STATEMENT OF
JAMES C. McKAY, Jr.
CHAIR, DISTRICT OF COLUMBIA UNIFORM LAW COMMISSION, ON
BILL 19-136,
UNIFORM COMMERCIAL CODE REVISION ACT OF 2011
AND
BILL 19-222
UNIFORM COMMERCIAL CODE ARTICLE 9 AMENDMENT ACT OF 2011
BEFORE THE COMMITTEE ON PUBLIC SERVICES AND
CONSUMER AFFAIRS
COUNCIL OF THE DISTRICT OF COLUMBIA
AT A PUBLIC HEARING

June 6, 2011

Chairperson Alexander and members of the Committee:

Good afternoon, I am James McKay, testifying in support of Bill 19-136, the Uniform Commercial Code Revision Act of 2011, and Bill 19-222, the Uniform Commercial Code Article 9 Revision Act of 2011, as Chair of the District of Columbia Uniform Law Commission. I am fortunate to have with me Carlyle Ring, a Virginia uniform law commissioner, who, among many key positions, serves as Chair of the Uniform Commercial Code Committee for the national Uniform Law Commission. I will give a very brief overview, and Mr. Ring, will explain the bills in some detail.

Enactment by the Council of these bills will bring the District's Uniform Commercial Code completely up to date. The Commercial Code is the legal backbone of commerce in the United States. The Code consists of eleven substantive articles, which provide comprehensive default rules for distinct types of transactions. Bill 19-136 would amend five of these articles: Article 1 (General Provisions); Article 3 (Letters of Credit);

Article 4 (Bank Deposits and Collections); Article 6 (Bulk Sales), which would be repealed; and Article 7 (Documents of Title), and Bill 19-222 would amend Article 9 (Secured Transactions).

The Uniform Law Commission, in conjunction with the American Law Institute and the American Bar Association, developed these amendments over a period of years to conform the Uniform Commercial Code to modern business practices, such as the prevalent use of electronic commerce, and to address a number of problems in interpreting the Code that have arisen over the past several decades. As Mr. Ring will demonstrate, these amendments have been widely adopted by the states. It is, therefore, essential that the Council adopt them in order for the District of Columbia to maintain its position as a center of national commerce.

I will comment on one of these amendments – namely, the repeal of Article 6 (Bulk Sales) by Bill 19-136. It is unusual for the Uniform Law Commission to recommend the repeal of a uniform law. However, the Commission, as well as the American Law Institute and American Bar Association, came to the conclusion that Article 6 had outlived its original purpose and, more importantly, that its continued existence was doing far more harm than good because it imposes unnecessary transaction costs and risks on legitimate sellers.

Article 6 was designed to protect unsecured creditors from a merchant's sale of all or most of its inventory to a third party who gives value and takes in good faith. It

imposes a 10-day notice requirement before the sale to all creditors. If this is not done, it permits the transferor's creditors to levy on the transferred assets in the hands of the buyer. However, over the years, it became apparent that the costs that Article 6 imposed on legitimate transactions greatly exceeded the value conferred in deterring illegitimate transactions. Articles 6 lumps the rare thief with numerous honest merchants and imposes an expensive and unnecessary procedure on them. Moreover, a determined thief can give the 10-day notice and still abscond with the money because 10 days is a very short period.

Article 6 has been repealed by all but a handful of states. Its persistence in the District has disadvantaged sellers located here because it has led buyers to discount the prices they are willing to pay District sellers because of the risks Article 6 imposes on them. It should be repealed.

I also need to mention, with respect to Bill 19-222, that there have been a few technical, but important, revisions to the Uniform Commercial Code Financing Statement Forms, which are contained in Section 28:9-521, after the bill was introduced. These revisions were recommended by the International Association of Commercial Administrators (IACA), the national organization representing the Uniform Commercial Code filing offices throughout the country. The Uniform Law Commission has adopted these revisions for its official version of the Article 9 Amendments and has asked that they be incorporated into state legislation amending Article 9. A copy of the revised

section containing the forms is appended to my testimony and has been provided in electronic form to the Committee. We ask that the Committee incorporate this revised section when the bill is marked up.

I leave further explanation of the amendments to the Uniform Commercial Code to Mr. Ring. However, I would be pleased to answer any questions at the appropriate time.

PROPOSED AMENDMENT TO BILL 19-222
Replace Section 2(q) with the following:

(q) § 28:9-521 is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in § 28:9-516(b):

"UCC FINANCING STATEMENT

"FOLLOW INSTRUCTIONS

"A. NAME & PHONE OF CONTACT AT FILER (optional)

"_____

"B. E-MAIL CONTACT AT FILER (optional)

"_____

"C. SEND ACKNOWLEDGMENT TO: (Name and Address)

"_____

"THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"1. DEBTOR'S NAME : Provide only <u>one</u> Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name; if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Finance Statement Addendum Form (Form UCC1Ad)

"1a. ORGANIZATION'S NAME

"_____

"OR

"1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

"_____ _____

"1c. MAILING ADDRESS

"_____

"CITY STATE POSTAL CODE COUNTRY

"_____ _____ _____ _____

"2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name; if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Finance Statement Addendum Form (Form UCC1Ad).

