



1997 SENATE BILL 308

September 30, 1997 – Introduced by Senators HUELSMAN and GEORGE, cosponsored by Representatives GREEN and CULLEN. Referred to Committee on Labor, Transportation and Financial Institutions.

1 **AN ACT** *to repeal* 112.06; *to renumber* 409.105 (3) (a); *to amend* 71.02 (2) (e),
2 112.07 (1), 199.12 (4) (d), 401.105 (2) (d), 401.206 (2), 405.114 (2) (intro.),
3 409.105 (1) (h), 409.105 (1) (i), 409.106, 409.203 (1) (intro.), 409.203 (1) (a),
4 409.301 (1) (d), 409.302 (1) (b), 409.302 (1) (f), 409.302 (1) (g), 409.303 (1),
5 409.304 (1), 409.304 (4), 409.304 (5) (intro.), 409.304 (5) (b), 409.305, 409.306
6 (1), 409.309, 409.312 (1), 409.312 (7), 551.33 (6) and 766.01 (9) (c); *to repeal*
7 *and recreate* chapter 408, 409.103 (6), 409.302 (1) (h) and 409.306 (3); and *to*
8 *create* 409.105 (2) (an), 409.105 (2) (ap), 409.105 (2) (aq), 409.105 (2) (cb),
9 409.105 (2) (gm), 409.105 (3) (ac), 409.105 (3) (ag), 409.105 (3) (as), 409.105 (3)
10 (bh), 409.105 (3) (bp), 409.105 (3) (bt), 409.105 (3) (f), 409.105 (3) (g), 409.105
11 (3) (h), 409.105 (3) (i), 409.105 (3) (j), 409.115, 409.116 and 409.302 (1) (i) of the

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1 statutes; **relating to:** revising the investment securities chapter of the uniform
2 commercial code.

Analysis by the Legislative Reference Bureau

This bill repeals and recreates the chapter in Wisconsin’s uniform commercial code (UCC) that governs investment securities, often referred to as “Article 8”. The bill repeals and recreates Wisconsin’s Article 8 in order to conform it to the revised Article 8 of the UCC, which was prepared under the joint sponsorship of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). This revised Article 8 was approved and promulgated by those organizations in 1994. In addition, the bill makes certain conforming and miscellaneous changes to other parts of the UCC, which were promulgated by NCCUSL and ALI along with the revised Article 8.

Background

Article 8 governs how changes in ownership of securities are effected. The original version of Article 8, drafted in the 1940s and 1950s, was based on the assumption that possession and delivery of physical certificates are the key elements in a securities holding system. Ownership of securities was traditionally evidenced by possession of the certificates, and changes were accomplished by delivery of the certificates. Article 8 refers to this type of security as a “certificated security”. In 1978, NCCUSL and ALI amended Article 8 of the UCC to reflect calls for the elimination of physical certificates and development of a modern electronic system for recording ownership of securities and transfers of ownership. These amendments contained rules governing the transfer of “uncertificated securities” or securities which are not represented by an physical instrument. Instead, the transfers of uncertificated securities are registered upon books maintained for that purpose by or on behalf of the issuer. Both the transfer of certificated securities and the registration of transfers of uncertificated securities on the books of the issuers have been described as “direct securities holding systems”, because the owner of a security has a direct relationship with the issuer of the security.

Currently, the vast majority of securities transactions that take place in the U.S. securities markets are effected through what has been described as an “indirect securities holding system”, in which both the securities issuer and the beneficial owner have relationships with securities intermediaries, but do not have a direct relationship with each other. Currently, a majority of securities issued by U.S. publicly traded corporations are held by a single securities intermediary, the Depository Trust Corporation (DTC), at which broker-dealers and banks have accounts. Rather than transferring physical securities, transfers are effected by adjusting the participants’ accounts with DTC, which acts as a clearing corporation. Because any 2 major broker-dealers may have executed, with each other, numerous trades in a given security for different clients over the course of a trading day, these trades are netted and only the net changes in the positions of each depository participant are made each day.

