

OREGON LAW COMMISSION

Date January 25, 2012
4:00 p.m.

Oregon Civic Justice Center
Melvin Henderson-Rubio Hearing Room
Salem, OR

MEMBERS PRESENT:

Lane Shetterly, Chair
Prof. Bernie Vail, Vice Chair (on phone)
Chief Judge David Brewer
Mark Comstock (on phone)
John DiLorenzo, Jr. (on phone)
Hardy Myers (on phone)
Scott Shorr (on phone)
Prof. Symeon Symeonides
Prof. Susan Gary (on phone)
Julie McFarlane (on phone)
David Leith (for Mary Williams, on phone)
Rep. Chris Garrett (on phone)

MEMBERS EXCUSED:

Judge Karsten Rasmussen
Justice Martha Walters
Sen. Floyd Prozanski

STAFF PRESENT:

Jeffrey C. Dobbins, Executive Director (on phone)
Wendy J. Johnson, Deputy Director and General Counsel
Dexter Johnson, Legislative Counsel
Sean Brennan, Deputy Legislative Counsel
Lisa Ehlers, Legal Assistant
John Adams, Law Clerk
Caitlynn Dahlquist, Student Work Study

GUESTS:

Prof. Carl Bjerre
David Nebel (on phone)

MEASURE/ISSUES HEARD:

Recommendations of Bills and Reports to 2012 Legislative
Assembly:
HB 4035

Speaker	Comments
Shetterly	Welcome. First on the agenda is approval of the meeting minutes for December 12, 2011. Motion?

Symeonides

I move we approve the meeting minutes.

Shetterly

Any discussion? None. Motion carried. Welcome to Commissioner Susan Gary for her first Commission meeting as a Commissioner. She has worked with us as a Work Group Member and we are pleased to have her join us.
Next we have the UCC Article 9 recommendations.
Wendy?

Johnson

The work group met twice and worked quickly to get it in the February session so we can meet the effective date.

Shetterly

That is why we want this adopted in the short session because we want to make sure we are uniform with other states when the effective date of July 1, 2013, comes.
Carl do you want to walk us through the changes?

Bjerre

Thank you Commission for paying attention to this bill.

This bill is the implementation of a uniform act proposed jointly by the sponsors of the Uniform Commercial Code; that is to say the Uniform Law Commission and American Law Institute. The bill makes amendments to the UCC Article 9, which is a massive statute that we revised in Oregon and nationwide most recently in 2001. In Oregon these updates are in ORS Chapter 79. Article 9 governs secured transactions or simply, the making of loans that are backed by personal property collateral. There have been some practical problems since the 2001 amendments to the nation-wide system so the UCC has come up with these new amendments. In order to keep in step with all of the other states, Oregon needs to adopt the changes by the effective date.

The appendix to our report is the 2010 amendments to Uniform Commercial Code Article 9 with the official comments. The comments are very well regarded as guidance to the intentions of the drafters.

There are four main points to the amendments. All of the four main issues have to do with the filing system. The key to the system is to be able to look up information and so the system is built around the name of the debtor.

Here are the four principle issues:

1. Public Interest of an Individual Debtor's Secured Loan: We took the safe harbor approach instead of the exclusive rule because we want to avoid overly technical requirements for filling out this one page form. The safe harbor approach means that filers can use the individual name, first and surname or driver's license name to meet the name requirement.

Shetterly

This was a unanimous decision with the Work Group.

Johnson

Brenda Bradley of Legal Aid was also a part of the work group and was forgotten on the Work Group list. She will be added.

Bjerre

2. Public Notice of an Organizational Debtor's Secured Loan: The name that is on the public organic record (certificate of corporation, LLC, etc.) must be used for the entity. The Secretary of State's office is working on getting these forms online.

3. Reliability of Collateral When Debtor's Location Changes: There will be a four month grace period that will extend to cover the fluid collateral (i.e. inventory property) when the entity moves.

4. Reliability of Collateral Following Merger: There will be a four month grace period that will extend to cover the fluid collateral (i.e. inventory property) when the entity merges with another entity.

Section IV (e) effective date is July 1, 2013. The idea of a uniform code is for transactions to cross borders without a lot of worry about differences in state laws, so all states are working hard to make the effective date and that is why we are asking for action during this session.

Shetterly

Are there any questions about the bill or the report?

Brewer

Thank you for the report.

Shetterly

No questions. Motion?

Symeonides

I move that LC 106 (HB 4035) be presented to the 2012 Legislative Assembly, with the recommendation of the Oregon Law Commission. I also move that the Oregon Law

Commission adopt the “Keeping Secured Transactions Law Effective” Explanatory Report, prepared by Prof. Carl Bjerre, dated January 25, 2012, to accompany LC 106 (HB 4035). The report will be amended to include Brenda Bradley as a Work Group participant.

Shetterly

Discussion or objections on the motion?

Johnson

I wanted to say thank you to Sean Brennan and Legislative Counsel.

Shetterly

No discussion or objections. Motion carried.

Thank you Carl, Dexter and Sean for drafting this.

Hearing next Wednesday tentatively before Rep. Garrett’s House Business and Labor Committee.

Any other business?

Recommendations for new work group chair and members are in the works.

Motion made to adjourn. Motion carried. Meeting adjourned.

Submitted By,

Reviewed By,

Lisa Ehlers
Legal Assistant

Wendy Johnson
Deputy Director and General Counsel

EXHIBIT SUMMARY

**Minutes for December 12, 2011 meeting
LC 106 & Accompanying Legislative Report**