners on Uniform Laws, (NCCUSL), and the banking industry agrees on a national basis that the provisions in NCCUSL's "Alternative A" approach, (sometimes called "Only If Approach"), should be enacted in each state.

Unfortunately, H. B. 6274, contains what is known as "Alternative B" or the Safe Harbor Approach, which the banking industry believes will leave uncertainty as to the priority of a lenders security interest.

H. B. 6274 has an effective date of July 1, 2013, reflecting the time necessary to implement the many provisions of this revised UCC 9. The office of the Secretary of State and the Department of Motor Vehicles are key agencies, when looking at the Alternative A provisions, from the perfecting of the security interest to the verification of identification. While we understand there are concerns that those agency data systems may have difficulty providing the linkage necessary to address the bills "name" provisions, we believe that with the effective date being over two years in the future that the systems may be able to be synchronized by that point.

We urge the Committee's consideration of adopting the NCCUSL's "Alternative A" approach and would welcome the opportunity to work with Committee, proponents of the bill and the affected agencies.

Background

During the drafting of the 2010 Amendments to UCC Article 9, the American Law Institute/National Conference of Commissioners on Uniform State Laws Committee considered

multiple issues. One of the most significant related to provisions concerning the name of an individual debtor.

UCC Article 9's requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name.

The question before the Drafting Committee was clear: Should Article 9 provide a more certain rule to determine the name of a debtor who is an individual? Many felt that clarification was needed. One reason was because courts, in interpreting the Uniform Commercial Code, have struggled in determining whether a particular financing statement that contains the debtor's name as reflected on his or her birth certificate, driver's license, passport or other identification, or even a debtor's nickname or commonly used name, is the correct name of the debtor for the financing statement to be sufficient.

There was a difference of opinion within the Drafting Committee as to the best approach on this matter. As a compromise, the Committee decided to provide states with two alternative sets of amendments relating to the names of individual debtors. There is an Alternative A (sometimes called "Only If Approach"), and there is an Alternative B (sometimes called "Safe Harbor Approach") to address the issue. The 2010 NCCUSL Amendments have wording to implement each approach.

Alternative A (Only If Approach). Generally, Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B (Safe Harbor Approach). Generally, Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.

The American Bankers Association Working Group on UCC Article 9 has studied the matter in detail, and has concluded that Alternative A is the only approach that should be enacted. Composed of bank lawyers and state bankers association professionals, the Group had numerous meetings over a two-year period. In meetings with the ALI/NCCUSL Drafting Committee, the Group highlighted the advantages of the Only If Approach. The ABA Group stressed that the Only If Approach simplifies both filing and searching. Particularly with respect to a debtor having the specified driver's license, the approach will provide greater certainty and more definition of the name. Although the Safe Harbor Approach outlines possible names to use to achieve perfection, it does little to address priority issues, which are central in the business of lending.



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Testimony of James Schulwolf, Member, Executive Committee
CBA Commercial Law and Bankruptcy Section and Member,
CBA Commercial Finance Committee

Judiciary Committee

House Bill 6274

An Act Concerning Amendments to Article 9 of the Uniform Commercial Code
Concerning Secured Transactions
March 9, 2011

Sen. Coleman, Rep. Fox, and honorable Members of the Judiciary Committee, thank you for the opportunity to appear and testify today on a bill of great interest to commercial law attorneys and their clients. Please be advised that the Executive Committee of the Connecticut Bar Association Commercial Law and Bankruptcy Section and the Connecticut Bar Association Committee on Commercial Finance support the revisions to Article 9 of the Uniform Commercial Code set forth in H.B. 6274.

To assist the Judiciary Committee, we submit the following information for your consideration.

A. Overview and Background

Revised Article 9 of the Uniform Commercial Code, being a substantially rewritten version of the laws generally dealing with secured transactions in personal property, was adopted in 2001 in Connecticut as Public Law 01-132. All 50 states, Puerto Rico and the District of Columbia adopted Revised Article 9 before the July 1 2001 "uniform" effective date:

Connecticut then adopted two revisions to Revised Article 9 to address problems and issues in the implementation of Revised Article 9 in Connecticut:

1. 2003 Revision – P.A. 03-62: In 2003 Public Act 03-62, was passed to correct a number of problems with the original text of Revised Article 9 adopted in Connecticut. This was an effort by practitioners (including panel members at this seminar), state officials and the Connecticut Bar Association to address problems found in the statute. Specific areas of the Act included: (a) allowing government transfers to be governed by Revised Article 9, if another statute permitted it to be used or no other law governed these transactions; (b) making clear that a provision in a security agreement or lease authorizing electronic self-help may be included within

the body of the security agreement or lease, as long as it is specifically stated; (c) conforming the motor vehicle certificate of title law to the provision of Revised Article 9 that permits a security interest in motor vehicles held by a debtor as inventory for sale or lease to be perfected by filing a financing statement; (d) amending the bank execution statute for judgment debtors that are not natural persons (C.G.S. §52-367a) to require the depository bank to notify any party with a security interest via a control agreement in a commercial (not consumer) deposit account of the levy and creating a procedure for a determination of conflicting interests in the account before the funds are turned over to the levying officer -- similar to the provision for exemption rights for bank execution against deposit accounts owned by natural persons; and (e) amending the statute governing postjudgment liens on personal property (C.G.S. §52-355) to overrule a decision denying a conversion claim as to property subject to a lien.