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Under current law, almost all of the provisions in Article 8 are based on a direct securities holding system and are keyed to the concepts of the transfer of physical certificates or registration of transfers of uncertificated securities on the books of the issuer. As a result of the way in which securities are held in an indirect securities holding system, these provisions currently govern only the relationship between the issuer and the direct holder of the securities, typically a clearing corporation. It does not govern the majority of securities trades, which are not effected by delivery of physical certificates or registration of entries on the books of the issuer, but rather by the registration of entries on the books of a securities intermediary. The revised Article 8 in this bill largely retains the existing provisions of Article 8 that govern persons who hold securities directly (typically, a clearing corporation) and adds new provisions which govern the rights of persons who hold securities indirectly through an intermediary.

Scope of revised Article 8

Under current law, Article 8 governs the transfer of “securities”, which is defined to include both certificated and uncertificated securities. Under the bill, while the direct-holding-system rules of Article 8 continue to apply only to securities, the new indirect-holding-system rules of the bill’s revised Article 8 apply to the broader category of “financial assets”. Under the bill, the term “financial asset” includes not only “securities”, but also obligations, shares or other interests in a person or in property or an enterprise of a person, which are, or are of a type, which is dealt in or traded on financial markets, or which are recognized as media for investment. “Financial assets” also include property that is held by a securities intermediary for another person in a securities account, if there is an express agreement between the parties that the property is to be treated as a financial asset under Article 8.

Securities entitlements

Under the bill, persons who hold financial assets indirectly through a securities account with a securities intermediary hold a “security entitlement” to the financial asset. The rules regarding securities entitlements created by the bill apply not only to a broker-dealer who maintains a securities account for an investor, but also to a clearing corporation that maintains accounts for broker-dealers or other participants and to a bank who maintains custodial securities accounts for its customers.

Under the revised Article 8, a security entitlement is, itself, a form of property interest, not merely a claim against the securities intermediary. With certain exceptions, a person acquires a security entitlement if a securities intermediary does any of the following: 1) indicates by book entry that a financial asset has been credited to the person’s securities account; 2) receives a financial asset from the person, or acquires a financial asset for a person, and accepts it for credit to the person’s securities account; or 3) becomes obligated under other law, rule or regulation to credit a financial asset to a person’s account. Current Article 8 provides some protections for “protected purchases” to take a security free from adverse claims, if the person purchases and holds a security directly for value and without

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notice of any adverse claims against the security. The revised Article 8 adds similar protections for persons who do not hold securities directly. Under the bill, an adverse claim may not be asserted against a person who acquires a securities entitlement for value and without notice of the adverse claim.

Securities intermediaries

The bill imposes a number of duties on persons who act as securities intermediaries. Many of these duties, such as the duty to obtain payments or distributions, the duty to exercise rights or the duty to comply with entitlement orders, are satisfied if the securities intermediary acts with respect to the duty in the manner required by an agreement with the entitlement holder, or, in the absence of an agreement, if the securities intermediary exercises due care in accordance with reasonable commercial standards. Many of these duties are also subject to the rights of the securities intermediary arising out of a security interest in the financial assets and to the rights of the securities intermediary granted under law, regulation, rule or agreement due to the failure of the account holder to fulfill obligations to the securities intermediary.

The duties of securities intermediaries created under the bill include the following:

1. The securities intermediary must maintain a sufficient quantity of financial assets to satisfy the claims of all of its entitlement holders. These financial assets may be maintained directly or through one or more other securities intermediaries.

2. The securities intermediary may not grant a security interest in a financial asset that it is required to maintain in order to satisfy the claims of an entitlement holder, unless the entitlement holder has agreed otherwise. The bill also provides that, to the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held for the entitlement holders. These interests are not property of the securities intermediary and are not subject to the claims of the creditors of the securities intermediary.

3. In the absence of a agreement to act otherwise, the securities intermediary must exercise due care in accordance with reasonable commercial standards to maintain financial assets held for entitlement holders.

4. The securities intermediary is required to take action to obtain a payment of distribution made by the issuer of a financial asset. The securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of the financial asset, if the payment or distribution is received by the securities intermediary.

