

**TESTIMONY IN SUPPORT OF HOUSE BILL No. 5099**  
**AN ACT CONCERNING ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE**  
**REGARDING SECURED TRANSACTIONS**

**Presented By**

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**On Behalf of**  
**The Commercial Law and Bankruptcy Section of**  
**The Connecticut Bar Association**

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Good afternoon, my name is Thomas J. Welsh and I am a principal of the law firm of Brown & Welsh, P.C. located in Meriden, Connecticut. I am a member of the Executive Board of the Association of Commercial Finance Attorneys, a Fellow of the American College of Commercial Finance Attorneys and a member of the American Law Institute. I served on the Law Revision Commission Advisory Committee on Revised Article 9 that prepared the draft which became the text of P.A. 01-132, adopting Revised Article 9 of the Uniform Commercial Code, codified in C.G.S. §9-101 et seq. I also testified on behalf of the Connecticut Bar Association and as the designated representative of the CBA Commercial Law and Bankruptcy Section in the adoption of Revised Article 9 in 2001.

Article 9 of the Uniform Commercial Code governs security interests in personal property and the sale 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 a lengthy and complex body of commercial law underlying a vast array of financial and business transactions.

Since the date of the adoption of Revised Article 9 in Connecticut, I have had the opportunity to conduct numerous seminars on Revised Article 9, and I have published several articles and co-authored a book on secured transactions in Connecticut. As part of this process I received a number of comments from members of the Bar, from representatives of the financing industry and from state officials relating to potential uncertainties in a number of the non-uniform provisions of the Connecticut statute. The staff attorneys in the Legislative Commissioners' 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. This experience led to my preparation of the initial 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 LCO, Law Revision Commission staff, staff of the Office of the Secretary of the State, the CBA Business Law and Commercial Law sections and Bankruptcy and Commercial Finance Committee, as well as to other interested parties. This text with comments and changes crafted by LCO became the text of House Bill 5099, the current technical amendments Bill.

The subject matter of H.B. 5099 is somewhat voluminous and my testimony today is limited in time, so I have prepared and submitted more extensive written materials for your consideration and inclusion in the record (referred to herein as the “**CBA Background Material**”)<sup>1</sup>. This material includes explanatory comments as to the need for, and intention of the drafters, regarding the proposed text. I hope that the Judiciary Committee will find them useful to answer any questions that may arise.

Please note that the drafters of the text of H.B. 5099 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.

In general, H.B. 5099:

- Makes numerous clerical corrections to the text of Article 9, as well as corrects two clerical errors in the text of P.A. 02-131 (adopting Article 2A of the UCC), to avoid possible misunderstandings and uncertainty.
- Permits Revised Article 9 to govern transfers and security interests granted by the State or a subdivision of the State, in those instances where the enabling legislation for such public agency specifically permits Revised Article 9 to apply.
- Makes clear that a provision in a security agreement or lease authorizing electronic self-help may be included within the body of the security agreement or lease, as long as it is specifically stated. This corrects an uncertainty in the language of Article 9.
- Confirms the motor vehicle certificate of title law to the provision of Revised Article 9 that permits a security interest in motor vehicles held by a debtor as inventory for

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<sup>1</sup> These written materials are dated March 3, 2003 and are titled “Background Material Concerning House Bill No. 5099 – An Act Concerning Article 9 of the Uniform Commercial Code Regarding Secured Transactions”.

sale or lease to be perfected by filing a financing statement, rather than by notation on the certificate of title. This cross-reference was inadvertently omitted from P.A. 01-132.

- Amends the bank execution statute for judgment debtors that are not natural persons (C.G.S. §52-367a) to require the depository bank to notify any party with a security interest via a control agreement in a commercial (not consumer) deposit account of the levy. It permits a period of 20 days for such secured party to make a motion to the court for a determination of its interest and priority in the account before turning over the funds to the levying officer. If the secured party files such a motion, it also provides authorization for the depository bank to withhold the funds until the court makes a determination. This provision is similar to the provision for exemption rights for bank execution against deposit accounts owned by natural persons in C.G.S. §52-367b. H.B. 5099 also conforms C.G.S. §52-367b to these secured party notice provisions.
- Amends C.G.S. §52-355, the statute governing postjudgment liens on personal property, to make clear that a judgment lien creditor is not deprived of an action for conversion for impairment of the judgment lien simply because it only can get possession by an execution or other judicial process.

After the publication of H.B. 5099 a few comments were received that noted corrections that should be made to the Bill. These changes are more fully explained in the CBA Background Material however, in summary they are as follows:

- **Exception for Trust Deposit Accounts Under Other Statutes:** The words “or if otherwise provided by statute” should be added to the end of the last sentence in Section 2 of H.B. 5099. This would permit another statute to specifically “opt in” to Article 9, while preserving the general rule that security interests in payroll or trust accounts is not permitted.
- **Excepting Consumer Transactions From Change to Electronic Self-Help Provisions:** The words “Except in a consumer transaction” should be added to the beginning of the amendment to C.G.S. §42a-9-606(d)(2) in Section 17 of H.B. 5099. In addition, the words “Except in consumer leases” should be added to the beginning of the amendment to C.G.S. §42a-2A-702(e)(2) in Section 25. This will make the modifications to Article 9 in these sections not affect consumer transactions, which have greater specificity and conspicuousness requirements.
- **Clerical Corrections to Execution Statute Provisions:** The word “exemption” in last sentence of subsection (j) in Section 22 of H.B. 5099 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. Also, the amendment in Section 23 of H.B. 5099, amending C.G.S. §52-367b(f)(1), should change the reference to “secured party claim form” to “secured party claim notice” to conform to the language used in the other portions of the statute.

- **Limiting the 20 Day Waiting Period Under H.B. 5099 Changes to Bank Execution Statute:** The text of H.B. 5099 creates a 20 day waiting period for payment of executions against bank accounts of non-individual judgment debtors, whether or not a security interest actually exists in the account. This waiting period should end, and the funds should be immediately turned over to the officer, if the depository bank finds that it has no control agreement of another secured party relating to the bank account. This can be accomplished by adding the following sentence to the end of subsection (d) of Section 22 of H.B. 5099: “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.”

In conclusion, H.B. 5099 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 in business deposit accounts. It has been drafted, to the greatest extent possible, not to affect substantive rights of parties. With the foregoing recommended changes, the Commercial Law and Bankruptcy Section of the CBA supports passage of House Bill 5099. On its behalf I respectfully request that the Judiciary Committee amend H.B. 5099 as I previously suggested and favorably report the amended bill.

Thank you.