2. 2004 Revision – P.A. 04-2: In 2004, in response to concerns by the public finance bar over potential application of Revised Article 9 to public finance transactions, and after discussions with members of this panel, the General Assembly passed revisions in a budget implementation bill, P.A. 04-2, to, among other things, provide an exception to the scope of Revised Article 9 for public finance transactions, conditioned upon the existence of other statutory provisions providing the minimum requisites for creation of such liens and their enforceability against third parties. This Act also deleted the prior option of many of these state authorities to ‘opt in’ to Revised Article.

B. National Revision to Official Text of Revised Article 9 and Connecticut Law Revision Commission Process

In 2008 the National Conference of Commissioners on Uniform State Laws and the American Law Institute formed a joint study committee to review the operation of Revised Article 9 in practice. The study committee determined that there were a number of discrete issues to be addressed and a drafting committee was formed late in 2008 that addressed appropriate statutory changes. Also revisions were made to the Official Comments to Article 9 to provide additional guidance to judges and practitioners relating to issues where changes to the statute were not deemed advisable or warranted. The drafting committee’s revisions to the statutory text of Revised Article 9 were approved by the American Law Institute and by the National Conference of Commissioners on Uniform State Laws in 2010.

The Connecticut Law Revision Commission at a meeting on October 26, 2010 undertook a review of these revisions. The Commission review was conducted by a Commission Advisory Committee co-chaired by Commission members Neal Ossen and Thomas J. Welsh. The Advisory Committee included a group of advisors selected on the basis of their expertise in commercial law and transactions, real estate law and transactions and consumer matters, as well as a representative of the Connecticut Bankers

Association and staff members from the Office of the Secretary of the State. A number of the members of the Advisory Committee were members of the Connecticut Bar Association Commercial Law and Bankruptcy Section and the Commercial Finance Committee.

The Advisory Committee met several times in November and December of 2010 and reviewed all of the proposed revisions and additions to UCC Article 9, as well as Connecticut statutes, common law and practice associated with each of the suggested changes. The Advisory Committee prepared a proposed draft adapted for enactment in Connecticut. The draft includes necessary amendments to conform the uniform text to Connecticut law and practice, including the policy choices made in Connecticut's adoption of the major 2001 revision of Article 9, and to incorporate the concerns raised by the Office of the Secretary of the State.

A number of the more significant issues and revisions that were discussed follow:

- **Alternatives for Names of Individual Debtors – Selection of “Safe Harbor” Approach:** The single most significant decision to be made relating to alternatives set forth in the 2010 Uniform Official Text is to determine which alternative to adopt relating to the name to be specified on a financing statement for a debtor that is an individual (a natural person). Two “Alternatives” were provided in the official draft for the correct name in a financing statement for an individual debtor – Alternative A, making the name shown on the motor vehicle operator's license the *only* permitted name, and Alternative B, adopting a ‘safe harbor’ approach making the name of an individual shown on the individual's Connecticut motor vehicle operator's license or identity card *one* of the names that would be sufficient on a financing statement, in addition to the names permitted under current law as well as the first personal name and surname of the individual. The Advisory Committee strongly recommended the adoption of Alternative B, the ‘safe harbor’ approach in Connecticut for a number of reasons, including the following:
 - Alternative A is a change in current law that could render ineffective existing financing statements over relatively minor omissions or additions and changes when licenses are reissued or renewed.
 - The Office of the Secretary of the State and Department of Motor Vehicles computer systems are entirely separate systems that could use a different character sets and have different field size limitations. Therefore, “Alternative A” could create instances in which the exact required name could not be entered onto financing statements in, or searched on the records of, the Office of the Secretary of the State.
 - The Advisory Committee and the Office of the Secretary of the State felt that if “Alternative A” was selected it would be very important to harmonize the name conventions, field sizes and other technical aspects of the computer systems of the Department of Motor Vehicles and the Office of the Secretary of the State. The cost to the State to study and revise the

computer systems of the Office of the Secretary of the State and the Department of Motor Vehicles to support "Alternative A" could be substantial and they could not recommend allocating resources necessary for this task at this time.

