

2011 HOUSE JUDICIARY

HB 1137

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1137
January 19, 2011
13077

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1137.

Rep. Larry Klemin: Sponsor, support, explained the bill. This bill was introduced at the request of the Commission on Uniform State Laws, and as I mentioned in the other hearing, I'm a member of that commission as is Rep. Kretschmar. This bill amends sections in the Uniform Commercial Code relating to secured transactions). It gives a brief summary of what's involved in this bill. These are referred to as the 2010 amendments to Article 9 relating to secured transactions. A secured transaction is one where a creditor, who is a secured party takes collateral to secure a debt. There are lots of variations on that theme, but really in a nutshell, this is what a secured transaction is. A creditor's interest is called a security interest and a lot of Article 9 deals with provisions relating to how to create a security interest, what's required for the security interest, how to resolve conflicting interests in the same collateral between different creditors. There are rules of priority as to which creditor has priority over another creditor. There are provisions relating to what happens on default. To a large extent, this bill has a lot of technical amendments to bring it up to date. There are some additional provisions in here about what is required for the debtor's name, how do you get that information, it has to be consistent with your driver's license. I went through this bill section by section and prepared a section by section analysis of the bill and tied that back into the sections of the Uniform Commercial Code. You will see in the bill, for example, on page 1, line 14, our section 41-09-02 is section 9-102 of the Uniform Commercial Code. The Uniform Commercial Code is a large body of commercial law that has been adopted nationwide and in fact takes up one entire volume of the ND Century Code. Article 9 is one section of that, and deals with secured transactions. There are a lot of other articles in the UCC that we're not dealing with in here. Anyway I've tried to highlight the section of the bill and to tie it to the section of the Uniform Act. For example, in section 9-102, which is the definition starting on page 1, there are really only four definitions that are being changed (see attached 1).

Rep. Delmore: You give that date of July 1st, are there some states that have already adopted this, or is this coming before legislators pretty much for the first time beginning this session.

Rep. Delmore: These amendments were approved last July, 2010. I'm not sure if any states have already adopted them, but if they have, it would have been recently. The intent is that they'll all have the same effective date in their acts as we would in this one.

Chairman DeKrey: Thank you. Further testimony in support of HB 1137.

Al Jaeger, Secretary of State: We stand in support of HB 1137. All of these documents that are referred to, Uniform Commercial Code, are filed in what is called the Central Indexing System, which is a central database that is maintained here in the Capitol. These documents can be filed in our office, or in any one of 53 county recorder offices. My staff has gone through the Uniform bill thoroughly, and there is nothing in there that would impact our procedures or any need to do anything as far as any changes. From the standpoint of how it is working now in the Secretary of State's Office with the Central Indexing system we don't have any concerns in the bill as it's been introduced.

Chairman DeKrey: Thank you.

Marilyn Foss, ND Bankers Association: As noted by Rep. Klemin, we did have input into the alternative, which would be in the bill with respect to the name of an individual debtor. This has been almost a raging controversy in some parts of the country, whether you perfected a security interest or if you said, John Doe, or J.D. Doe and the previous version of Article 9 didn't give any guidance. It just said that you had to use the correct name. The guidance that is now in the bill, provides that a debtor who is a person, the correct name is the name on a driver's license or state issued ID card. That really fits really well with bank requirements to know their customers and the primary method by which you know your customers, is to check the state issued driver's license or ID so that works very well, and we don't see problems other than bringing our banks up to speed on the other changes that are of particular importance to us; they essentially relate to what happens when the debtor moves as Rep. Klemin alluded to. The bill makes it clear that when a debtor moves, your security interest in after acquired property continue for four months and make it clearer that if you've moved and sold your collateral, the secured lender also has what is called "continuing perfection" for four months and you have a four month period after that time to get your documents filed in the new right place. We do support the bill.

Rep. Delmore: Is that a shorter period of time to get those filed and done for the documents.

Marilyn Foss: No it's not a shorter period of time; the clarifying part of it is, is that if the debtor moves, most security agreements will provide that, for instance, if you take a security in all of your equipment, that if you buy new equipment, you've also got a security interest in the new equipment, that's called after acquired property and the clarification in this is that when the debtor moves, if the debtor buys more equipment in his new spot, your security interest and perfection still lasts for four months in that after acquired property as well.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We're going to close the hearing. What are the committee's wishes in regard to HB 1137.

Rep. Kretschmar: I move a Do Pass on HB 1137.

Rep. Delmore: Second.

