



Connecticut Bar Association

BACKGROUND MATERIAL CONCERNING HOUSE BILL No. 5099

**AN ACT CONCERNING ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE
REGARDING SECURED TRANSACTIONS**

Prepared By

Thomas J. Welsh, Esq.

On Behalf of

**COMMERCIAL LAW AND BANKRUPTCY SECTION OF
THE CONNECTICUT BAR ASSOCIATION**

March 3, 2003

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I. INTRODUCTION AND HISTORY OF TECHNICAL AMENDMENTS BILL

- A. **Introduction to Article 9:** Article 9 of the Uniform Commercial Code (generally referred to herein as “**Article 9**”) governs security interests in personal property and 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.

A major revision to Article 9 was adopted by Connecticut and all of the other states in the United States in 2001 and was effective in Connecticut on October 1, 2001 (sometimes referred to herein as “**Revised Article 9**”).

- B. **History of Non-Uniform Provisions and Need for Revisions to Revised Article 9 and Associated Statutes:** In 2001, when Revised Article 9 was adopted in Connecticut as Public Act 01-132, a number of amendments and departures from the official text promulgated by the American Law Institute and the National Conference of Commissioners of Uniform State Laws, were made to conform to Connecticut practice, procedure and other statutes. The Connecticut Law Revision Commission created an Advisory Committee with members of the Bar from the various affected 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, that prepared recommended text for adoption in Connecticut (this committee is sometimes referred to in these materials as the “**Advisory Committee**”). This text became the original proposed version of Revised Article 9, which was then amended in the adoption process as the result of comments received from the Secretary of the State, legislators and the public.

Since the date of the adoption of Revised Article 9 in Connecticut, the author and other members of the Connecticut Bar Association have held numerous seminars and received a number of comments from members of the Bar and from the financing industry relating to potential uncertainties in a number of the non-uniform provisions of the Connecticut statute. Staff attorneys in the Legislative Commissioner's office, in the process of codifying the new statute, also noted a number of ambiguities and clerical errors in the text. In addition, it became apparent that a serious problem existed in the interaction of Revised Article 9 and the Connecticut bank execution statutes for non-individual judgment debtors. This problem exists because, unlike the prior law, Revised Article 9 now permits secured parties to perfect an interest in a deposit account – however, no provision was included in the execution statutes to give a secured party notice and an opportunity to establish its priority over an execution upon a deposit account constituting its collateral.

- C. **Process and Goals In Preparing Technical Amendments Bill:** As a result of the foregoing comments received by the author and noted in the preparation of a book on Connecticut secured transactions, the author prepared proposed text to correct a number of technical problems that had been reported. This text, with explanatory comments as to the need for the changes and intention of the text, was sent for comment to the staff attorneys in the Legislative Commissioners' Office, Law Revision Commission staff, staff of the Office of the Secretary of the State, the Connecticut Bar Association Business Law and Commercial Law and Bankruptcy Sections and the Commercial Finance Committee, as well as to other interested parties. This text with comments and changes crafted by the Legislative Commissioners' office became the text of House Bill 5099, the current technical amendments Bill (sometimes referred to herein as the "**Bill**" or the "**proposed Bill**").

As an overriding consideration, the drafters of the text of the Bill attempted, to the greatest extent possible, not to affect substantive rights of parties under Revised Article 9. The purpose was to avoid confusion and reconcile conflicts between Article 9 and other statutes and to provide for appropriate constitutional protections for secured parties under the bank execution statutes. Although other methods of resolving ambiguities may have been possible, which could have affected the rights of parties, the drafters were mindful that such changes are not the province of a "technical" amendments Bill. The intention of the drafters was, wherever possible, to preserve existing statutory rights and procedures and to make no unnecessary substantive changes.

II. **ADDITIONAL RECOMMENDED CHANGES TO BILL**

As part of the process of review by members of the Bar and other interested parties relating to the proposed text of the technical amendments Bill, a few comments were received that noted corrections that should be made to the Bill. These recommended changes, and the reasons for them, follow.

- A. **Exception for Trust Deposit Accounts Under Other Statutes:** Section 2 of the proposed Bill amends, among other subsections, existing Conn. Gen. Stat. §42a-

9-109(d)(16) by renumbering it and by providing that the Connecticut limitation on the scope of Revised Article 9 with respect to “trust” accounts does not, in itself, prohibit granting of a security interest by a statutory trust under Chapter 615 of the General Statutes. A member of the Bar has correctly commented that certain other state statutes may provide that an interest in a deposit account in the nature of a “trust” account *is a security interest* under Article 9. An example is the interest of a landlord in a deposit account holding tenant security deposits, under Conn. Gen. Stat. §47a-21(c). Consequently, I recommend that the words “or if otherwise provided by statute” be added to the end of the last sentence in Section 2 of the proposed Bill. This would permit the another statute to “opt in” to Article 9, while preserving the general rule that security interests in payroll or trust accounts is not permitted. This also has the advantage of not requiring a string of specific statutory exceptions at the end of already somewhat convoluted text.

- B. **Excepting Consumer Transactions From Change to Electronic Self Help Provisions:** Section 17 of the proposed Bill adds a sentence to Conn. Gen. Stat. §42a-9-606(d)(2), which is a non-uniform provision adopted in Connecticut to restrict the use by secured parties of “electronic self-help” after a default by a debtor until a 15 days have elapsed after a statutory notice has been given. This provision section of the statute requires a debtor to “separately agree to a term” of a security agreement that authorizes electronic self-help. The members of the Law Revision Commission Advisory Committee that recommended this provision only intended that such a clause should be separately stated in the security agreement, they did not intend that the clause had to be in a separate agreement or had to be separately signed or initialed. The additional clause in Section 17 makes this clear. However, these Advisory Committee members also pointed out that the exception in the proposed Bill should not be applicable to consumer transactions, which have greater specificity and conspicuousness requirements. Therefore, I recommend that the words “Except in a consumer transaction” be added to the beginning of the amendment to Conn. Gen. Stat. §42a-9-606(d)(2) in Section 17 of the Bill.

In addition, Section 25 of the Bill makes a similar change to the identical electronic self help restrictions in Conn. Gen. Stat. §42a-2A-702(e)(2), relating to consumer lease transactions. Therefore, I also recommend that the words “Except in consumer leases” be added to the beginning of the amendment to Conn. Gen. Stat. §42a-2A-702(e)(2) in Section 25 of the Bill.

- C. **Clerical Corrections to Execution Statute Provision:** Section 22 of the Bill amends Conn. Gen. Stat. §52-367a, dealing with execution against deposit accounts of judgment debtors that are not natural persons. It provides for notice of an execution on the deposit account to a secured party with a security interest in the account under a control agreement and gives an opportunity for the secured party to file a motion for determination of its interest in the account under Conn. Gen. Stat. §52-356c before the funds are turned over to the levying officer. The

last sentence of subsection (j) in Section 22 of the Bill relates to the admissibility of records of the depository bank in a hearing held by the court on this issue – however this sentence refers to the court determining the “legitimacy of a claim of exemption”. This is a clerical error and is incorrect, since a judgment debtor that is not a natural person does not have an exemption right. The word “exemption” in this sentence should be replaced with the words “an interest in property”, to refer to the correct determination to be made under subsection (e) of that Section.