- **Revisions coordinating with the Model Entity Transactions Act that allows redomestication of registered organizations in another state:** Certain changes in the 2010 Uniform Official Text were intended to conform UCC Article 9 to allow the revisions contemplated in the Model Entity Transactions Act that had been drafted by the National Conference of Commissioners on Uniform State Laws and which has been adopted in several states. The Business Law Section and Tax Section of the Connecticut Bar Association have been working on a proposed draft of proposed legislation that has been submitted to the General Assembly in 2011 to adopt provisions of the Model Entity Transactions Act ("META") in Connecticut. The adoption of the revisions to Article 9, while permitting the secured transactions to proceed if META is enacted will be self-consistent and will not require META to be adopted in Connecticut.
- **Clarification of rules relating to names of decedent's estates as Debtors on financing statements:** The national Official Text and proposed Bill modifies and clarifies the provisions of CGS §42a-9-503(a)(2), relating to the proper name for a financing statement when the debtor is a decedent's estate and provides more explicit rules to guide practitioners and the courts.
- **Providing for an expanded four-month rule for effectiveness of financing statements after a change in location:** The national Official Text and proposed Bill revises the provisions of CGS §42a-9-316 by adding new subsections (h) and (i) to allow a financing statement to continue to be effective to perfect a security interest in after-acquired property for up to four (4) months after the debtor changes its location to another jurisdiction or after a "new debtor" in another jurisdiction becomes bound by the debtor's security agreement. If the secured party perfects its security interest in the new jurisdiction before the expiration of the four-month period (or before the earlier lapse of the prior financing statement) the security interest would continue – otherwise the perfection will lapse as against a bona fide purchaser of the collateral. This new rule for 'new debtors' supplants the non-uniform one-year provision adopted in 2001 in CGS §42a-9-316(a)(4), which had been necessary due to the perceived absence of a rule in the earlier official draft of Revised Article 9.
- **Revision of UCC Article 9 forms and allowing adoption of revised forms by the Office of the Secretary of the State:** The national form financing statement and amendment forms are being amended in the 2010 national Official Text; however the Secretary of the State will retain the authority to adopt and to amend the national and local forms for filing by promulgation of rules, as in current Connecticut law.

C. **Recommendation:**

The Connecticut Bar Association Commercial Law and Bankruptcy Section and the Connecticut Bar Association Committee on Commercial Finance support the changes set forth in H.B. 6274. These changes will correct some issues that arose since the enactment of Revised Article 9 in 2001 and are necessary to make the Connecticut law of secured transactions, which underlies a vast area of commercial and business financing in Connecticut, conform to that of the other states that will adopt it prior to the July 1, 2013 uniform national effective date.

We respectfully recommend adoption of H.B. 6274 for the reasons noted above.

Please do not hesitate to contact us if you require any further information or if we can be of further assistance.

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KLASKIN

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REPORT OF ADVISORY COMMITTEE ON 2010 AMENDMENTS TO ARTICLE 9
OF THE UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

Prepared and Submitted By:

Neal Ossen and
Thomas J. Welsh
Co-Chairpersons

December 16, 2010

A. Overview and Recommendation:

The Connecticut Law Revision Commission at a meeting on October 26, 2010 undertook a review of the revisions to Article 9, Secured Transactions, of the Uniform Commercial Code (“UCC”) that were promulgated by the American Law Institute and the National Conference of Commissioners of Uniform State Laws in 2010.

The Commission review was conducted by a Commission Advisory Committee co-chaired by Commission members Neal Ossen and Thomas J. Welsh. The Advisory Committee included a group of advisors selected on the basis of their expertise in commercial law and transactions, real estate law and transactions and consumer matters and a representative of the Connecticut Bankers Association as well as staff members from the Office of the Secretary of the State. Mr. Richard Taff from the Office of the Legislative Commissioners provided staffing for the Advisory Committee and attended the meetings. Also a representative from the Office of Legislative Research attended these meetings and received the written materials that were distributed. A list of the advisors and staff members that attended the meetings is attached.

The Advisory Committee met on November 4, 2010, November 18, 2010, November 30, 2010 and December 16, 2010 and reviewed all of the proposed revisions and additions to UCC Article 9, as well as Connecticut statutes, common law and practice associated with each of the suggested changes. The Advisory Committee found that the suggested revisions are relatively uncontroversial corrections and refinements of UCC Article 9 – which had been extensively revised and rewritten by the 2001 amendments enacted in Connecticut by Public Act 01-132. The 2010 revisions arose as the result of a few court decisions and non-uniform amendments in a number of states, most notably regarding the issue of what constitutes the name of an individual as a debtor. Since the need for a technical revision to correct some aspects of Article 9 was

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apparent, the drafters added provisions to clarify portions of the statute that had proved problematical and to address a few court decisions in other states that had incorrectly interpreted provisions of Article 9, as well as to anticipate and prepare for future adoption of the Model Entity Transactions Act and similar laws.

