

Draft for Consideration in Connecticut

**2003 TECHNICAL REVISIONS TO ARTICLE 9 OF THE UNIFORM
COMMERCIAL CODE**

SECURED TRANSACTIONS AND RELATED STATUTES

Sec. 1. Subdivision (B) of subsection (e)(2) of Section 42a-9-103 is amended as follows.

(B) For the purposes of this [subsection] subdivision (2) 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. Section 42a-9-109. Subsection (c) of Section 42a-9-109 is hereby amended as follows:

(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;

(3)[(2)] 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
(4)[(3)] 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. Subdivisions (14) through (16) of subsection (d) of Section 42a-9-109 are hereby amended as follows.

(14) [~~A transfer by a government or government subdivision or agency of this state;~~]

[(15)] An assignment of lottery winnings governed by section 12-831, an assignment of workers' compensation benefits governed by section 31-320 or an assignment of a structured settlement payment right governed by section 52-225f; or

(15)[(16)] 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, provided, however, 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 or foreign statutory trust under Chapter 615 of the general statutes.

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. Subdivision (2) of subsection (a) of Section 42a-9-311 is hereby amended as follows.

(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

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 is hereby amended as follows.

(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 is hereby amended by adding thereto a new subsection (j), as follows.

(j) Except as provided in subsection (i) 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.

Enactment Comment

This new subsection 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. Subsections (b) and (c) of section 42a-9-407 are hereby amended as follows.

(b) Except as otherwise provided in subsection [~~(g)~~](c) of section 30 of [this act]Public Act 02-131, 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 30 of ~~[this act]~~ Public Act 02-131 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 is hereby amended as follows.

(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 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 (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 is hereby amended by adding thereto a new subsection (c), as follows.

(c) References in this Act to records filed in the filing office described in subdivision (1) of subsection (a) of this section shall be deemed to refer to such records filed or recorded 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. Subdivision (2) of subsection (a) of section 42a-9-512 is hereby amended as follows.

(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 of the general statutes, as amended by this act, 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 is hereby amended as follows.

(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. Subdivision(b)(1) of subsection (a) of section 42a-9-518 is hereby amended as follows.

(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 of the general statutes, as amended by this act, the 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 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 is hereby amended as follows.

(d) 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 85 of this act or an amendment filed under subsection (b) of section 85 of this act:

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

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

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. Subsections (a) and (b) of section 42a-9-523 are hereby amended as follows.

(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 of the general statutes, as amended by this act, 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 90 of this act 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 of the general statutes, as amended by this act, 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 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 of the general statutes, as amended by this act, the number assigned to the record pursuant to subdivision (1) of subsection (a) of section 90 of this act or, in the case of a filing office described in subdivision (1) of subsection (a) of section 42a-9-501 of the general statutes, as amended by this act, the book and page number assigned to the record; and

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

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. 15. Subsection (f) of section 42a-9-523 is hereby amended as follows.

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

Enactment Comment

This technical change 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. 16. Subsections (a) and (b) of section 42a-9-525 are hereby amended as follows:

(a) The [~~Secretary of the State~~] filing office described in subdivision (2) of subsection (a) of section 42a-9-501 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, of the general statutes, as amended by this act, 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, 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, of the general statutes, as amended by this act.

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. 17. Subsection (a) of section 42a-9-609 is hereby amended as follows.

(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 107 of this act.

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. 18. Subdivision (2) of subsection (d) of section 42a-9-609 is hereby amended as follows.

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

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. 19. Subsection (37) of section 42a-1-201 is hereby amended as follows.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 42a-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security. Except as otherwise provided in section [~~42a-5-505~~] 42a-2-505, the right of a seller or lessor of goods under article 2 to retain or acquire possession

of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer, as provided by section 42a-2-401, is limited in effect to a reservation of a "security interest". For purposes of this section, "security interest" does not include a rent-to-own agreement, as defined in section 42-240.

Enactment Comment

This technical change corrects a clerical error in the text of the Act and corrects an incorrect statutory reference.

Sec. 20. Section 14-167 is hereby amended as follows.

This chapter does not apply to or affect: (a) A lien given by statute or rule of law to a supplier of services or materials for the vehicle; (b) a lien given by statute to the United States, this state or any political subdivision of this state; (c) 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 (d) a security interest in a vehicle that is inventory held for sale or lease by a person or leased by that person as a lessor and that person is in the business of selling vehicles, as provided in subsection (d) of section 42a-9-311.

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. 21. Subsection (b) of section 16-245k(b) is hereby amended as follows.

(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. 22. Subsection (j) of section 16-245k is hereby amended as follows.

(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, however, 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. 23. Subsection (b) of section 36a-770 is hereby amended as follows.

(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 section 42a-9-311 and sections 42a-9-501 to [42a-9-507, ~~inclusive, and sections 42a-9-508 to 42a-9-518~~] 42a-9-526, inclusive, 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. 24. Section 52-367a is hereby amended as follows.

(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 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 and any exemption claim form 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 (20) 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 which 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 pursuant to section 52-356c, 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 to 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 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 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 clerk of the court, after a judgment or order is entered pursuant to section 52-356c on a written claim for determination of interests in property is made pursuant to subsection (e) of this section, 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. 25. Subsections (d) through (i) and subsection (p) of section 52-367b are hereby amended as follows.

(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 control agreement between the banking institution and such secured party under article 9 of Title 42a at the last known address of the judgment debtor [~~debtor's last known address~~] and 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 or any such secured party shall give notice of its claim of a prior perfected security interest in said 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 any such 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.

(f) (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 said secured party with the address set forth in ~~[the]~~ said exemption claim form or secured party claim notice. The clerk shall forthwith send file-stamped copies of the form or secured party claim notice 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 under 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 any 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 any 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 any claim by a secured party of a prior perfected security interest in said 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.

(p) 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

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. 26. Subsection (c) of section 52-355a is hereby amended as follows.

(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 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 such a personal property 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. 27. Subdivisions (1) and (2) of subsection (e) of section 55 of Public Act 02-131 is hereby amended as follows.

(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 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.

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 18 above.