

2009 SENATE JUDICIARY

SB 2206

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2206

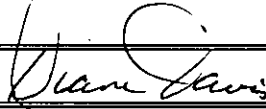
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7732

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Relating to the effectiveness of a Uniform Commercial Code termination statement and to provide for retroactive application

Rick Clayburgh – President and CEO of the ND Bankers Association - See written testimony.

Senator Nething – Asks why we need this changed.

Clayburgh – States a couple points. He said the task force that looked at it decided to leave that section alone, in doing do the uniform language for the effectiveness of the termination statement was not included in our law. He relates a case of one of his financial institutions. He quoted John Foster from UND Law School, who is an expert in Debtor Creditor law, said there is a length of time or provision period where that termination statement did not extinguish the financing statement because of the fact that there was not this specific language in the law. John Foster said in order to clear up any confusion what a termination statement will do and that will extinguish a previous filed financing statement.

The committee discusses how the process works and the case that brought this to attention.

Senator Nething – With this new language then a termination statement means that secured interest is terminated.

Clayburgh – Yes

Senator Nething – Understands what this bill does but does not understand how someone can say when you fully intended to terminate something why that wouldn't have occurred otherwise. It seems to have accomplished what they wanted it to do.

Clayburgh – By leaving this section alone the previous legislature inadvertently left out an important part that would have covered all this.

Senator Olafson – Asks if there is ever a good reason to file a termination statement when the financing is finished.

Clayburgh – Most lenders believe once they file the termination statement the financing is finished.

Don Forsberg – Executive Vice President for Independent Community Banks of ND – In support of this bill – This language will clarify for the future.

Clara Jenkins – Sec. of State Office – Neutral – She asks to hold off action until they talk to the Attorney General.

Close the hearing for 2206

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2206

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 27, 2006

Recorder Job Number: 7896

Committee Clerk Signature

Diane Davis

Minutes: **Senator D. Nething, Chairman**

Committee work

Senator Lyson motions for do pass

Senator Schneider seconds

Vote – 5 yes, 1 absent

Senator Nething will carry

Date: 1/27/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2206
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Lyson Seconded By Sen Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger		
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 5 (N) 0

Absent _____

Floor Assignment Sen. Nething

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

REPORT OF STANDING COMMITTEE (410)
January 27, 2009 3:10 p.m.

Module No: SR-16-1051
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2206: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2206 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2206

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2206

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10686, 10692

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will open the hearing on SB 2206.

Marilyn Foss, ND Bankers Association: Support (attachment), explained the bill.

Rep. Koppelman: What is the filing office and what is a transmitting utility.

Marilyn Foss: The filing office is either the office of the Secretary of State when you file a UCC or it can also be a county recorder's office. We have central filing. So that is in reference to either of those offices. A transmitting utility I think is a defined term, and I don't believe that I can give you the definition but I can look it up.

Rep. Klemin: What is the reason for the retroactive application?

Marilyn Foss: When we were looking at this, we thought that there could be any number of continuation statements out there that were relatively old, had originated after we got Article 9 in 2001, that had been a procedure that had terminated and if there was another mistake situation that I had described, the creditor that terminated and then filed a continuation statement. But we thought if we did the retroaction application it could clear up any other questions if there was a mistake that might show in the records and resolve that going forward.

Rep. Klemin: So it goes back to when the revised article 9 was adopted.

Marilyn Foss: Yes.

Rep. Wolf: On the retroactive application, I believe the bank is the one that files the termination statements on its own, so is this going to cause the bank to go back and redo filings for 2001 to the present; so that they are officially terminated or is this just going to be a problem later. Who is going to pay for all this?

Marilyn Foss: We talked to the Secretary of State's office about that to see if they thought that this would impose any filing obligations by anybody. Our conclusion was no, if the paperwork had been filed then this wouldn't impose an obligation on them to look and make any re-filing necessary. We are just putting into law what our understanding is of how this works, as far as everybody understands how this worked.

Rep. Wolf: Basically the retroactive is just a date.

Marilyn Foss: Yes.

Chairman DeKrey: Thank you. Further testimony in support. Neutral testimony.