In the course of their work, staff from the Office of the Legislative Commissioners prepared the attached draft adapted for enactment in Connecticut. The draft includes necessary amendments to conform the uniform text to Connecticut law and practice and to incorporate the concerns raised by the Office of the Secretary of the State. The Advisory Committee also unanimously recommended the adoption of so-called "Alternative B" in this draft relating to the name of individual debtors – which alternative adopts a 'safe harbor' approach making the name of an individual shown on the individual's Connecticut motor vehicle operator's license or identity card one of the names that would be sufficient on a financing statement, in addition to the names permitted under current law as well as the first personal name and surname of the individual. The Advisory Committee commercial law experts felt strongly that adoption of the "Alternative A" rule, making the name shown on the motor vehicle operator's license the only permitted name, would be a major change that could cause existing financing statements for individuals to become ineffective upon any simple change in a driver's license – also, the Office of the Secretary of the State warned that its computerized filing system and that of the Department of Motor Vehicles were entirely separate systems that might not be fully compatible at this time and either system could be changed in the future without notice to or coordination with the other office or department, so that significant expenditures of state money might have to be devoted to upgrade these systems and to coordinate them in the future if so-called "Alternative A" was adopted.

Consumer representatives on the Advisory Committee and who were consulted on the proposed changes expressed the opinion that these changes did not adversely affect consumer issues and did not alter policy decisions or compromises made when Revised Article 9 was adopted in 2001.

Because of the strong interest in uniformity in the area of commercial law, in general, and in the law of security interests in personal property that underlies most commercial finance, in particular, the Advisory Committee recommends enactment of the 2010 revisions to UCC Article 9 as set forth in the attached enactment draft.

B. History of Article 9 Revisions and Goals of the Review Process:

1. History of Connecticut Adoption and Amendment of Revised Article 9: In 1998 a major revision of Article 9 of the UCC was approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute with a uniform national effective date of July 1, 2001. In Connecticut the Law Revision Commission formed a study committee on March 1, 2000 to study these revisions to Article 9. The report of the Commission to the Judiciary Committee of the General Assembly was dated December 21, 2000, with a supplementary report dated January 11, 2001. The Law Revision Commission recommended

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adoption of these revisions and provided draft text for consideration by the General Assembly. These revisions to Article 9, with minor amendments in the adoption process were enacted in Connecticut as Public Act 01-132, with an effective date of October 1, 2001.

Since the date of the original enactment of revised Article 9 in 2001 several revisions to UCC Article 9 have been adopted. In 2003, Public Act 03-62 was passed to correct a number of technical problems with the original text of Revised Article 9 adopted in Connecticut. This was an effort by practitioners (including a co-chair of this Advisory Committee), state officials and the Connecticut Bar Association to address mostly technical drafting problems found in certain Revised Article 9 provisions and in other statutes that referenced Revised Article 9. In addition, in 2004, in response to concerns by the public finance bar over potential application of Revised Article 9 to public finance transactions, the General Assembly passed revisions in a budget implementation bill, Public Act 04-2, to, among other things, provide an exception to the scope of Revised Article 9 for public finance transactions, conditioned upon the existence of other statutory provisions providing the minimum requisites for creation of such liens and their enforceability against third parties. This Act also deleted the prior option of many state authorities to 'opt in' to Revised Article 9.

Finally, in 2008 the National Conference of Commissioners on Uniform State Laws and the American Law Institute formed a joint study committee to review the operation of Revised Article 9 in practice. The study committee determined that there were a number of discrete issues to be addressed and a drafting committee was formed late in 2008 that addressed appropriate statutory changes. Revisions to the Official Comments to Article 9 were also drafted to provide additional guidance to judges and practitioners relating to issues where changes to the statute were not deemed advisable or warranted. The drafting committee's revisions to the statutory text of Revised Article 9 were approved by the American Law Institute on May 17, 2010 and by the National Conference of Commissioners on Uniform State Laws during the summer of 2010 (the "2010 Uniform Official Text").

2. Standards Employed in the Amendment and Connecticut Review Process:

The Advisory Committee noted that the national drafting committee considered the following standards in making the revisions to Revised Article 9 in the 2010 Uniform Official Text:

- No changes should be made that would alter policy decisions made during the 1998 revision unless the current provisions appear to be creating significant problems in practice.
- Recommendations for statutory change should focus on issues as to which ambiguities have been discovered in existing statutory language, where there are substantial ambiguities in practice under the current provisions, or as to which there have been significant non-uniform amendments in one or more jurisdictions that suggest the need to consider revisions.

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- Issues should be handled by a revision to the Official Comments rather than to the statutory text whenever the statutory language is sufficiently clear and produces the desired result, but judicial decisions or experience in practice indicates that some clarification might be desirable.

