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Yalosta Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE JUDICIARY

HB 1070

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1070

House Judiciary Committee

Conference Committee

Hearing Date 1-13-03

Tape Number	Side A	Side B	Meter #
3	xx		0-31
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 11 members present, 2 members absent (Rep. Bernstein & Rep. Wrangham)

Chairman DeKrey: I call the Judiciary meeting to order. We have a quorum. Rep. Klemin will start off with HB 1070.

Rep. Klemin: (See Testimony) I would be happy to answer any questions.

Chairman DeKrey: I don't see any questions from the committee. Is there anyone in the audience that is in opposition or anyone else in favor of HB 1070? What is the committee's wishes on HB 1070?

Rep. Maragos: I make a Do Pass Motion on HB 1070.

Rep. Galvin: I second the motion.

Chairman DeKrey: Is there any discussion by the committee. Since there is no other discussion, we will now take a roll call vote on HB 1070.

11 YES 0 NO 2 ABSENT PASSED CARRIER: Rep. Boehning

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Date: 1/13/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1070

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Maragos Seconded By Rep. Galvin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Boehning

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

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REPORT OF STANDING COMMITTEE (410)
January 14, 2003 4:29 p.m.

Module No: HR-06-0559
Carrier: Boehning
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1070: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1070 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-06-0559

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10/2/03
Date

LP

2003 SENATE JUDICIARY

HB 1070

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1070

Senate Judiciary Committee

Conference Committee

Hearing Date 02/26/03

Tape Number	Side A	Side B	Meter #
1	X		42.4 - End
1		X	0.0 - End
Committee Clerk Signature <i>Mina L. Salley</i>			

Minutes: Senator Stanley W. Lyson, Vice Chairman, called the meeting to order. Roll call was taken and not all committee members present. Senator Lyson, Vice Chairman requested meeting starts with testimony on the bill:

Testimony Support of HB 1070

Representative Klemm - Introduced the Bill (meter 42.4) This bill is basically a technical correction that legislative council said held to much context to consider it a clerical change.

When this bill had its major overhaul by the National Commission of Uniform State Laws last session this technical change was missed and we are here to update it.

Senator Carolyn Nelson discussed what a "secured interest" was (meter 45.8)

Marilyn Foss - General Counsel for the ND Bankers Assoc. (meter 50) Read Testimony

-Attachment #1a and submitted Amendment - Attachment #1b.

Senator Thomas L. Trenbeath discussed history of bill (meter 57) and amendment change.

Joel Gilberts - Representing Independent Banks of ND (meter 58.6) stated his support.

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1070
Hearing Date 02/26/03

Testimony in opposition of HB 1070

None

Testimony Neutral to HB 1070

None

**Motion Made to DO PASS Foss Amendment to HB 1070 by Senator Thomas L. Trenbeath
and seconded by Senator Dick Dever**

Roll Call Vote: 4 Yes. 0 No. 2 Absent

**Motion Made to DO PASS HB 1070 as Amended by Senator Thomas L. Trenbeath and
seconded by Senator Dick Dever**

Roll Call Vote: 4 Yes. 0 No. 2 Absent

Motion Passed

Floor Assignment: Senator Thomas L. Trenbeath

Senator Stanley W. Lyson, Vice Chairman closed the hearing

30305.0101
Title.0200

Adopted by Senate Judiciary Committee
February 26, 2003

JB
2-26-03

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1070

Page 1, line 4, remove "and" and after "41-09-24" insert ", and subsection 1 of section 41-09-31"

Page 1, line 5, replace "and" with a comma and after "banks" insert ", and perfection of security interests in certain property"

Page 2, after line 17, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 41-09-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
 - a. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection 1 of section 41-09-30;
 - b. Section 35-01-05.1; or
 - c. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property; or
 - d. ~~Section 35-01-05.~~"

Renumber accordingly

Yalosta Rickford
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 4:33 p.m.

Module No: SR-34-3539
Carrier: Trenbeath
Insert LC: 30305.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1070: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1070 was placed on the Sixth order on the calendar.

Page 1, line 4, remove "and" and after "41-09-24" insert ", and subsection 1 of section 41-09-31"

Page 1, line 5, replace "and" with a comma and after "banks" insert ", and perfection of security interests in certain property"

Page 2, after line 17, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 41-09-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
 - a. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection 1 of section 41-09-30;
 - b. Section 35-01-05.1; or
 - c. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property; or
 - d. ~~Section 25-01-05."~~

Renumber accordingly

2003 TESTIMONY

HB 1070

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10/2/03
Date

National Conference of Commissioners on Uniform State Laws
211 East Ontario St., Ste. 1300, Chicago, IL 60611 • 312/915-0195 • Fax 312/915-0187

NOV 30 2001

MEMORANDUM

TO: All Commissioners
FROM: Fred Miller, Chair, Executive Committee
DATE: November 21, 2001

Today by conference call the Executive Committee approved amendments to UCC Article 9 and to the Uniform Consumer Leases Act. Pursuant to §4.3(b)(3) of the Constitution, these amendments will be considered as approved by the Conference unless before December 31 an objection is filed in accordance with §4-3(b)(3).