In addition, the amendment in Section 23 of the Bill amending subdivision (f)(1) of Conn. Gen. Stat. §52-367b should change the reference to “secured party claim form” to “secured party claim notice”. This is a clerical error and should be corrected, since no form is required and to conform to this language to that used in the other portions of this statute.

- D. **Consideration of Limiting 20 Day Waiting Period Under Proposed Bill Changes to Bank Execution Statute:** As noted above, Section 22 of the Bill amends Conn. Gen. Stat. §52-367a, dealing with execution against deposit accounts of judgment debtors that are not natural persons, by giving notice of a levy and allowing a period of 20 days for a party claiming a security interest in the deposit account under a control agreement to file a motion with the court for determination of its interest under Conn. Gen. Stat. §52-356c. The current text of the Bill, however, does not provide that the funds are to be immediately turned over to the levying officer if there is no control agreement in force. This results in a minimum 20-day waiting period before the proceeds of the deposit account are to be turned over by the depository bank to the levying officer. These funds be turned over immediately to the levying officer if the depository bank has no record of a control agreement relating to the account. Therefore, the following sentence should be added to the end of subsection (d) of Section 22 of the Bill: “Notwithstanding the foregoing, if the banking institution upon which the execution is served and upon which the demand is made determines from its records that the deposit account is not subject to a security interest of a secured party said banking institution shall immediately pay to the officer the amount removed from the judgment debtor’s account pursuant to subsection (c) of this section, which amount shall be received and applied on such execution by such officer.”

III. **TEXT OF BILL WITH DRAFTING COMMENTARY**

For the information of the Judiciary Committee and members of the General Assembly in considering the proposed Bill, attached as **EXHIBIT A** are the provisions of the proposed Bill with explanatory comments following each section as to the need for the changes and intention of the text.

IV. CONCLUSION

Article 9 is a complex body of commercial law underlying a vast array of financial and business transactions. It was a lengthy and complex piece of legislation. After the adoption in Connecticut of Revised Article 9 in 2001 a number of clerical errors and ambiguities were found to exist in the text of Revised Article 9, as well as in the interconnection of Revised Article 9 and other state statutes. Also, it became apparent that a serious problem existed in the interaction of Revised Article 9 and the Connecticut bank execution statutes for non-individual judgment debtors.

The proposed Bill amends Revised Article 9 and associated statutes to conform these statutes to each other, to reduce confusion and to remedy the failure of the bank execution statute to give required notice and an opportunity for a hearing to secured parties with security interests under Revised Article 9 in business deposit accounts.

Several additional comments and suggested changes to the Bill are included in these materials. With these recommended changes, the Commercial Law and Bankruptcy Section of the Connecticut Bar Association supports passage of House Bill 5099.

EXHIBIT A

To

BACKGROUND MATERIAL CONCERNING HOUSE BILL No. 5099

Prepared By Thomas J. Welsh

On Behalf of

**Commercial Law And Bankruptcy Section Of
The Connecticut Bar Association**

PROPOSED BILL PROVISIONS AND EXPLANATORY COMMENTS

February 26, 2003

HOUSE BILL 5099

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (e) of section 42a-9-103a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(e) (1) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(A) In accordance with any reasonable method of application to which the parties agree;

(B) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(C) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(i) To obligations that are not secured; and

(ii) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(2) In a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation:

(A) The payment must be applied so that the secured party retains no purchase money security interest in any property as to which the secured party has recovered payments aggregating the amount of the sale price including any finance charges attributable thereto; and

(B) For the purposes of this [subsection] subdivision only, in the case of items purchased on different dates, the first item purchased shall be deemed the first paid for and, in the case of items purchased on the same date, the lowest priced item shall be deemed the first paid for.

Enactment Comment

Subdivision (2) of Section 9-103 was added as the result of the Law Revision Advisory Committee's recommendation to add a separate payment allocation rule for consumer goods transactions. The Legislative Commissioner's Office correctly points out that the use of the term "this subsection" creates confusion as to whether it is intended to apply to all of subsection (e), including commercial transactions subject to a different rule. The technical change makes clear

the intention to have these provisions apply only to the consumer goods transactions governed under the new subdivision (2).

Sec. 2. Subsection (c) of section 42a-9-109 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) This article does not apply to the extent that:

(1) A statute, regulation or treaty of the United States preempts this article;

(2) Another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state.

[(2)] (3) A statute of another state, a foreign country or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority or enforcement of a security interest created by the state, country or governmental unit; or

[(3)] (4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 42a-5-114.

Enactment Comment

The deletion of subsection (2) of the official text of Revised Article 9 was intended to conform to the absolute exclusion of transfers and security interests created by the State from the scope of Revised Article 9 added by the Advisory Committee as subdivision (15) of subsection (d) of 9-109. However, statutes governing a number of state agencies explicitly utilize the provisions of Revised Article 9 – for example: (i) state tax liens under CGS §§12-35a(b) and 12-195b utilizes the filing system of Revised Article 9; (ii) the Connecticut Development Authority may “opt in” to Revised Article 9 to govern security interests that secure its bonds, under CGS §32-23f(f); (iii) pledges by the University of Connecticut securing its bonds are governed by Revised Article 9, with some adjustments, under CGS §10a-109h(a); and (iv) the Connecticut Higher Education Supplemental Loan Authority may “opt in” to Revised Article 9 under §10a-233. Given this fact, the more measured approach of the official text, which allows Article 9 to apply if the applicable State statute permits it, and using the other statutory approach if the statute does not, would be preferable. This also avoids uncertainty as to whether this “blanket” exclusion in Article 9 would not permit these state agencies to utilize Revised Article 9 despite clear authorization in their enabling statutes allowing them to do so. It should be emphasized that the decision as to whether a specific public agency or instrumentality has the authority to “opt in” to Article 9 is left solely to the General Assembly in the enabling statutes for the specific agency or instrumentality. This change only provides the mechanism to allow the public agency to use Article 9 when its enabling legislation allows it to do so.

Sec. 3. Subsection (d) of section 42a-9-109 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(d) This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 42a-9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 42a-9-315 and 42a-9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 42a-9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 42a-9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in sections 42a-9-203 and 42a-9-308;

- (B) Fixtures in section 42a-9-334;
- (C) Fixture filings in sections 42a-9-501, 42a-9-502, 42a-9-512, 42a-9-516 and 42a-9-519; and
- (D) Security agreements covering personal and real property in section 42a-9-604;
- (12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 42a-9-315 and 42a-9-322 apply with respect to proceeds and priorities in proceeds;
- (13) An assignment of a deposit account in a consumer transaction, but sections 42a-9-315 and 42a-9-322 apply with respect to proceeds and priorities in proceeds;
- [(14) A transfer by a government or government subdivision or agency of this state;]
- [(15)] (14) An assignment of workers' compensation benefits governed by section 31-320; or
- [(16)] (15) A security interest in a deposit account that is a payroll account or a trust account and which is titled or otherwise clearly identifiable as such an account, except that this article shall not be inapplicable to a security interest in a deposit account solely due to the fact that the debtor is a statutory trust formed, or a foreign statutory trust registered, under chapter 615.