In addition to the foregoing considerations, Co-Chair Welsh recommended that the Advisory Committee adopt the following standards for their review and for recommendations as to any deviations from the 2010 Uniform Official Text in Connecticut:

- The policy decisions made in the 2001 adoption of Revised Article 9 in Connecticut should be preserved whenever possible, unless the change is necessary to give effect to the change recommended in the 2010 Uniform Official Text and provided that any parties that were proponents for these policy decisions are advised and given the opportunity to address the proposed change.
- Changes should not be made to the 2010 Uniform Official Text unless necessary due to deviation from Connecticut law or practice, to reduce any resulting ambiguity or to preserve the policy decisions made in the 2001 adoption of Revised Article 9 in Connecticut. Adherence to the uniform text to the greatest degree possible will advance the goal of the Uniform Commercial Code in Connecticut, as noted in Conn. Gen. Stat. §42a-1-103(a)(3), to “make uniform the law among the various jurisdictions”, and thereby to permit decisions in other states relating to the uniform text to be persuasive authority to be cited to courts in the State of Connecticut.

In general, the Advisory Committee review and discussion employed the above standards and revised the text in the accompanying enactment draft as little as possible from that of the 2010 Uniform Official Text.

C. Significant Specific Issues and Alternatives Addressed: The following were the most significant issues addressed in the review and revision of the 2010 amendments to UCC Article 9. (Additionally there are a number of revisions not discussed below, as the Advisory Committee considers them to be technical, noncontroversial and mostly conforming changes.)

1. Alternatives for Names of Individual Debtors: The single most significant decision to be made relating to alternatives set forth in the 2010 Uniform Official Text is to determine which alternative to adopt relating to the name to be specified on a financing statement for a debtor that is an individual (a natural person). This change resulted from a number of cases that had been reported relating to uncertainty of courts as to exactly what was the name of an individual for purposes of Revised Article 9 and non-uniform amendments made by certain states, most notably Texas and Nebraska, making the name shown on the driver's license (or other state-issued identification card) the sole permitted name for use on a financing statement for an individual debtor. The 2010 Uniform Official Text provided two alternatives to allow each state to determine whether to adopt the driver's license name 'only' (mandatory) model or the driver's license name 'safe harbor' model. Specifically, “Alternative A” in the 2010 Uniform Official Text makes the name shown on an individual's unexpired driver's license

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(or state-issued identification card) the sole name permitted on a financing statement to perfect a security interest relating to that individual or the first personal name and surname of an individual without a current driver's license or state identification card. "Alternative B", on the other hand, makes the name of an individual shown on the driver's license or state identification card one of the permitted names, in addition to the first personal name and surname of the individual and/or the actual name of the individual as determined under state law.

An American Bankers Association working group has expressed a preference for "Alternative A," although it appears that secured creditors generally are of the view that adoption of either "Alternative A" or "Alternative B" would be an improvement over the individual debtor's name provisions in existing Revised Article 9. Additionally, drafters of the 2010 Uniform Official Text have noted that "Alternative A" is not feasible if a significant number of names reflected on drivers' licenses issued by a given state cannot be entered into that state's Uniform Commercial Code database, whether due to character set or field size discrepancies or other technical reasons.

After considerable discussion and research the members of the Advisory Committee strongly recommended the adoption by the State of Connecticut of "Alternative B", the 'safe-harbor' model, for the following reasons:

- The requirement that the name of an individual on a financing statement be limited to the name shown on the motor vehicle operator's license or state-issued identification card is a major change from current law that could have the effect of invalidating existing financing statements over relatively minor omissions or additions, such as the omission or addition of a middle initial or a middle name.
- Under 'Alternative A' any change in a name on a motor vehicle operator's license after it is issued or upon renewal (as well as expiration or nonrenewal of an operator's license) could constitute a change in the name of the debtor under Conn. Gen' Stat. §42a-9-507(c), which in turn could render the financing statement ineffective for collateral acquired more than four months after the change unless a correcting amendment is filed. This would be particularly important in cases where an individual was operating a business as a proprietorship or in a general partnership.
- The Office of the Secretary of the State advised the Advisory Committee that their existing computerized filing system and the system for searches of their UCC records utilize a limited set of alphanumeric characters that are permitted in a financing statement and for searches. The computer system employed by the Department of Motor Vehicles for motor vehicle operator's licenses and state identity cards is an entirely separate system that could use a different character set and have different field size limitations than the system of the Office of the Secretary of the State. Therefore, the adoption of "Alternative A" could create instances in which the exact required name from Department of Motor Vehicle records could not be entered onto financing statements in, or searched on the records of, the Office of the Secretary of the State.