Al Jaeger, Secretary of State: Neutral. As Marilyn had intimated, they did visit with us, we did have some concerns. We think that if it is left the way it is, we will be okay. Our first concern was the retroactive date because all of a sudden we were programming, and that concerned us. But if the language is left true, we can make it work. We suspect that it isn't something that will come up that often. In that particular situation that Marilyn referred to, I don't think it's something that's going to come up very often.

Ch. DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2206?

Rep. Koppelman: I move a Do Pass.

Rep. Delmore: Second.

12 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Griffin

Date: 3/11/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2206

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 (No) 0 (Absent) 1

Floor Carrier: Rep. Griffin

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 11, 2009 11:57 a.m.

Module No: HR-44-4558
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2206: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2206 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2206

TESTIMONY OF RICK CLAYBURGH
SUPPORTING SENATE BILL 2206

Chairman Nething, members of the Committee, I am Rick Clayburgh, President and CEO of the North Dakota Bankers Association. I appear before you today in support of Senate Bill 2206. Senate Nething introduced this bill on behalf of the North Dakota Bankers Association.

North Dakota has a non uniform provision of the UCC for Termination Statements. Termination statements are the documents that are typically filed when a borrower has paid off the debt so that the creditor is no longer claiming security interest in collateral. The termination statement "terminates" an earlier filed financing statement.

When revised Article 9 was up for consideration in 2000, there was a task Force that reviewed its provisions. The Task Force, in deference to the legislature, decided to leave the termination statements section alone because NDCC section 41-09-84 had been revised several times during previous Legislative Sessions. However, as a result, our law did not include the new Article 9 language about the effectiveness of a termination statement.

All this bill does is add this uniform language to our law. The citations within the new subsection simply are the North Dakota references to the uniform provisions.

Members of the Committee, the North Dakota Bankers Association asks for your favorable consideration of Senate Bill 2206.

TESTIMONY OF MARILYN FOSS
SUPPORTING SENATE BILL 2206

Chairman DeKrey, members of the Committee, I am Marilyn Foss, General Counsel for the North Dakota Bankers Association. I appear before you today in support of Senate Bill 2206. This bill was introduced at the request of the North Dakota Bankers Association.

This bill concerns termination statements under North Dakota's version of the Revised Article Nine of the Uniform Commercial Code. A termination statement is the document that a creditor files with the Secretary of State or county recorder when a borrower has paid off the debt to give public notice that the creditor is no longer claiming a security interest in the debtor's collateral.

This bill has come about because North Dakota has adopted a non uniform statute for termination statements. UCC Revised Article Nine was adopted by the 2001 Legislative Assembly. Before the legislation was introduced, Revised Article Nine was considered by an SBAND task force similar to the one that worked on the Uniform Trust Code. When the task force covered the proposed provision for termination statements, it was noted that termination statements was an area which had several times "caught the attention" of the legislature which after several legislative revisions, had crafted a termination statement statute to address the issues that had arisen in North Dakota. In deference to this legislative activity, the task force decided not to recommend the adoption of the Revised Article Nine provision for termination statements and, instead to recommend retention of then NDCC section 41-09-43, recodified as NDCC section 41-09-84. While this addressed North Dakota issues, the termination statement statute did not include the new Article 9 language about the effectiveness of a termination statement.

All this bill does is add the uniform language to our law. The citations within the new subsection simply are the North Dakota references to the uniform provisions.

It might be said that the proposed changes simply state the obvious. . . that a terminated financial statement ceases to be effective. However, over the past year or so, an attorney opined to one of our member banks that the absence of this language raised a question regarding whether a terminated financing statement could be resurrected by filing a continuation statement for the same financing statement. The best the attorney could do was to say he didn't think the tactic would work, but he wasn't absolutely sure about it. With this bill, the question is answered conclusively, "no". A termination statement eliminates any such possibility. NDBA has vetted the lengthy retroactive application of the new law with several experts on debtor/creditor law and with the Secretary of State. All agree that it doesn't cause problems for anyone.

Members of the Committee, the North Dakota Bankers Association asks for your favorable consideration of Senate Bill 2206.