Enactment Comment

This change deletes the “blanket” prohibition on security interests granted by the State being governed by Article 9 for the reasons noted in Section 2 above. The limitation on applicability of Article 9 to State agencies, unless permitted by statute, will now be set forth in §42a-9-109(c)(2). In addition, the change to subdivision (16) makes clear that deposit accounts in business trusts governed under Chapter 613 of the General Statutes are not exempt from coverage under Article 9 – this will make clear that the restriction on security interests in “trust” accounts was not intended to bar a security interest in deposit accounts simply because the debtor is a business trust, unless, of course, these accounts are, in turn, payroll or trust accounts.

Sec. 4. Subsection (a) of section 42a-9-311 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt

subsection (a) of section 42a-9-310;

(2) Any certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any non-Uniform Commercial Code [central] filing statute, including chapter 247, section 21-67a, section 49-5, chapter 282 and chapter 283; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

Enactment Comment

Perfection of security interests in mobile manufactured homes, under CGS §21-67a, and under open-end mortgages, under CGS §49-5, is accomplished by recording in the Land Records in the town clerk's offices where the associated real property is located. There are not "central" filing systems. Therefore, the reference to a "central" filing system in the official text is not correct for these instances and should be deleted to avoid uncertainty.

Sec. 5. Subsection (d) of section 42a-9-311 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(d) During any period in which collateral subject to a statute specified in subdivision (2) of subsection (a) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling [or leasing] goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Enactment Comment

This change is intended to correct a clerical error in section 99 of Public Act 02-131, which enacted Article 2A of the Uniform Commercial Code in Connecticut. This public act section added the words "or leasing" to this section of Article 9, based upon a superceded version of the official text of revised Article 9. The words "or leasing" had been deleted from the official text in the January, 2001 version of revised Article 9.

Sec. 6. Section 42a-9-406 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Subject to subsections (b) to (i), inclusive, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee.

After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor. An assignor who receives payment after notification is given must return the payment to the account debtor or forward the payment to the assignee.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and in section 42a-2A-403 and section 42a-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in section 42a-2A-403 and section 42a-9-407, and subject to subsections (h) and (i), a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subdivision (3) of subsection (b).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) Except as provided subsection (j) of this section, this section prevails over any inconsistent provision of any statute or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

[~~(i)~~] (j) (1) This section does not apply to:

(A) An assignment of a health-care-insurance receivable;

(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 USC 104(a)(1) or (2), as amended from time to time, or

(ii) A claim or right to receive benefits under a special needs trust as described in 42 USC 1396p(d)(4), as amended from time to time.

(2) Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with said subsection: Section 12-831, 31-320 or 52-225f.

Enactment Comment

The new subsection (i) conforms the restriction on anti-assignment clauses relating to accounts, chattel paper, payment intangibles and promissory notes to the same provision added by the Advisory Committee in 42a-9-408(e) relating to health insurance receivables and general intangibles. The omission of this provision was an oversight.

Sec. 7. Section 42a-9-407 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October*], 2003):

(a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.

(b) Except as otherwise provided in subsection [(g)] (c) of section 42a-2A-403, a term described in subdivision (2) of subsection (a) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection [(d)] (e) of section 42a-2A-403 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Enactment Comment

This change is intended to correct clerical errors in section 104 of Public Act 02-131, which enacted Article 2A of the Uniform Commercial Code in Connecticut. This public act section added cross references in section 42a-9-407(b) and (c) to subdivisions of section 30 of P.A. 02-131 (enacting section 2A-303 of the official text of this uniform law). However, the

order of the subsections in section 30 of P.A. 02-131 was changed from the official text of 2A-303, so the cross-references did not refer to the correct provisions. If not corrected, this would have the effect, among other things, of deleting the “specific” and “conspicuousness” requirements for assignment clauses in consumer leases.

Sec. 8. Subsection (f) of section 42a-9-408 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(f) (1) This section does not apply to an assignment or transfer of, or the creation, attachment or perfection of a security interest in:

[(i)] (A) A claim or right to receive compensation for injuries or sickness as described in 26 USC 104(a) (1) or (2), as amended from time to time, or

[(ii)] (B) A claim or right to receive benefits under a special needs trust as described in 42 USC 1396p (d)(4), as amended from time to time.

(2) Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment [,] or perfection [or enforcement] of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with said subsection: Section 12-831, 31-320 or 52-225f.

Enactment Comment

Subsection (f) was added by the Advisory Committee so not to invalidate certain statutory restrictions on the assignment or transfer of, or the creation attachment or perfection of a security interest in, health care receivables or general intangibles. The Legislative Commissioner’s Office has pointed out that the language added by the Advisory Committee in subsection (f) did not include a reference to the “attachment” or “perfection” of a security interest. The Legislative Commissioner’s Office also has noted that CGS §42a-9-408(c) does not invalidate restrictions on enforcement of health care receivables and general intangibles, so the reference to “enforcement” in the text of section 42a-9-408(f)(2) was not correct. This change will avoid confusion as to the reach of the intended exception.

Sec. 9. Section 42a-9-501 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real

property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The Office of the Secretary of the State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Office of the Secretary of the State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(c) Whenever there is a reference in this article to the filing of a record in the filing office described in subdivision (1) of subsection (a) of section 42a-9-501 it shall be deemed to refer to the recording of a record in said office.

Enactment Comment

This change reflects the fact that filings are “recorded” in the land records in a town clerk’s office, rather than “filed”, as in the Office of the Secretary of the State. This change to the official text conforms to Connecticut’s decentralized land records system to avoid any confusion.

Sec. 10. Subsection (a) of section 42a-9-512 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Subject to section 42a-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; or

(2) If the amendment relates to an initial financing statement recorded in a filing office described in subdivision (1) of subsection (a) of section 42a-9-501, identifies the initial financing statement to which the amendment relates by book and page number on which or the date and time that the initial financing statement was recorded.

Enactment Comment

This change is intended to correct a clerical error in the original bill and to make clear the information that must be provided in amendments of financing statements in order to properly reference the initial financing statement recorded in the land records in a town clerk's office.

Sec. 11. Subsection (b) of section 42a-9-515 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October*], 2003):

(b) Except as otherwise provided in subsections (e), (f) and (g), an initial financing statement filed in connection with a public finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public finance transaction or manufactured-home transaction.

Enactment Comment

This change conforms to the changes in Sections 2 and 3 above. It gives a state agency that has authorization in its enabling statutes that allow it to "opt in" to Article 9's filing system a 30-year period for effectiveness of its financing statement. Otherwise, these filings will lapse at the end of 5 years. This change returns the text to the uniform text adopted by other states.

Sec. 12. Subsection (b) of section 42a-9-518 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) A correction statement must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; or

(B) If the correction statement relates to a record recorded in a filing office described in subdivision (1) of subsection (a) of section 42a-9-501, the book and page number on which or the date and time that the initial financing statement was recorded;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

Enactment Comment

This change is intended to conform this section to the similar change in section 42a-9-512(a)(2) in the foregoing section, so to make clear the information that must be provided in correction statements in order to properly reference the initial financing statement recorded in the land records in a town clerk's office.