5. The securities intermediary is also required to exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

6. The securities intermediary is required to comply with entitlement orders, if the entitlement order is originated by the appropriate person, if the securities intermediary has reasonable opportunity to assure itself that the entitlement order is genuine and authorized and if the intermediary has had reasonable opportunity to comply with the entitlement order. An “entitlement order” is a notification communicated to a securities intermediary directing transfer or redemption of a

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financial asset to which the entitlement holder has a security entitlement. If the securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary is required to reestablish a security entitlement in favor of the person entitled to it and pay or credit, to the entitlement holder's account, any payments or distributions that the person did not receive as a result of the wrongful transfer. If this is not done, the securities intermediary is liable to the entitlement holder for damages.

Security interests in securities

The bill also amends Article 9 of Wisconsin's UCC, which governs secured transactions. In addition to making conforming changes to adapt the existing rules to the new concept of a security entitlement, the bill makes some substantive changes to the way in which security interests in financial assets are created and perfected. The bill continues the long-established principle that a security interest in a certificated security can be perfected by a possessory pledge; however, revised Article 9 does not require that all security interests in investment securities be implemented by procedures based on the concept of the common law pledge. Under the revised Article 9 rules, a security interest in securities can be created in the same fashion as a security interest in any other form of property, that is, by agreement between the debtor and secured party. There is no requirement of a "transfer", "delivery", or any similar action for the creation of an effective security interest.

Under revised Article 9, a security interest may be perfected by "control". In general, obtaining control means taking the steps necessary to place the secured party in a position where the secured party can have the collateral sold off without the further cooperation of the debtor. Thus, for certificated securities, a lender obtains control by taking possession of the certificate with any necessary endorsement. For securities held through a securities intermediary, a lender can obtain control in 2 ways. First, the lender obtains control if it becomes the entitlement holder; that is, has the securities positions transferred to an account in its own name. Second, the lender obtains control if the securities intermediary agrees to act on instructions from the secured party to dispose of the positions, even though the debtor remains the entitlement holder. Such an arrangement suffices to give the lender control even though the debtor retains the right to trade and exercise other ordinary rights of an entitlement holder. Except where the debtor is itself a securities firm, filing of an ordinary Article 9 financing statement is also a permissible alternative method of perfection. However, this filing does not assure the lender the same protections as for other forms of collateral, since the priority rules under revised Article 9 provide that a secured party who obtains control has priority over a secured party who does not obtain control.

The bill also provides for certain security interests in financial assets to be created as a result of the purchase or delivery of a financial asset. If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase and if the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays for the financial asset, then the securities intermediary has a security interest in the buyer's securities entitlement

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to secure the buyer's obligation to pay. The perfected security interest arises by operation of law; no security agreement is necessary and no steps need be taken in order to perfect the security interest. A similar provision creates a security interest in a certificated financial asset to secure the buyer's obligation to pay for the certificated financial asset. This provision covers situations where the certificated financial asset is delivered pursuant to an agreement between persons in the business of dealing with such financial assets and the agreement class for "delivery versus payment".

Other changes

The bill significantly changes the few provisions in current Article 8 that deal with clearing corporations. The bill repeals provisions of current Article 8 that address the issue of who may act as a clearing corporation or as a custodian bank, as well as the provisions which deal with how a clearing corporation should conduct its operations. These issues are largely addressed under federal securities laws.

The bill simplifies the provisions in current Article 8 governing uncertificated securities. For example, under current Article 8, an issuer who issues uncertificated securities is required to send paper transaction statements when the issuer registers a transfer of the uncertificated securities on its books. These requirements exist under current Article 8 even though no such requirements apply to transfers made by securities intermediaries. This bill repeals the transaction statement requirements for issuers of uncertificated securities.

The bill repeals Wisconsin's uniform act for the simplification of fiduciary securities transfers. In general terms, this act assumed that an issuer would be liable to an adverse claimant if the issuer had notice of an adverse claim. Under the act, a corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. Since, under revised Article 8, notice of an adverse claim does not impose duties on an issuer of securities, the bill repeals the simplification of fiduciary security transfers act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 71.02 (2) (e) of the statutes is amended to read:
- 2 71.02 (2) (e) Retention of professional services of brokers, as defined in s.
- 3 408.303 408.102 (1) (c), and of attorneys and accountants located in this state.
- 4 **SECTION 2.** 112.06 of the statutes is repealed.