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- The Advisory Committee and the Office of the Secretary of the State felt that if “Alternative A” was selected it would be very important to harmonize the name conventions, field sizes and other technical aspects of the computer systems of the Department of Motor Vehicles and the Office of the Secretary of the State to avoid creating a situation in which it could be impossible to file a proper financing statement with the Office of the Secretary of the State because the exact name of the individual debtor shown on the Department of Motor Vehicles system was incompatible with the allowable name conventions in the computer system of the Office of the Secretary of the State.
- The Office of the Secretary of the State advised the Advisory Committee that the cost to the State to study and revise the computer systems of the Office of the Secretary of the State and the Department of Motor Vehicles to support “Alternative A” could be substantial and they could not recommend allocating resources necessary for this task at this time.

Notwithstanding the distribution of this draft report and written materials and the discussions in meetings of the Advisory Committee, no party has expressed any objection to selection of the “Alternative B” ‘safe harbor’ approach recommended by the Advisory Committee.

Although the Advisory Committee has been informed that a few other states currently studying this issue might be recommending enactment of “Alternative A”, it is the strong opinion of the Advisory Committee that enactment of “Alternative B” is the better alternative for the State of Connecticut.

2. Model Entity Transactions Act: The 2010 Uniform Official Text modified the definition of entities designated as “registered organizations” under Revised Article 9 to reflect the fact that model statutes and statutes adopted in some states after the adoption of Revised Article 9 may permit the direct consolidation or redomestication of such entities in a different state than in which they were originally formed. Under prior law such changes were generally only possible indirectly – though mergers or similar mechanisms that were anticipated in the earlier text of Revised Article 9. The 2010 Uniform Official Text defines the term ‘public organic record’ to mean the certificate of incorporation or similar document that is filed and effective to govern an entity. An entity’s ‘public organic record’ would be used for certain Revised Article 9 purposes – including, without limitation, such matters as the proper name of the entity for financing statements and the proper jurisdiction in which to file financing statements. This definition and changes in the 2010 Uniform Official Text were intended to conform to the meanings of the same terms in the Model Entity Transactions Act that had been drafted by the National Conference of Commissioners on Uniform State Laws and which has been adopted in several states.

It came to the attention of the Advisory Committee that the Business Law and Tax Sections of the Connecticut Bar Association have been working on a proposed draft of proposed legislation to be submitted to the General Assembly in 2011 to adopt provisions of the Model Entity Transactions Act in Connecticut (“CT META”). Co-Chair Thomas Welsh met with the

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Connecticut Bar Association drafting committee relating to this draft proposed legislation and reviewed the current draft of their work and provided copies to the Advisory Committee. Although the Advisory Committee noted that certain questions may exist in the proposed CT META draft – for example, over exactly which ‘public organic record’ is determinative for purposes of Revised Article 9 – the Advisory Committee did not believe that any change should be made to the provisions in the 2010 Uniform Official Text on this issue and that any questions should be resolved if and when CT META is submitted for consideration by the General Assembly. The Co-Chairs of the Advisory Committee will continue to coordinate with the Connecticut Bar Association drafting committee on CT META to provide assistance in conforming CT META to the attached proposed revisions to Revised Article 9.

3. Decedent’s Estates as Debtors: The 2010 Uniform Official Text modified the provisions of UCC §9-503(a)(2), relating to the proper name for a financing statement when the debtor is a decedent’s estate. The 2010 Uniform Official Text employed the term “personal representative” of a decedent to refer to the fiduciary of a decedent’s estate. Although Connecticut statutes (*i.e.* Conn. Gen. Stat. §45a-390) define the term “fiduciary” to refer to this position, the Advisory Committee felt that no change was needed to this term in the 2010 Uniform Official Text for enactment in Connecticut since this term could include parties that were ‘personal representatives’ of a decedent’s estate in ancillary proceedings in other jurisdictions and since there was very little likelihood of confusion over the meaning of this term.

In addition, considerable discussion ensued in the Advisory Committee over the question of whether the revision to Conn. Gen. Stat. §42a-9-503(a)(2) would require an amendment to a financing statement that had been filed prior to the death of the debtor to continue the effectiveness of the financing statement, since the pre-death financing statement would presumably not contain the required ‘indication’ that the debtor was an estate. The Advisory Committee determined that an amendment to the pre-death financing statement should not be required to maintain the effectiveness of the financing statement, at least for collateral acquired by the individual debtor prior to death. Further, since, pursuant to Conn. Gen. Stat. §42a-9-506(c), a search of the UCC records in the Office of the Secretary of the State under the name of the decedent utilizing its current search logic would reveal the financing statement (since the estate ‘indication’ is not currently searchable) an argument can be made that the financing statement is not materially misleading and will continue to perfect a security interest in collateral acquired more than four months after the death of the debtor even without an amendment to indicate the estate nature of the debtor. [Of course, if the search logic of the Office of the Secretary of the State should change to allow a search for the estate ‘indication’ this argument would no longer be applicable.]