11 YES 0 NO 3 ABSENT

DO PASS

CARRIER: Rep. Klemin

Date: 9/19/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1137

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury					
Rep. Koppelman					
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1137: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1137 was placed on the
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1137

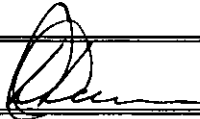
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1137
2/8/11
Job #14198

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to transition provision for revision of secured transaction laws.

Minutes:

There is attached written testimony

Senator Nething - Chairman

Representative Klemin – Uniform Law Commission – Introduces the bill – See written testimony.

Senator Nelson – Asks if there is going to be anything in this bill that conflicts with bill #2174.

Rep. Klemin - Replies this bill only deals with Article 9.

Clara Jenkins – Director Business Systems and Program for the Secretary of State – Has reviewed this bill and is in support of it.

Marilyn Foss – General Counsel for the ND Bankers Association – In support of the bill. She mentions that the individual name was of interest to them. This bill specifies that the individual's name that will be used is the name on the debtor's driver's license or other state issued ID.

Senator Nelson – Asks about Section 24 if it is a grandfather clause.

Foss – Replies that she would read it that way also.

Opposition – 0
Neutral – 0

Close the hearing on 1137.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1137
3/9/11
Job #15180

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to transition provision for revision of secured transaction laws

Minutes:

Senator Nething – Chairman

Senator Lyson moves a do pass
Senator Sorvaag seconds

Roll call vote – 6 yes, 0 no
Motion passes

Senator Nelson will carry

Date: 3/9
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1137

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Lyson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1137: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1137 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1137

1

**HB 1137 - 2010 AMENDMENTS TO ARTICLE 9
UNIFORM COMMERCIAL CODE
SECURED TRANSACTIONS**

Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following over a decade of experience with the revised Article 9.

Of most importance, the 2010 amendments provide greater guidance as to the name of a debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments clarify that the proper name for perfection purposes is the name filed with the state and provided on the organization's charter or other constitutive documents, to the extent there is a conflict with the name on an entity database. More importantly, the 2010 Amendments provide significantly greater clarity as to the name of an individual debtor to be provided on a financing statement.

Since the adoption of the 1998 revision of Article 9, there have been at least a dozen court decisions dealing with the question of what name needs to be provided on a financing statement for an individual debtor. Several states have adopted non-uniform amendments to Article 9 to address this issue. The 2010 Amendments to Article 9 give greater guidance relating to names.

The Amendments also deal with perfection issues arising on after-acquired property when a debtor (individual or organization) moves to a new jurisdiction. Article 9 currently provides that perfection by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction. The amendments change this by giving the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

Existing Section 9-518 authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized. While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed. The amendments change section 9-518 in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the amendments authorize the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. The comments also make clear that the secured party has no duty to file an information statement, even if it knows of the unauthorized filing.

A number of additional technical amendments are also included in this package. For example, some extraneous information currently provided on financing statements will no longer be required. A safe harbor for the transfer of chattel paper in conformance with the Uniform Electronic Transactions Act is included in the amendments, and the amendments make it clear that the broader override contractual restrictions found in Section 9-406(d) applies with respect to enforcement of a security interest through the sale or strict foreclosure of payment intangibles and promissory notes. Clarification is given with respect to certificates of title for title goods where the certificates of title are, in whole or in part, in electronic form, and greater guidance is given with respect to the notice requirements applicable to electronic dispositions of collateral (specifically, time and "electronic location" of online auctions) when a security interest is enforced by sale or other disposition of the collateral.

The amendments are accompanied by changes to the official comments to Article 9 to explain the amendments and also provide some additional clarifications in the official comments.

The amendments are slated to have a uniform effective date of July 1, 2013, so as to allow states to adopt the amendments uniformly and have them become operative simultaneously (thereby avoiding unnecessary conflicts and confusion with respect to interstate transactions).

HB 1137 - SECTION BY SECTION ANALYSIS

AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

SECTION 1

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) [Article 9 definitions.] In this article:

- (7) "Authenticate" *pg 3, line*
 - (10) "Certificate of title" *p. 4, line 7(K)*
 - (68) "Public organic record" *p 13, line 25*
 - (71) "Registered organization" *pg 14.*
- } new terms*

SECTION 2.

SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER

"Control" of Electronic Chattel Paper. This Article covers security interests in "electronic chattel paper" This section governs how "control" of electronic chattel paper may be obtained. A secured party's control of electronic chattel paper (i) may substitute for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, nontemporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper"

SECTION 3.

SECTION 9-307. LOCATION OF DEBTOR.

Technical amendment to 9-307(f)(2).

SECTION 4.

SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.

Technical amendment.

SECTION 5.

SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.