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1 **SECTION 3.** 112.07 (1) of the statutes is amended to read:

2 112.07 (1) Notwithstanding any other provision of the statutes, any fiduciary,
3 as defined in s. 112.01 (1) (b), who is holding securities in a fiduciary capacity, any
4 bank or trust company holding securities as a custodian or managing agent, and any
5 bank or trust company holding securities as custodian for a fiduciary may deposit or
6 arrange for the deposit of such securities in a clearing corporation as defined in s.
7 408.102 (1) ~~(e)~~ (e). When the securities are so deposited, certificates representing
8 securities of the same class of the same issuer may be merged and held in bulk in the
9 name of the nominee of the clearing corporation with any other such securities
10 deposited in that clearing corporation by any person regardless of the ownership of
11 the securities, and certificates of small denomination may be merged into one or more
12 certificates of larger denomination. The records of the fiduciary and the records of
13 the bank or trust company acting as custodian, as managing agent or as custodian
14 for a fiduciary shall at all times show the name of the party for whose account the
15 securities are so deposited. Ownership of, and other interests in, the securities may
16 be transferred by bookkeeping entry on the books of the clearing corporation without
17 physical delivery of certificates representing the securities. A bank or trust company
18 which deposits securities pursuant to this section shall be subject to such rules and
19 regulations as, in the case of state chartered institutions, the division of banking and,
20 in the case of national banking associations, the comptroller of the currency may
21 from time to time issue. A bank or trust company acting as custodian for a fiduciary
22 shall, on demand by the fiduciary, certify in writing to the fiduciary the securities
23 deposited by the bank or trust company in a clearing corporation pursuant to this
24 section for the account of the fiduciary. A fiduciary shall, on demand by any party
25 to a judicial proceeding for the settlement of the fiduciary's account or on demand by

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1 the attorney for such a party, certify in writing to the party the securities deposited
2 by the fiduciary in the clearing corporation for its account as such fiduciary.

3 **SECTION 4.** 199.12 (4) (d) of the statutes is amended to read:

4 199.12 (4) (d) The name of any corporation in which the candidate holds a
5 security, ~~as defined under s. 112.06 (1) (f)~~, the current market value of which is \$3,000
6 or more and the dollar value of such security. In this paragraph, "security" includes
7 any share of stock, bond, debenture, note or other security issued by a corporation
8 which is registered as to ownership on the books of the corporation.

9 **SECTION 5.** 401.105 (2) (d) of the statutes is amended to read:

10 401.105 (2) (d) Section ~~408.106~~ 408.110 on applicability of ch. 408.

11 **SECTION 6.** 401.206 (2) of the statutes is amended to read:

12 401.206 (2) Subsection (1) does not apply to contracts for the sale of goods (s.
13 402.201) nor of securities (s. ~~408.319~~ 408.113) nor to security agreements (s.
14 409.203).

15 **SECTION 7.** 405.114 (2) (intro.) of the statutes is amended to read:

16 405.114 (2) (intro.) Unless otherwise agreed when documents appear on their
17 face to comply with the terms of a credit but a required document does not in fact
18 conform to the warranties made on negotiation or transfer of a document of title (s.
19 407.507) or of a certificated security (s. ~~408.306~~ 408.108) or is forged or fraudulent
20 or there is fraud in the transaction:

21 **SECTION 8.** Chapter 408 of the statutes is repealed and recreated to read:

22 **CHAPTER 408**

23 **UNIFORM COMMERCIAL CODE —**

24 **INVESTMENT SECURITIES**

25 **SUBCHAPTER I**

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1 GENERAL MATTERS

2 **408.101 Short title.** This chapter may be cited as uniform commercial code
3 — investment securities.

4 **408.102 Definitions. (1)** In this chapter:

5 (a) “Adverse claim” means a claim that a claimant has a property interest in
6 a financial asset and that it is a violation of the rights of the claimant for another
7 person to hold, transfer or deal with the financial asset.

8 (b) “Bearer form”, as applied to a certificated security, means a form in which
9 the security is payable to the bearer of the security certificate according to its terms
10 but not by reason of an endorsement.

11 (c) “Broker” means a person defined as a broker or dealer under the federal
12 securities laws, but without excluding a bank acting in that capacity.

13 (d) “Certificated security” means a security that is represented by a certificate.