Sec. 13. Subsection (d) of section 42a-9-519 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(d) (1) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subsection (a) of section 42a-9-514 or an amendment filed under subsection (b) of section 42a-9-514:

[(1)] (A) In the grantor index under the name of the assignor as grantor; and

[(2)] (B) In the grantee index under the name of the assignee as grantee.

(2) The filing officer shall also enter upon the margin of the record of such initial financing statement a notation of the record of the subsequent assignment or amendment and of any continuation statement, termination statement or correction statement.

Enactment Comment

This change is intended to correct a clerical error in the original bill and to make clear that the town clerk is to make a marginal notation of and assignment or amendment upon the record of the initial financing statement recorded in the land records.

Sec. 14. Section 42a-9-523 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) If a person that files or records a written record requests an acknowledgment of the filing or recording, the filing office, in the case of a filing office described in subdivision (2) of subsection (a) of section 42a-9-501, shall send to the person an acknowledgment of the filing of the record showing the number assigned to the record pursuant to subdivision (1) of subsection (a) of section 42a-9-519 and the date and time of the filing of the record and, in the case of a filing office described in subdivision (1) of subsection (a) of section 42a-9-501, shall send to the person an acknowledgment of the [filing] recording of the record showing the book and page number and the date and time of the [filing] recording of the record.

(b) If a person files or records a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) In the case of a filing office described in subdivision (2) of subsection (a) of section 42a-9-501, the number assigned to the record pursuant to subdivision (1) of subsection (a) of section 42a-9-519 or, in the case of a filing office described in subdivision (1) of subsection (a) of section 42a-9-501, the book and page number assigned to the record; and

(3) The date and time of the filing or recording of the record.

(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 42a-9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 42a-9-515 and a record of which is maintained by the filing office under subsection (a) of section 42a-9-522;

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

(3) The information provided in each financing statement, except that the filing office is not required to transcribe information that is otherwise available concerning collateral.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office described in subdivision (2) of subsection (a) of section 42a-9-501 shall perform the acts required by subsections (a) to (d), inclusive, at the time and in the manner prescribed by filing-office regulation, but not later than five business days after the filing office receives the request.

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

(a) of section 42a-9-501.

Enactment Comment

This change reflects the fact that filings are “recorded” in the land records in a town clerk’s office, rather than “filed”, as in the Office of the Secretary of the State. This change to the official text conforms to Connecticut’s decentralized land records system to avoid any confusion. Also the technical change in the reference to the centralized filing office was suggested by the Legislative Commissioner’s Office to more accurately reflect the reference to the “filing office”, being the Office of the Secretary of the State, rather than the person of the Secretary of the State.

Sec. 15. Section 42a-9-525 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) The [Secretary of the State] filing office described in subdivision (2) of subsection (a) of section 42a-9-501, as amended by this act, shall charge and collect the following uniform fee: For filing and indexing an initial financing statement, a correction statement or an amendment, twenty-five dollars. No fee shall be charged (1) to the state when the initial financing statement, correction statement or amendment 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 (2) to a municipality when the initial financing statement, correction statement or amendment 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, or (3) 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 described in subdivision (2) of subsection (a) of section 42a-9-501, as amended by this act, including issuing a certificate showing whether there is on file, on the date and [hour] time stated therein, any financing statement naming a particular debtor and any amendment thereof and, if there is, giving the date and hour of filing such 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 or amendment for a uniform fee of twenty dollars regardless of the number of pages and affix such filing officer’s certification and official seal thereto for a fee of 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 amendment thereof, is requested by the Attorney General or an assistant attorney general or by [an] a duly 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.

(c) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection (c) of section 42a-9-502. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

Enactment Comment

These technical changes make clear that the referenced fees are only for filings in the Office of the Secretary of the State and conform the language in these subsections to references in the other text in Article 9, to avoid any possible confusion.

Sec. 16. Subsection (a) of section 42a-9-609 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October*], 2003):

(a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 42a-9-610.

Enactment Comment

This technical change corrects a clerical error in the text of the Act and makes clear that the rights of the secured party are cumulative and do not imply an election or waiver of any remedies.

Sec. 17. Subsection (d) of section 42a-9-609 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October*], 2003):

(d) (1) In this subsection, "electronic self-help" means the use of electronic means to exercise a secured party's rights pursuant to subsection (a) of this section with respect to the security agreement, and "electronic" means relating to technology that has electrical, digital, magnetic or wireless optical electromagnetic properties or similar capabilities. "Electronic self-help" includes the use of electronic means to locate the collateral.

(2) Electronic self-help is permitted only if the debtor separately agrees to a term of the security agreement authorizing electronic self-help that requires notice of exercise as provided in subdivision (3) of this subsection. The debtor is deemed to have separately agreed to a term of

the security agreement authorizing electronic self-help if a clause is included in the security agreement authenticated by the debtor that specifically states that electronic self-help is authorized.

(3) Before resorting to electronic self-help authorized by a term of the security agreement, the secured party shall give notice to the debtor stating:

[(i)] (A) That the secured party intends to resort to electronic self-help as a remedy on or after fifteen days following communication of the notice to the debtor;

[(ii)] (B) The nature of the claimed breach which entitled the secured party to resort to self-help; and

[(iii)] (C) The name, title, address and telephone number of a person representing the secured party with whom the debtor may communicate concerning the security interest.

(4) A debtor may recover direct and incidental damages caused by wrongful use of electronic self-help. The debtor may also recover consequential damages for wrongful use of electronic self-help even if such damages are excluded by the terms of the security agreement.

(5) Even if the secured party complies with subdivisions (2) and (3) of this subsection, electronic self-help may not be used if the secured party has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties not involved in the dispute.

Enactment Comment

This technical change makes clear that a security agreement can authorize use of electronic self-help by a clause in the security agreement that separately states that electronic self-help is authorized. This eliminates confusion as to whether the authorization for electronic self-help can be included in a security agreement or must be contained in a separately authenticated document. The intention of the Advisory Committee was that while the authorization for electronic self-help must be separately stated in an authenticated security agreement (i.e. a general statement in an authenticated security agreement that the security party has all of the rights of a secured party under Article 9, alone, would not grant the right to electronic self-help), it was not required to be separately signed or otherwise authenticated. This change will make this intention clear and not require additional loan documentation in Connecticut transactions.

Sec. 18. Section 14-167 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October*], 2003):

This chapter does not apply to or affect: [(a)] (1) A lien given by statute or rule of law to a

supplier of services or materials for the vehicle; [(b)] (2) a lien given by statute to the United States, this state or any political subdivision of this state; [(c)] (3) a security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, but a buyer in the ordinary course of business, as defined in subdivision (9) of section 42a-1-201, takes free of the security interest, as stated in section 42a-9-320; or (4) a security interest in a vehicle that is inventory held for sale or lease by a person in the business of selling vehicles, as provided in subsection (d) of section 42a-9-311, as amended by this act.