4. Revisions to Official Comments and Relevance of Official Comments in Connecticut: Notwithstanding the fact that the State of Connecticut does not formally adopt official comments to the Uniform Commercial Code as part of the enactment of the associated statutes, and consequently it was not necessary to submit proposed 2010 revisions to the Official Comments for UCC Article 9 to the General Assembly for approval, the Advisory Committee reviewed the proposed and final revisions to these Official Comments. This brief review was

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intended to determine whether any revision to the Official Comments would affect any of the policy decisions made in the Connecticut enactment of Revised Article 9 – so that an appropriate statutory override could be crafted if necessary. The review of the 2010 revisions to the Official Comments to Article 9 revealed no inconsistency between these changes and any Connecticut statute or policy that would require a change to the statutory provisions.

A considerable discussion occurred in the Advisory Committee, however, over the relevance and use of Official Comments in the interpretation of the Uniform Commercial Code, in general, and of Revised Article 9, in particular. This discussion occurred in the context of Conn. Gen. Stat. §1-2z:

“The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

Notwithstanding this statute, which was adopted in 2003 well after the adoption of the Uniform Commercial Code and of Revised Article 9, the Advisory Committee felt that reference to the Official Comments by practitioners and by the courts to assist in determining the meaning and purposes of the Uniform Commercial Code (including the 2010 revisions to Revised Article 9) was warranted.

This position is supported by the general provisions of the Uniform Commercial Code, adopted in Article 1, which specify, in Conn. Gen. Stat. §42a-1-103(a), that:

This title shall be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) To simplify, clarify and modernize the law governing commercial transactions;
- (2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

The goal of uniformity in subsection (3) above justifies reference to the Official Comments and case law from other jurisdictions as persuasive authority for interpretation of the provisions of the UCC and, in this context, Revised Article 9 (including without limitation the 2010 revisions thereto).

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In addition, the Report and Recommendation of the Connecticut Law Revision Commission to the Judiciary Committee dated December 21, 2000, relating to the review and adoption of Revised Article 9 in 2001, stated, on page 2 thereof, 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 below. . . . *With respect to proposed revisions to particular sections, resort should be made to the official comments to those sections in the Official draft.* (emphasis added)

Senator Coleman, in introducing Revised Article 9 as S.B. 1226 in the Connecticut Senate in 2001 also stated that “courts in Connecticut and in the other states look to the experience of other states, *as well as to the official comments of the drafters of a uniform law* in interpreting their commercial statutes” (emphasis added). [Senate Session Transcript, May 31, 2001.] It is also well established that the courts in Connecticut have referred to the Official Comments when interpreting provisions of the Connecticut UCC, including Article 9. See for example, *Hall v. DeChello Distributors, Inc.*, 6 Conn. App. 530, 506 A.2d 1054 (1986), cert. denied, 200 Conn. 807, 512 A.2d 230 (1986) [The purposes and policies of the UCC “are explained in the Official Comments which accompany each section of the Uniform Commercial Code.”] and *Laurel Bank and Trust Co. v. Mark Ford, Inc.*, 182 Conn. 437, 438 A.2d 705 (1980) [referring to the Official Comments in construing Article 9].

Based on the foregoing it is clear that the courts and practitioners should be able to rely upon the Official Comments to assist them in determining the meaning of the provisions of Revised Article 9 (including the 2010 revisions thereto).

5. Expanded Four-Month Rule for Effectiveness of Financing Statement After Change in Location: The 2010 Uniform Official Text revised the provisions of UCC §9-316 by adding new subsections (h) and (i) to allow a financing statement to continue to be effective to perfect a security interest in after-acquired property for up to four (4) months after the debtor changes its location to another jurisdiction or after a “new debtor” in another jurisdiction becomes bound by the debtor’s security agreement. If the secured party perfects its security interest in the new jurisdiction before the expiration of the four-month period (or before the earlier lapse of the prior financing statement) the security interest would continue – otherwise the perfection will lapse as against a bona fide purchaser of the collateral.

This new rule for ‘new debtors’ supplants the non-uniform one-year provision adopted in 2001 in Conn. Gen. Stat. §42a-9-316(a)(4), which had been necessary due to the perceived absence of a rule in the earlier official draft of Revised Article 9. Since these new subsections of §9-316 in the 2010 Uniform Official Text now provide a more comprehensive set of rules in the ‘new debtor’ situation, the Advisory Committee recommended the adoption of the 2010 Uniform Official Text on this point and the deletion of the non-uniform Connecticut provision.

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6. Adoption of Revised Forms By the Office of the Secretary of the State:
Notwithstanding the provisions of §9-521 of the 2010 Uniform Official Text, the Advisory Committee, with the concurrence of the representatives from the Office of the Secretary of the State, decided not to revise the provisions of Conn. Gen. Stat. §42a-9-521, which permits the Secretary of the State to prescribe the forms that will be acceptable for filing. The national form financing statement and amendment forms are being amended in the 2010 Uniform Official Text; however the Secretary of the State will retain the authority to adopt and to amend the national and local forms for filing as in the current law. The Advisory Committee did not believe that it was necessary or desirable to write the specific content of these forms into the statutory provisions of Revised Article 9, as changes to these forms may be made administratively by the affected state officers if necessary. This policy was established in the adoption of Revised Article 9 in 2001 and the Advisory Committee did not see any compelling reason to recommend a change.