The amendments and their background are as follows:

Article 9

- a. Amend the definition of "agricultural lien" as follows: §9-102(a)(5) "Agricultural lien" means an interest, other than a security interest, in farm products.
- b. Amend the definition of "health-care-insurance receivable" as follows: §9-102(a)(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.
- c. Amend the section that determines a bank's jurisdiction as follows: §9-304(b) [Bank's jurisdiction.] The following rules determine a bank's jurisdiction for purposes of this part:
 - (1) If an agreement between the bank and the debtor its customer governing the deposit account
- d. Amend the section on automatic perfection as follows: §9-309 The following security interests are perfected when they attach:

....
(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

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10/2/03
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The first three amendments cure technical errors. The fourth amendment regarding sales of lottery winnings is substantive. After Article 9 was completed, interests that purchase these rights petitioned the drafting committee for automatic perfection on the ground that to monitor the location of the seller for perhaps 20 or more years because of a need to refile if the seller moved was not reasonable. This objection had not been anticipated, but their argument seemed persuasive, particularly since a like provision for payment intangibles already existed in §9-309(3) (but under Article 9, lottery winnings are an "account"). These amendments have been prepared by a task force of the Standby Committee, and have all been approved by the Permanent Editorial Board and the Executive Committee, and will be approved by the Standby Committee by November 26.

Consumer Leases.

Add a new subsection (f) to §104 as follows:

- (f) This Act does not apply to a license of information or a copy of it. The extent to which this Act applies to information contained in and part of leased goods is not expressly addressed.

This amendment has been approved by the drafting committee and the Executive Committee. It meets an unanticipated objection. Originally, the Consumer Leases Act was to be promulgated at the same time as the amendments to Article 2A, and would as to this issue follow the scope of Article 2A. However, while Consumer Leases was approved at the Greenbrier meeting, Article 2A was held over. The drafting committee agreed on a comment that said what this amendment says, but when it was determined Consumer Leases would be promulgated alone, it was requested the comment be put in the statute to more concretely guide the courts. The amendment is consistent with the treatment of this matter in Article 9 (except Article 9 is less neutral on "smart goods," which is what the second sentence is about, but of course in Article 9 the issue is just what category of collateral is involved, not what law), and with the proposed scope provision for Article 2 voted on at the Greenbrier meeting, except, again, it is more neutral with regard to "smart goods;" it also excludes the diskette with the information on it but that is so the rules of the Consumer Leases Act will not apply merely because of the medium chosen to deliver the information; what Consumer Leases deals with is not really about a simple delivery vehicle. With this amendment, the drafting committee will have an industry letter stating no opposition to the Act, and the amendment is contingent on receipt of that letter.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is now in its 111th year. The organization comprises more than 300 lawyers, judges and law professors, appointed by the states as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands, to draft proposals for uniform and model laws on subjects where uniformity is desirable and practicable, and work toward their enactment in legislatures.

The uniform law movement began in the latter half of the 19th century. The Alabama State Bar Association recognized as early as 1881 the legal tangles created by wide variations in state laws. But it was not until 1889 that the American Bar Association decided, at its 12th Annual Meeting, to work for "uniformity of the laws" in the then 44 states.

Within a year, the New York Legislature authorized the governor to appoint three commissioners to explore the best way to effect uniformity of law between increasingly inter-dependent states. The ABA endorsed New York's action. The result was the first meeting of the Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S.

Seven states sent commissioners to that first meeting of the Conference in Saratoga Springs, New York, in 1892. By 1912, every state had appointed uniform law commissioners. The U.S. Virgin Islands is the last jurisdiction to join, appointing its first commission in 1968.

Since its organization, the Conference has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act, the Uniform Limited Partnership Act, and the Uniform Interstate Family Support Act.

Most significant was the 1940 Conference decision to attack major commercial problems with comprehensive legal solutions—a decision that set in motion the project to produce the Uniform Commercial Code in partnership with the American Law Institute. The Code took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the Conference.

Today the Conference is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law. It rarely drafts law that is regulatory in nature.

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**TESTIMONY OF MARILYN FOSS IN FAVOR OF HB 1070
(On Behalf Of The North Dakota Bankers Association)**

You have already been advised that the purpose of HB 1070 is to make technical corrections to UCC Revised Article Nine. The errors which are corrected by it are contained in Revised Article Nine as it was originally recommended by the Commission on Uniform State Laws. However, recently, Jenn Clark brought a homegrown error to my attention. The error as she described it to me relates to perfecting security interests in motor vehicles and other property which is covered by a certificate of title.

Frankly, I need to confer with Ms. Clark before proposing a specific technical correction. We just haven't been able to get together to do that. Accordingly, I would ask the committee to defer immediate action on the bill to permit us to get together and prepare the amendment. I am hopeful we will be able to do that early this week.

Att # 1a 2/26

TESTIMONY OF MARILYN FOSS ON HOUSE BILL 1070

Mr. Chairman, members of the judiciary committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. I am here this morning to suggest an amendment to House Bill 1070. The amendment is another technical correction to UCC Article Nine and merely removes an erroneous statutory reference. The possibility that the statutory reference is incorrect was pointed out to me by legislative council because I served on the ad hoc committee which reviewed Revised Article Nine before it was introduced in the 2001 legislative session. I didn't propose the amendment on the House side only because of time constraints and my inability to confirm my view that the reference was incorrect by "running" the change by some other attorneys who practice in the area of secured transactions.

NDCC section 41-09-31(1) addresses situations where it is not necessary to file a financing statement to perfect a security interest in property because priority is governed by another statute. NDCC section 35-01-05 relates to the creation and attachment of a security interest in after-acquired property. Perfection and priority of such a security interest is governed by the provisions of Article Nine and the filing of a financing statement is generally understood to be required to perfect a security interest in after-acquired property. For that reason, the reference to section 35-01-05 in section 41-09-31(1) should be deleted.

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 - b. Section 35-01-05.1; or
 - c. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property; ~~or~~
 - ~~d. Section 35-01-05.~~

Renumber accordingly

Yolanda Rickford
Operator's Signature

10/2/03
Date