Amendments to 9-316(h) and (i) stating rules that apply to collateral subject to a financing

statement when the governing law changes from one jurisdiction to another because the debtor changes location.

SECTION 6.

SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

Technical amendment

SECTION 7.

SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.

Technical amendments.

SECTION 8.

SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.

Technical amendment to 9-406(e).

SECTION 9.

SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.

Technical amendment to 9-408(b).

SECTION 10.

SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

Technical amendment to 9-502(c)(3).

SECTION 11.

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

Amendments relating to the sufficiency of the name of the debtor. The name of an individual debtor on a financing statement should be the same as the name shown on a driver's license.

SECTION 12.

SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

Technical amendment to 9-507(c).

SECTION 13.

SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

Technical amendment to 9-515(f).

SECTION 14.

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

Technical amendment to 9-516(b).

SECTION 15.

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

Amendments 9-518 relating to the filing of an information statement in a filing office if the person believes a record filed there under the person's name is inaccurate or was wrongfully filed. Also allows a secured party to file an information statement. An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed.

SECTION 16.

SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.

Technical amendment.

The following sections provide rules to be followed relating actions taken before or after the effective date:

SECTION 17.

SECTION 9-802. SAVINGS CLAUSE.

SECTION 18.

SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

SECTION 19.

SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.

SECTION 20.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

SECTION 21.

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

SECTION 22.

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

SECTION 23.

SECTION 9-808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.

SECTION 24.

SECTION 9-809. PRIORITY.

SECTION 25.

SECTION 9-801. EFFECTIVE DATE. This Act takes effect on July 1, 2013.

This is a delayed effective date and is intended to give enough time for all states to adopt the amendments so that the amendments to UCC Article 9 take effect everywhere in the United states at the same time.

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HOUSE BILL 1137
TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
FEBRUARY 8, 2011

House Bill 1137 was introduced at the request of the Commission on Uniform State Laws. The bill adopts the 2010 amendments to Article 9 of the Uniform Commercial Code, relating to secured transactions. Article 9 provides the rules governing a financial transaction where a creditor takes an interest in collateral owned by a debtor in order to secure a loan. If the debtor defaults, the creditor may repossess and sell the collateral to satisfy the debt. The creditor's interest is called a "security interest."

Article 9 was substantially revised in 1998. The 1998 revisions are in effect in all states and the District of Columbia. The 1998 amendments to Article 9 were adopted in North Dakota in 2001. The 2010 amendments to Article 9 that are contained in House Bill 1137 modify the existing statute to respond to filing issues and to address other matters that have arisen in practice following more than a decade of experience with the revised Article 9.

Attached is summary of the 2010 amendments to Article 9 and a section by section analysis of House Bill 1137. Most of the 2010 amendments to Article 9 are technical amendments. However, there are also some substantive amendments. Since the adoption of the 1998 revision of Article 9, there have been at least a dozen court decisions dealing with the question of what name needs to be provided on a financing statement for an individual debtor. A financing statement is a form that a creditor files with the Secretary of State in order to give notice to the public and other potential creditors that the creditor claims an interest in the debtor's property to secure a loan. The filing of the financing statement is called perfection since it perfects the creditor's security interest in the collateral. The 2010 Amendments to Article 9 give greater guidance relating to names.

The Amendments also deal with perfection issues arising on after-acquired property when a debtor moves to a new jurisdiction and provide rules for which state law governs when the jurisdiction changes.

Existing law authorizes the debtor to file a correction statement, which is a claim that a financing statement filed was in fact unauthorized. While this filing has no legal effect on the underlying claim, it does put into the public record the debtor's claim that a financing statement was wrongfully filed. The amendments change the law in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the amendments authorize the secured party to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized.

The amendments are slated to have a uniform effective date of July 1, 2013, so as to allow states to adopt the amendments uniformly and have them become operative simultaneously nationwide, thereby avoiding unnecessary conflicts and confusion with respect to interstate transactions.

On behalf of the North Dakota Commission on Uniform State Laws, I encourage you to recommend "do pass" on House Bill 1137.

**HB 1137 - 2010 AMENDMENTS TO ARTICLE 9
UNIFORM COMMERCIAL CODE
SECURED TRANSACTIONS**

Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

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SECTION 20.

SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

SECTION 21.

SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.

SECTION 22.

SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

SECTION 23.

SECTION 9-808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT.

SECTION 24.

SECTION 9-809. PRIORITY.

SECTION 25.

SECTION 9-801. EFFECTIVE DATE. This Act takes effect on July 1, 2013.

This is a delayed effective date and is intended to give enough time for all states to adopt the amendments so that the amendments to UCC Article 9 take effect everywhere in the United states at the same time.