Based upon the substantial work and analysis by the Advisory Committee and staff and the discussions and comments by the various experts and constituencies included in the review process, the Advisory Committee recommends enactment of the 2010 revisions to Revised Article 9 as set forth in the attached enactment draft.

CONNECTICUT LAW REVISION COMMISSION

ADVISORY COMMITTEE ON 2010 AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

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CONNECTICUT LAW REVISION COMMISSION
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December 16, 2010

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LINE 18

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Good morning Senator Coleman and Representative Fox and members of the Judiciary Committee. My name is Andrew Schneider, I am Executive Director of the ACLU of Connecticut and I am here before you today to express our view that House Bill 6489, An Act Requiring the Collection of DNA From Persons Arrested For a Serious Felony should be vigorously opposed on grounds of constitutionality, safety, and cost. However, we are open to ways that would incorporate our concerns into this legislation.

The cornerstone of the American legal system - that a person is innocent until proven guilty - is turned on its head when innocent people are included in a criminal databank. There is a vast difference between using DNA as a tool in investigations - both to catch the guilty and exonerate the wrongly accused - and storing the most intimate biological information of persons who have not been convicted of any crime, even if it is only stored for the duration of the legal proceedings that ends in acquittal (which can sometimes take years).

DNA is much more than a fingerprint, in that it contains some of the most private information about a person. Our genetic code, which is contained in our DNA, determines a great deal about susceptibility to disease as well as information about one's family history. This is private information about you that should not be made available to the police or the government. Concerns of misuse of this information are driven by current laboratory practice, where each biological sample is retained along with the generated DNA profile. The risk that these samples might be accessed and used in controversial research (for example on human behaviors such as aggression, substance addiction, or criminal tendency) or in other sinister ways remains so long as those samples remain on file. There is an additional danger inherent in these databases as well, which is that they make sharing the data extremely easy. Almost weekly we hear of another government database being breached and the information being sold by identity thieves.

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
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6546-6914**

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SENATE

494
June 7, 2011

THE CHAIR:

So ordered sir.

SENATOR LOONEY:

Thank you, Madam President.

Continuing on page 10, Calendar 474 House Bill
Number 6274.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Also, continuing on page, calendar page 10,
Calendar 476, House Bill Number 6635.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered sir.

SENATOR LOONEY:

Thank you, Madam President.

Moving, now to calendar page 12, Calendar 499,
House Bill Number 6638.

Madam President, move to place the item on the
Consent Calendar.

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SENATE

520
June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed...

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

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Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

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Calendar 536, House Bill 5300. Calendar 537, House
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,
Substitute for House Bill 6538. Calendar 547,
Substitute for House Bill 6440. Calendar 548,
Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for
House Bill 5802. Calendar 551, House Bill 6433.
Calendar 552, House Bill 6413. Calendar 553,
Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for
House Bill 5415. Calendar 557, Substitute for House
Bill 6318. Calendar 558, Substitute for House Bill
6565.

Calendar page 21, Calendar 559, Substitute for
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for
House Bill 6600. Calendar 564, Substitute for House
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for
House Bill 6103. Calendar 570, Substitute for House
Bill 6336. Calendar 573, Substitute for House Bill
6434.

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Calendar page 24, Calendar 577, Substitute for
House Bill 5795.

Calendar page 25, Calendar 581, House Bill
6354.

Calendar page 26, Calendar 596, Substitute for
House Bill 6282. Calendar 598, Substitute for House
Bill 6629.

Calendar page 27, Calendar 600, House Bill
6314. Calendar 601, Substitute for House Bill 6529.
Calendar 602, Substitute for House Bill 6438.
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,
Substitute for House Bill 6485. Calendar 616,
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for
House Bill 6634. Calendar 627, Substitute for House
Bill 6596.

Calendar page 32, Calendar 629, House Bill
5634. Calendar 630, Substitute for House Bill 6631.
Calendar 631, Substitute for House Bill 6357.
Calendar 632, House Bill 6642.

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Calendar page 33, Calendar 634, Substitute for
House Bill 5431. Calendar 636, Substitute for
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House
Bill 6525.

Calendar page 48, Calendar 399, Substitute for
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for
House Bill 6233. Calendar 412, House Bill 5178.
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for
House Bill 6113.

Madam President, that completes the item placed
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the
machine will be open for Consent Calendar number 1.

THE CLERK:

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

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SENATE

525
June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item..

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)