Enactment Comment

This technical change eliminates a conflict between the provisions of the motor vehicle certificate of title statutes and section 42a-9-311(d) of Article 9 with respect to motor vehicle inventory held for sale or leased by a debtor in the business of selling such vehicles. Article 9 provides that filing a financing statement under Article 9 will perfect a security interest in such inventory. This correction will eliminate any confusion from such conflict and will permit cost-effective financing of such inventory.

Sec. 19. Subsection (b) of section 16-245k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) A valid and enforceable security interest in transition property is perfected when it has attached and when a financing statement has been filed in accordance with part 5 of article 9 of title 42a naming the pledgor of the transition property as “debtor” and identifying the transition property. In such case the financing statement shall be filed as if the debtor were located in this state. Any description of the transition property shall be sufficient if it refers to the financing order creating the transition property. [In each case, the financing statement shall be filed as if the debtor were located in this state.] A copy of the financing statement shall be filed with the department by the electric company or electric distribution company that is the pledgor or transferor of the transition property, and the department may require the electric company or electric distribution company to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

Enactment Comment

This technical change corrects a clerical error in the text of the Act to avoid any possible confusion.

Sec. 20. Subsection (j) of section 16-245k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October, 2003*):

(j) As between bona fide assignees of the same right for value without notice, the assignee first

filing a financing statement in accordance with part 5 of article 9 of title 42a naming the assignor of the transition property as debtor and identifying the transition property has priority. In [each] such case, the financing statement shall be filed as if the debtor were located in this state. Any description of the transition property shall be sufficient if it refers to the financing order creating the transition property. A copy of the financing statement shall be filed by the assignee with the department, and the department may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

Enactment Comment

This technical change corrects a clerical error to avoid any possible confusion and to make clear that to be effective the financing statement must be filed as if the debtor was located within this state, regardless of the location of the debtor specified in Article 9.

Sec. 21. Subsection (b) of section 36a-770 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Filing and recording. Section 42a-9-310 determines the need for filing or recording to perfect a security interest, section 42a-9-317 [,] determines the persons who take subject to an unperfected security interest, and sections 42a-9-311 and 42a-9-501 to [42a-9-518] 42a-9-526, inclusive, as amended by this act, determine the place for such filing or recording.

Enactment Comment

This technical change corrects clerical errors in the text of the Act to reference the correct statutory sections and to avoid any possible confusion.

Sec. 22. Section 52-367a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October, 2003*):

(a) As used in this section and section 52-367b, the term “banking institution” means any bank, savings bank, savings and loan association or credit union organized, chartered or licensed under the laws of this state or the United States and having its main office in this state, or any similar out-of-state institution having a branch office in this state.

(b) Execution may be granted pursuant to this section against any debts due from any banking institution to a judgment debtor which is not a natural person. If execution is desired against any such debt, the plaintiff requesting the execution shall so notify the clerk, and the clerk shall issue such execution containing a direction that the officer serving the same shall make demand (1) upon the main office of any banking institution having its main office within the county of such

officer, or (2) if such main office is not within such officer's county and such banking institution has one or more branch offices within such county, upon an employee of such a branch office, such employee and branch office having been designated by the banking institution in accordance with regulations adopted by the Commissioner of Banking, in accordance with chapter 54, for the payment of any debt due to the judgment debtor, and, after having made such demand, shall serve a true and attested copy thereof, with [his] such officer's actions thereon endorsed, with the banking institution officer upon whom such demand is made.

(c) If any such banking institution upon which such execution is served and upon which such demand is made is indebted to the judgment debtor, [it] the banking institution shall [pay to such officer, in the manner and at the time hereinafter described,] remove from the judgment debtor's account the amount of such indebtedness not exceeding the amount due on such execution, [, to be received and applied on such execution by such officer.] Such banking institution shall act upon such execution according to section 42a-4-303 before its midnight deadline, as defined in section 42a-4-104. Nothing in this subsection shall be construed to affect any other rights or obligations of the banking institution with regard to funds in the judgment debtor's account.

(d) If the deposit account is subject to a security interest of secured party, other than the banking institution upon which such execution is served and upon which such demand is made, pursuant to a control agreement between the banking institution and such secured party under article 9 of title 42a, and if any funds are removed from the judgment debtor's account pursuant to subsection (c) of this section, the banking institution shall forthwith mail a copy of the execution when received from the serving officer, postage prepaid, to the judgment debtor and to such other secured party at the last known address of said parties with respect to the affected accounts on the records of the banking institution. The banking institution shall hold the amount removed from the judgment debtor's account pursuant to subsection (c) of this section for twenty days from the day of the mailing to the judgment debtor and such other secured party, and during such period shall not pay the serving officer.

(e) To prevent the banking institution from paying the serving officer, as provided in subsection (h) of this section, said other secured party shall give notice of its prior perfected security interest in said deposit account, by delivering to the clerk of the court that issued the execution a written claim for determination of interests in property pursuant to section 52-356c and by delivering a copy of said claim to the banking institution upon which such execution is served.

(f) Upon receipt of a written claim for determination of interests in property made pursuant to subsection (e) of this section, the clerk of the court shall enter the appearance of the secured party with the address set forth in the written claim. The clerk shall forthwith send file-stamped copies of the written claim to the judgment creditor, the judgment debtor and the banking institution upon which such execution was served with a notice stating that the disputed funds are being held until a court order is entered regarding the disposition of the funds.

(g) If a written claim for determination of interests in property is made pursuant to subsection (e) of this section, the banking institution shall continue to hold the amount removed from the judgment debtor's account until a court order is received regarding disposition of the funds.

(h) If no written claim for determination of interests in property is made pursuant to subsection (e) of this section, the banking institution shall, upon demand, forthwith pay the levying officer the amount removed from the judgment debtor's account, and the serving officer shall thereupon pay such sum, less such serving officer's fees, to the judgment creditor, except to the extent otherwise ordered by a court.

(i) If a written claim for determination of interests in property is made pursuant to subsection (e) of this section, the clerk of the court, after a judgment or order is entered pursuant to section 52-356c, shall forthwith send a copy of such judgment or order to the banking institution. Such judgment or order shall be deemed to be a final judgment for the purposes of appeal. No appeal shall be taken except within seven days of the rendering of the judgment or order. The judgment or order of the court may be implemented during such seven-day period, unless stayed by the court.

(j) If records or testimony are subpoenaed from a banking institution in connection with a hearing conducted pursuant to section 52-356c on a written claim for determination of interests in property is made pursuant to subsection (e) of this section, the reasonable costs and expenses of the banking institution in complying with the subpoena shall be recoverable by the banking institution from the party requiring such records or testimony, provided, the banking institution shall be under no obligation to attempt to obtain records or documentation relating to the account executed against which are held by any other banking institution. The records of a banking institution as to the dates and amounts of deposits into an account in the banking institution shall, if certified as true and accurate by an officer of the banking institution, be admissible as evidence without the presence of the officer in any hearing conducted pursuant to section 52-356c to determine the legitimacy of a claim of exemption made under subsection (e) of this section.

(k) If such banking institution fails or refuses to pay over to such officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action therefor to the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution.