"2a. ORGANIZATION'S NAME

"_____

"OR

"2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

"_____ _____

"2c. MAILING ADDRESS

"_____

"CITY STATE POSTAL CODE COUNTRY

"_____ _____ _____ _____

"3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

"3a. ORGANIZATION'S NAME

"_____

"OR

"3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

"3c. MAILING ADDRESS

"_____

"CITY STATE POSTAL CODE COUNTRY

"_____ _____ _____ _____

"4. COLLATERAL: This financing statement covers the following collateral:

"_____

"5. Check only if applicable and check only one box:

"Collateral is ☐ held in a Trust (see Instructions)

☐ being administered by a Decedent's Personal Representative.

"6a. Check only if applicable and check only one box:

"☐ Public-Finance Transaction ☐ Manufactured-Home Transaction

"☐ A Debtor is a Transmitting Utility

"6b. Check only if applicable and check only one box:

"☐ Agricultural Lien ☐ Non-UCC Filing

"7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor

"☐ Licensee/Licensor

"8. OPTIONAL FILER REFERENCE DATA

"_____

"[UCC FINANCING STATEMENT (Form UCC1)]

"UCC FINANCING STATEMENT ADDENDUM

"FOLLOW INSTRUCTIONS

"9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here [ ].

"9a. ORGANIZATION'S NAME

"_____

"OR

"9b. INDIVIDUAL'S SURNAME

"_____

"FIRST PERSONAL NAME

"_____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

'THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name and enter the mailing address in line 10c)

"10a. ORGANIZATION'S NAME

"_____

"OR

"10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

"_____ _____

"10c. MAILING ADDRESS

"_____

"CITY STATE POSTAL CODE COUNTRY

"_____ _____ _____ _____

"11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

"11a. ORGANIZATION'S NAME

"_____

"OR

"11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

"11c. MAILING ADDRESS

"_____

"CITY STATE POSTAL CODE COUNTRY

"_____ _____ _____ _____

"12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

"_____

"13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

"14. This FINANCING STATEMENT:

"☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

"15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

"_____

"16. Description of real estate:

"_____

"17. MISCELLANEOUS:

"_____

"[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]".

(2) Subsection (b) is amended to read as follows:

"(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in § 28:9-516(b):

"UCC FINANCING STATEMENT AMENDMENT

"FOLLOW INSTRUCTIONS

"A. NAME & PHONE OF CONTACT AT FILER (optional)

"_____

"B. E-MAIL CONTACT AT FILER (optional)

"_____

"C. SEND ACKNOWLEDGMENT TO: (Name and Address)

"_____

"THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"1a. INITIAL FINANCING STATEMENT FILE NUMBER

"_____

"1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

"Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

"2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

"3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

"4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

"5. ☐ PARTY INFORMATION CHANGE:

"Check one of these two boxes:

"This Change affects ☐ Debtor or ☐ Secured Party of record.

"AND

"Check one of these three boxes to:

"☐ CHANGE name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.

"☐ ADD name: Complete item 7a or 7b, and item 7c.

"☐ DELETE name: Give record name to be deleted in item 6a or 6b.

"6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

"6a. ORGANIZATION'S NAME

"_____

"OR

"6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

"7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or

"7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)

"7a. ORGANIZATION'S NAME

“_____

“OR

“7b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME

“_____ _____

“ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

“_____ _____

“7c. MAILING ADDRESS

“_____

“CITY STATE POSTAL CODE COUNTRY

“_____ _____ _____ _____

“8. ☐ COLLATERAL CHANGE:

“Also check one of these four boxes:

“☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral

“☐ ASSIGN collateral

“Indicate collateral:

“9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

“If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

“9a. ORGANIZATION’S NAME

“_____

“OR

“9b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME

“_____ _____

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

“_____ _____

“10. OPTIONAL FILER REFERENCE DATA

“_____

“[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

“UCC FINANCING STATEMENT AMENDMENT ADDENDUM

“FOLLOW INSTRUCTIONS

“11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

“_____

“12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

“12a. ORGANIZATION’S NAME

“_____

"OR

"12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

"THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13; Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name; see Instructions if name does not fit)

"13a. ORGANIZATION'S NAME

"_____

"OR

"13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"_____ _____

"ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

"_____ _____

"14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

"_____

"15. This FINANCING STATEMENT AMENDMENT: ☐ covers timber to be cut

"☐ covers as-extracted collateral ☐ is filed as a fixture filing

"16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

"_____

"17. Description of real estate

"_____

"18. MISCELLANEOUS:

"_____

"[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]".