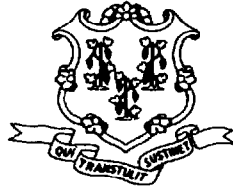


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# Connecticut General Assembly



CONNECTICUT LAW REVISION COMMISSION  
STATE CAPITOL  
ROOM 509A  
HARTFORD, CONNECTICUT 06106-1591  
(860) 240-0220  
FAX: (860) 240-0322  
Email: LRC@PO.STATE.CT.US

DAVID D. BIKLEN  
EXECUTIVE DIRECTOR

DAVID L. HEMOND  
CHIEF ATTORNEY

JO A. ROBERTS  
SENIOR ATTORNEY

**To: Representative Michael P. Lawlor  
Senator Eric Coleman  
Co-Chairs, Judiciary Committee  
Members of the Law Revision Commission**

**From: David L. Hemond**

**Date: January 11, 2001**

**Re: Revisions to Revised Article 9 draft dated December 21, 2000**

I recently submitted to you a draft proposed by the Connecticut Law Revision Commission for a Revised Article 9 of the Uniform Commercial Code. The Commission's advisory committee has since met, on January 11, to address concerns raised by the Secretary of the State concerning the proposed effective date of July 1, 2001, and concerning several peripheral issues in the consumer area. The committee also addressed a technical concern raised by town clerks and a concern raised as to the use of Article 9 with respect to electronic self-help. Their recommendations concerning the proposed draft follow.

**Effective date concerns.** A national effective date of July 1, 2001 was targeted by the National Conference of Commissioners on Uniform State Laws to ease the potential conflict of laws problems that would arise among the states if some states enact the revised Article 9 while others continue to operate for a time under old Article 9. We believe that the goal of a uniform effective date is worth while. The draft as submitted contains the proposed July 1, 2001 effective date. However, the Secretary of the State has properly requested an effective date that leaves adequate lead time for that office to program its computers and otherwise prepare for its obligations under the new act. Those concerns might be adequately addressed by an early enactment of the proposal in this session. However, should an early enactment prove impractical, an extension of the effective date will be requested. We request that concerns of the Secretary of the State in that respect be addressed as may be necessary. We will continue to work with that office and keep you informed of any developments.

**Clarifications of language concerning consumer provisions:** (Please note that the proper bill section number cross-references for these provisions must be determined by the Legislative Commissioners' Office. Reference here is made to the Uniform Act section number.)

1. **Clarification of section 9-605.** The committee recommends that Section 9-605 include the following language as a new subsection (b) for clarification :

“(b) What the secured party knows is to be determined in the light of the good faith obligations of the secured party.”

The other language in the section should be styled as subsection (a).

2. **Clarification of subsection (c) of section 9-601.** The committee recommends that subsection (c) be revised for clarification to read as follows:

“(c) The rights under subsections (a) and (b) are cumulative, and, except as otherwise may be prohibited under other law in a consumer transaction, may be exercised simultaneously.”

3. **Clarification of subsection (b) of section 9-626.** The committee recommends that the last sentence of subsection (b) be revised to read as follows:

“... Notwithstanding subsection (b) of section 9-627, those approaches may apply principles of existing statutory and case law, including laws concerning the determination of a deficiency or surplus, that apply to analogous consumer transactions in similar goods under part XI of chapter 669 of the general statutes and under other Connecticut law.”

4. **Clarification of subsection (e) of section 9-627.** The committee recommends that subsection (e) be revised to read as follows:

“(e) Notwithstanding the provisions of subsection (b), in a consumer transaction the determination of a deficiency or surplus is subject to the court determination of the proper rule that applies to a consumer transaction under Section 9-626(b).”

**Technical correction concerning filing with town clerks.** The committee recommends that subsection (a) of section 9-516 be revised for clarification to read as follows:

“(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing. In the case of the recording of a record in a filing office described in Section 9-501(a)(1), tender of the filing fee means tender of the fee set by section 7-34a of the general statutes.”

**Conforming revision for judgment liens on personal property.** The committee recommends clarification of section 52-355a of the general statutes, which allows placement of a judgment lien on personal property through use of the Article 9 filing process. (That section would be new

to the bill.) The committee recommends addition of the following language at the end of subsection (a) of section 52-355a:

“For purposes of this section, the judgment lien shall be filed as if the debtor were located in this state. However, in the case of a debtor who is not located in this state, the judgment lien shall be effective only as to the debtor’s tangible personal property that is located in this state.”

**Electronic self-help.** The committee finds that the traditional Article 9, Section 9-609, “self-help” provisions raise new concerns where self-help is exercised with respect to electronic media. In that case, the committee believes that any such self-help should be subject to appropriate limitations that require express authorization for use and that require notice to the debtor. The committee recommends addition of the following new subsection (d) to Section 9-609 to address electronic self-help:

“(d)(1) In this section, “electronic self-help” means the use of electronic means to exercise a secured party’s rights pursuant to Part 6 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.

(2) Electronic self-help is permitted only if the debtor separately agrees to a term authorizing electronic self-help that requires notice of exercise as provided in subdivision (3).

(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) that the secured party intends to resort to electronic self-help as a remedy on or after 15 days following communication of the notice to debtor;

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

(iii) 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 subsections (2) and (3), 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.”

If you have any questions concerning these proposed changes, please give me a call.

Cc: Rick Taff