(l) Except as provided in subsection (k) of this section, no banking institution or any officer, director or employee of such banking institution shall be liable to any person with respect to any act done or omitted in good faith or through the commission of a bona fide error that occurred despite reasonable procedures maintained by the banking institution to prevent such errors in complying with the provisions of this section.

(m) Nothing in this section shall in any way restrict the rights and remedies otherwise available to a judgment debtor or to any such secured party at law or in equity.

Enactment Comment

When the existing bank execution statutes were adopted, Article 9 did not permit a security interest to be created in a deposit account. Therefore no provisions were included in the

execution statutes to give notice that an execution had been levied on a deposit account to any party other than to the judgment debtor. Since judgment debtors that are not natural persons have no exemption rights, no mechanisms were provided in section 52-367a for advance notice of an execution and of turnover of the proceeds to a levying officer – the banking institution is required to turn over the proceeds immediately and to give contemporaneous notice to the judgment debtor. The 2001 revision to Article 9 now permits a debtor, other than in a consumer transaction, to grant a security interest in a deposit account by entering into a control agreement among the debtor, the secured party and the depository banking institution. Unfortunately, the bank execution statutes were not amended to allow the banking institution to notify the secured party that a bank execution had been levied on its collateral or to allow the secured party a hearing to show that it had a prior perfected security interest before the funds are turned over to the levying officer. This situation could either impose liability on the levying officer or judgment creditor receiving funds, assuming that the secured party can trace its collateral into their hands; or, in the event that the secured party is determined to have lost its lien, could raise a constitutional issue due to extinguishment of its property right in the deposit account without prior notice and opportunity for a hearing.

For these reasons the foregoing text provides a notice to the secured party and a right to a hearing to determine the competing interests of the secured party and a judgment creditor prior to turnover of the funds. These provisions are similar to the provisions for natural persons contained in section 52-367b, without the exemption claim provisions. This text also utilizes the procedure for determination of disputed interests in property set forth in section 52-356c, rather than creating an entirely new hearing procedure. The protections for the banking institution acting in good faith and for reimbursement for reasonable costs and expenses to provide subpoenaed records that are contained in section 52-367b have also been incorporated into this text.

Sec. 23. Section 52-367b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Execution may be granted pursuant to this section against any debts due from any banking institution to a judgment debtor who is a natural person, except to the extent such debts are protected from execution by sections 52-352a, 52-352b, 52-352c, of the general statutes, revision of 1958, revised to 1983, 52-354 of the general statutes, revision of 1958, revised to 1983, 52-361 of the general statutes, revision of 1958, revised to 1983 and section 52-361a, as well as by any other laws or regulations of this state or of the United States which exempt such debts from execution.

(b) If execution is desired against any such debt, the plaintiff requesting the execution shall notify the clerk of the court. In a IV-D case, the request for execution shall be accompanied by an affidavit signed by the serving officer attesting to an overdue support amount of five hundred dollars or more which accrued after the entry of an initial family support judgment. If the papers are in order, the clerk shall issue such execution containing a direction that the officer serving such execution shall, within seven days from the receipt by the serving officer of such execution,

make demand (1) upon the main office of any banking institution having its main office within the county of the serving officer, or (2) if such main office is not within the serving officer's county and such banking institution has one or more branch offices within such county, upon an employee of such a branch office, such employee and branch office having been designated by the banking institution in accordance with regulations adopted by the Commissioner of Banking, in accordance with chapter 54, for payment of any such nonexempt debt due to the judgment debtor and, after having made such demand, shall serve a true and attested copy of the execution, together with the affidavit and exemption claim form prescribed by subsection (k) of this section, with the serving officer's actions endorsed thereon, with the banking institution officer upon whom such demand is made. If the officer serving such execution has made an initial demand pursuant to this subsection within such seven-day period, the serving officer may make additional demands upon the main office of other banking institutions or employees of other branch offices pursuant to subdivision (1) or (2) of this subsection, provided any such additional demand is made not later than forty-five days from the receipt by the serving officer of such execution.

(c) If any such banking institution upon which such execution is served and upon which such demand is made is indebted to the judgment debtor, the banking institution shall remove from the judgment debtor's account the amount of such indebtedness not exceeding the amount due on such execution before its midnight deadline, as defined in section 42a-4-104. Notwithstanding the provisions of this subsection, if electronic direct deposits that are readily identifiable as exempt federal veterans' benefits, Social Security benefits, including, but not limited to, retirement, survivors' and disability benefits, supplemental security income benefits or child support payments processed and received pursuant to Title IV-D of the Social Security Act were made to the judgment debtor's account during the thirty-day period preceding the date that the execution was served on the banking institution, then a banking institution shall leave the lesser of the account balance or one thousand dollars in the judgment debtor's account, provided nothing in this subsection shall be construed to limit a banking institution's right or obligation to remove such funds from the judgment debtor's account if required by any other provision of law or by a court order. The judgment debtor shall have access to such funds left in the judgment debtor's account pursuant to this subsection. The banking institution may notify the judgment creditor that funds have been left in the judgment debtor's account pursuant to this subsection. Nothing in this subsection shall alter the exempt status of funds which are exempt from execution under subsection (a) of this section or under any other provision of state or federal law, or the right of a judgment debtor to claim such exemption. Nothing in this subsection shall be construed to affect any other rights or obligations of the banking institution with regard to the funds in the judgment debtor's account.

(d) If any funds are removed from the judgment debtor's account pursuant to subsection (c) of this section, upon receipt of the execution and exemption claim form from the serving officer, the banking institution shall forthwith mail copies thereof, postage prepaid, to the judgment debtor and to any secured party that is party to a control agreement between the banking institution and such secured party under article 9 of title 42a at the [judgment debtor's] last known address of the judgment debtor and of any such secured party with respect to the affected

accounts on the records of the banking institution. The banking institution shall hold the amount removed from the judgment debtor's account pursuant to subsection (c) of this section for fifteen days from the date of the mailing to the judgment debtor and any such secured party, and during such period shall not pay the serving officer.

(e) To prevent the banking institution from paying the serving officer, as provided in subsection (h) of this section, the judgment debtor shall give notice of a claim of exemption by delivering to the banking institution, by mail or other means, the exemption claim form or other written notice that an exemption is being claimed and any such secured party shall give notice of its claim of a prior perfected security interest in such deposit account by delivering to the banking institution, by mail or other means, written notice thereof. The banking institution may designate an address to which the notice of a claim of exemption, or a secured party claim notice, shall be delivered. Upon receipt of such notice, the banking institution shall, within two business days, send a copy of such notice to the clerk of the court which issued the execution.

(1) (1) Upon receipt of an exemption claim form or a secured party claim notice, the clerk of the court shall enter the appearance of the judgment debtor or such secured party with the address set forth in the exemption claim form or secured party claim notice. The clerk shall forthwith send file-stamped copies of the exemption claim form or secured party claim form to the judgment creditor and judgment debtor with a notice stating that the disputed funds are being held for forty-five days from the date the exemption claim form or secured party claim notice was received by the banking institution or until a court order is entered regarding the disposition of the funds, whichever occurs earlier, and the clerk shall automatically schedule the matter for a short calendar hearing. The claim of exemption filed by such judgment debtor shall be prima facie evidence at such hearing of the existence of the exemption.

(2) Upon receipt of notice from the banking institution pursuant to subsection (c) of this section, a judgment creditor may, on an ex parte basis, present to a judge of the Superior Court an affidavit sworn under oath by a competent party demonstrating a reasonable belief that such judgment debtor's account contains funds which are not exempt from execution and the amount of such nonexempt funds. Such affidavit shall not be conclusory but is required to show the factual basis upon which the reasonable belief is based. If such judge finds that the judgment creditor has demonstrated a reasonable belief that such judgment debtor's account contains funds which are not exempt from execution, such judge shall authorize the judgment creditor to submit a written application to the clerk of the court for a hearing on the exempt status of funds left in the judgment debtor's account pursuant to subsection (c) of this section. The judgment creditor shall promptly send a copy of the application and the supporting affidavit to the judgment debtor and to any secured party shown on a secured party claim notice sent to the judgment creditor pursuant to subdivision (1) of this subsection. Upon receipt of such application, the clerk of the court shall automatically schedule the matter for a short calendar hearing and shall give written notice to [both] the judgment creditor, [and] the judgment debtor and to any secured party shown on a secured party claim notice received by the clerk of the court. The notice to the judgment creditor pursuant to subsection (c) of this section shall be prima facie evidence at such hearing that the funds in the account are exempt funds. The burden of proof shall be upon the judgment

creditor to establish the amount of funds which are not exempt.

(g) If an exemption claim is made or a secured party claim notice is given pursuant to subsection (e) of this section, the banking institution shall continue to hold the amount removed from the judgment debtor's account for forty-five days or until a court order is received regarding disposition of the funds, whichever occurs earlier. If no such order is received within forty-five days of the date the banking institution sends a copy of the exemption claim form or notice of exemption or a secured party claim notice to the clerk of the court, the banking institution shall return the funds to the judgment debtor's account.

(h) If no claim of exemption or secured party claim notice is received by the banking institution within fifteen days of the mailing to the judgment debtor and any secured party of the execution and exemption claim form pursuant to subsection (d) of this section, the banking institution shall, upon demand, forthwith pay the serving officer the amount removed from the judgment debtor's account, and the serving officer shall thereupon pay such sum, less such serving officer's fees, to the judgment creditor, except to the extent otherwise ordered by a court.

(i) The court, after a hearing conducted pursuant to subsection (f) of this section, shall enter an order determining the issues raised by the claim of exemption and claim by a secured party of a prior perfected security interest in such deposit account. The clerk of the court shall forthwith send a copy of such order to the banking institution. Such order shall be deemed to be a final judgment for the purposes of appeal. No appeal shall be taken except within seven days of the rendering of the order. The order of the court may be implemented during such seven-day period, unless stayed by the court.

(j) If both exempt and nonexempt moneys have been deposited into an account, for the purposes of determining which moneys are exempt under this section, the moneys most recently deposited as of the time the execution is served shall be deemed to be the moneys remaining in the account.

(k) The execution, exemption claim form and clerk's notice regarding the filing of a claim of exemption shall be in such form as prescribed by the judges of the Superior Court or their designee. The exemption claim form shall be dated and include a checklist and description of the most common exemptions, instructions on the manner of claiming the exemptions and a space for the judgment debtor to certify those exemptions claimed under penalty of false statement.

(l) If records or testimony are subpoenaed from a banking institution in connection with a hearing conducted pursuant to subsection (f) of this section, the reasonable costs and expenses of the banking institution in complying with the subpoena shall be recoverable by the banking institution from the party requiring such records or testimony, provided, the banking institution shall be under no obligation to attempt to obtain records or documentation relating to the account executed against which are held by any other banking institution. The records of a banking institution as to the dates and amounts of deposits into an account in the banking institution shall, if certified as true and accurate by an officer of the banking institution, be admissible as evidence

without the presence of the officer in any hearing conducted pursuant to subsection (f) of this section to determine the legitimacy of a claim of exemption made under this section.

(m) If there are moneys to be removed from the judgment debtor's account, prior to the removal of such moneys pursuant to subsection (c) of this section, the banking institution shall receive from the serving officer as representative of the judgment creditor a fee of eight dollars for the banking institution's costs in complying with the provisions of this section which fee may be recoverable by the judgment creditor as a taxable cost of the action.

(n) If the banking institution fails or refuses to pay over to the serving officer the amount of such debt, not exceeding the amount due on such execution, such banking institution shall be liable in an action therefor to the judgment creditor named in such execution for the amount of nonexempt moneys which the banking institution failed or refused to pay over, excluding funds of up to one thousand dollars which the banking institution in good faith allowed the judgment debtor to access pursuant to subsection (c) of this section. The amount so recovered by such judgment creditor shall be applied toward the payment of the amount due on such execution. Thereupon, the rights of the banking institution shall be subrogated to the rights of the judgment creditor. If such banking institution pays exempt moneys from the account of the judgment debtor over to the serving officer contrary to the provisions of this section, such banking institution shall be liable in an action therefor to the judgment debtor for any exempt moneys so paid and such banking institution shall refund or waive any charges or fees by the banking institution, including, but not limited to, dishonored check fees, overdraft fees or minimum balance service charges and legal process fees, which were assessed as a result of such payment of exempt moneys. Thereupon, the rights of the banking institution shall be subrogated to the rights of the judgment debtor.

(o) Except as provided in subsection (n) of this section, no banking institution or any officer, director or employee of such banking institution shall be liable to any person with respect to any act done or omitted in good faith or through the commission of a bona fide error that occurred despite reasonable procedures maintained by the banking institution to prevent such errors in complying with the provisions of this section.

(p) Nothing in this section shall in any way restrict the rights and remedies otherwise available to a judgment debtor or any such secured party at law or in equity.

(q) Nothing in this section shall in any way affect any rights of the banking institution with respect to uncollected funds credited to the account of the judgment debtor, which rights shall be superior to those of the judgment creditor.

(r) For the purposes of this subsection, "exempt" shall have the same meaning as provided in subsection (c) of section 52-352a. Funds deposited in an account that has been established for the express purpose of receiving electronic direct deposits of public assistance payments from the Department of Social Services shall be exempt.

Enactment Comment

This change conforms the provisions of the bank execution statute with respect to deposit accounts of natural persons to those provisions in Section 24 above for corporations and other business entities that have granted a security interest in their deposit accounts under the 2001 revisions to Article 9. These provisions for natural persons would only be effective for a non-consumer transaction – i.e. where an individual is doing business without forming a business entity and has business deposit accounts that it has pledged as collateral for a loan. Security interests are not permitted in deposit accounts in consumer transactions under revised Article 9.

Sec. 24. Subsection (c) of section 52-355a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) Any such judgment lien shall be effective, in the same manner and to the same extent as a similar security interest under the provisions of title 42a, for five years from the date of filing, provided the filing shall not give the judgment creditor any right to take possession of the personal property on which the lien has been placed other than by writ of execution or other judicial process. The lien may be extended for additional five-year periods in the same manner as a financing statement may be extended but shall not be extended beyond the period of enforceability of the judgment. Any such property on which a lien has been placed may be executed against and levied on by the judgment creditor in the same manner as other personal property of the judgment debtor. The fact that a judgment creditor has no right hereunder to take possession of the property on which the lien has been placed other than by writ of execution or other judicial process shall not be a defense in a conversion action by a judgment lien creditor for impairment of such judgment lien.

Enactment Comment

The personal property judgment lien is supposed to be effective “in the same manner and to the same extent” as a security interest under Article 9. The fact that, unlike a security interest under Article 9, possession of the collateral by the judgment creditor can only be obtained by judicial process should not defeat an action against a subordinate party that sells or destroys the lien property or otherwise impairs the lien. A secured party with a security interest under Article 9 would have such a right of action. In the unpublished case of Fleet National Bank v. Narco Finishing, CV000802948S, 2001 WL 548932 (Conn. Superior Court, 2001), the Court interpreted section 52-355a to not permit a judgment lien creditor a right of conversion, in part since “[t]his Court concludes that since [the plaintiff] never executed on the personal property, it never had an immediate right to possession at the time of the alleged conversion.” Although the defendant in this case may also have prevailed on other grounds, this reasoning is troublesome, since it implies that a creditor with a subordinate lien position or an unsecured creditor may disregard a judgment lien filed in the UCC records and impair the lien interest of a judgment lien creditor with impunity.

Sec. 25. Subsection (e) of section 42a-2A-702 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(e) (1) In this subsection, “electronic self-help” means the use of electronic means to exercise a term of the lease agreement with respect to the lessor’s [rights] right to take possession of the leased goods or, without removal, to render the leased goods unusable on the lessee’s premises, and includes the use of electronic means to locate leased goods.

(2) Electronic self-help is permitted only if the lessee separately agrees to a term of the lease agreement authorizing electronic self-help that requires notice of exercise as provided in subdivision (3) of this subsection. The lessee is deemed to have separately agreed to a term in a lease agreement authorizing electronic self-help if a clause is included in a lease agreement authenticated by the debtor that specifically states that electronic self-help is authorized.

(3) Before resorting to electronic self-help authorized by a term of the lease agreement, the lessor shall give notice to the lessee stating:

(A) That the lessor intends to resort to electronic self-help as a remedy on or after fifteen days following communication of the notice to the lessee;

(B) The nature of the claimed breach which entitled the lessor to resort to electronic self-help; and

(C) The name, title, address and telephone number of a person representing the lessor with whom the lessee may communicate concerning the lease agreement.

(4) A lessee may recover damages, including incidental damages, caused by wrongful use of electronic self-help. The lessee may also recover consequential damages for wrongful use of electronic self-help even if such damages are excluded by the terms of the lease agreement.

(5) Even if the lessor complies with subdivisions (2) and (3) of this subsection, electronic self-help may not be used if the lessor has reason to know that such use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties not involved in the dispute.

Enactment Comment

This change is to conform the electronic self-help provisions in Article 2A to the same provisions previously adopted in Article 9 dealing with secured transactions (in section 42a-9-609(d)). The effect of this change is to limit the definition of “electronic self-help” to lessor’s remedies of taking possession of or disabling the leased goods, as in Article 9 – so to avoid confusion, for example, as to whether sending an e-mail demand for payment alone constitutes “electronic self-help”. In addition, this change conforms the documentation provisions to the change to section 42a-9-609(d)(2) in Section 17 above.

Sec. 26. Subsection (f) of section 32-23f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(1) The principal of and interest on bonds or notes issued by the authority may be secured by a pledge of any revenues and receipts of the authority derived from any project and may be additionally secured by a mortgage or deed of trust covering all or any part of a project, including any additions, improvements, extensions to or enlargements of any projects thereafter made. Such bonds or notes may also be secured by a pledge or assignment of a loan agreement, conditional sale agreement or agreement of sale or by an assignment of the lease of any project for the construction and acquisition of which said bonds or notes are issued and by an assignment of the revenues and receipts derived by the authority from such project. The payments of principal and interest on such bonds or notes may be additionally secured by a pledge of any other property, revenues, moneys, or funds available to the authority for such purpose. The resolution authorizing the issuance of any such bonds or notes and any such mortgage or deed of trust or lease or loan agreement, conditional sale agreement or agreement of sale or credit agreement may contain agreements and provisions respecting the establishment of reserves to secure such bonds or notes, the maintenance and insurance of the projects covered thereby, the fixing and collection of rents for any portion thereof leased by the authority to others or the sums to be paid under any conditional sale agreement or agreement of sale entered into by the authority with others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, the vesting in a trustee or trustees of such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of any bonds and notes and limiting or abrogating the right of the holders of any bonds and notes of the authority to appoint a trustee under this chapter, chapter 578 and subsection (a) of section 10-320b, or limiting the rights, powers and duties of such trustee; provision for a trust agreement by and between the authority and a corporate trust which may be any trust company or bank having the powers of a trust company within or without the state, which agreement may provide for the pledging or assigning of any revenues or assets or income from assets to which or in which the authority has any rights or interest, and may further provide for such other rights and remedies exercisable by the trustee as may be proper for the protection of the holders of any bonds or notes and not otherwise in violation of law, and such agreement may provide for the restriction of the rights of any individual holder of bonds or notes of the authority and may contain any further provisions which are reasonable to delineate further the respective rights, duties, safeguards, responsibilities and liabilities of the authority; persons and collective holders of bonds or notes of the authority and the trustee; and covenants to do or refrain from doing such acts and things as may be necessary or convenient or desirable in order to better secure any bonds or notes of the authority, or which, in the discretion of the authority, will tend to make any bonds or notes to be issued more marketable notwithstanding that such covenants, acts or things may not be enumerated herein; and any other matters of like or different character, which in any way affect the security or protection of the bonds or notes, all as the authority shall deem

advisable and not in conflict with the provisions hereof. Each pledge, agreement, mortgage and deed of trust made for the benefit or security of any of the bonds or notes of the authority shall be in effect until the principal of and interest on the bonds or notes for the benefit of which the same were made have been fully paid, or until provision has been made for payment in the manner provided in the resolution or resolutions authorizing their issuance. Any pledge made in respect of such bonds or notes shall be valid and binding from the time when the pledge is made; the revenues, money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution, trust indenture nor any other instrument by which a pledge is created need be recorded. The resolution authorizing the issuance of such bonds or notes may provide for the enforcement of any such pledge or security in any lawful manner. The authority may elect [, notwithstanding the exclusions provided in subdivision (14) of subsection (d) of section 42a-9-109,] to have the provisions of title 42a, the Connecticut uniform commercial code, apply to any pledge made by or to the authority to secure its bonds or notes by filing a financing statement with respect to the security interest created by the pledge [. In each] and in such case, the financing statement shall be filed as if the debtor were located in this state.

Enactment Comment

This change conforms to the changes in Sections 2 and 3 above, since this statute permits the Connecticut Development Authority to “opt in” to Article 9 to govern any pledge made by the authority to secure its bonds.