14 (e) “Clearing corporation” means:

15 1. A person that is registered as a “clearing agency” under the federal securities
16 laws;

17 2. A federal reserve bank; or

18 3. Any other person that provides clearance or settlement services with respect
19 to financial assets that would require it to register as a clearing agency under the
20 federal securities laws but for an exclusion or exemption from the registration
21 requirement, if its activities as a clearing corporation, including promulgation of
22 rules, are subject to regulation by a federal or state governmental authority.

23 (f) “Communicate” means to:

24 1. Send a signed writing; or

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1 2. Transmit information by any mechanism agreed upon by the persons
2 transmitting and receiving the information.

3 (fm) "Endorsement" means a signature that alone or accompanied by other
4 words is made on a security certificate in registered form or on a separate document
5 for the purpose of assigning, transferring or redeeming the security or granting a
6 power to assign, transfer or redeem it.

7 (g) "Entitlement holder" means a person identified in the records of a securities
8 intermediary as the person having a security entitlement against the securities
9 intermediary. If a person acquires a security entitlement by virtue of s. 408.501 (2)
10 (b) or (c), that person is the entitlement holder.

11 (h) "Entitlement order" means a notification communicated to a securities
12 intermediary directing transfer or redemption of a financial asset to which the
13 entitlement holder has a security entitlement.

14 (i) 1. "Financial asset", except as otherwise provided in s. 408.103, means:

15 a. A security;

16 b. An obligation of a person or a share, participation, or other interest in a
17 person or in property or an enterprise of a person, which is, or is of a type, dealt in
18 or traded on financial markets, or which is recognized in any area in which it is issued
19 or dealt in as a medium for investment; or

20 c. Any property that is held by a securities intermediary for another person in
21 a securities account if the securities intermediary has expressly agreed with the
22 other person that the property is to be treated as a financial asset under this chapter.

23 2. As context requires, "financial asset" means either the interest itself or the
24 means by which a person's claim to it is evidenced, including a certificated or
25 uncertificated security, a security certificate or a security entitlement.

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1 (j) "Good faith", for purposes of the obligation of good faith in the performance
2 or enforcement of contracts or duties within this chapter, means honesty in fact and
3 the observance of reasonable commercial standards of fair dealing.

4 (L) "Instruction" means a notification communicated to the issuer of an
5 uncertificated security which directs that the transfer of the security be registered
6 or that the security be redeemed.

7 (m) "Registered form", as applied to a certificated security, means a form in
8 which:

- 9 1. The security certificate specifies a person entitled to the security; and
- 10 2. A transfer of the security may be registered upon books maintained for that
11 purpose by or on behalf of the issuer, or the security certificate so states.

12 (n) "Securities intermediary" means:

- 13 1. A clearing corporation; or
- 14 2. A person, including a bank or broker, that in the ordinary course of its
15 business maintains securities accounts for others and is acting in that capacity.

16 (o) "Security", except as otherwise provided in s. 408.103, means an obligation
17 of an issuer or a share, participation or other interest in an issuer or in property or
18 an enterprise of an issuer:

19 1. Which is represented by a security certificate in bearer or registered form,
20 or the transfer of which may be registered upon books maintained for that purpose
21 by or on behalf of the issuer;

22 2. Which is one of a class or series or by its terms is divisible into a class or series
23 of shares, participations, interests or obligations; and

24 3. Which:

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1 a. Is, or is of a type, dealt in or traded on securities exchanges or securities
2 markets; or

3 b. Is a medium for investment and by its terms expressly provides that it is a
4 security governed by this chapter.

5 (p) “Security certificate” means a certificate representing a security.

6 (q) “Security entitlement” means the rights and property interest of an
7 entitlement holder with respect to a financial asset specified in subch. V.

8 (r) “Uncertificated security” means a security that is not represented by a
9 certificate.

10 **(2)** Other definitions applying to this chapter and the sections in which they
11 appear are:

12 (a) “Appropriate person” — s. 408.107 (1).

13 (b) “Control” — s. 408.106.

14 (c) “Delivery” — s. 408.301.

15 (d) “Investment company security” — s. 408.103 (2).

16 (e) “Issuer” — s. 408.201.

17 (f) “Overissue” — s. 408.210 (1).

18 (g) “Protected purchaser” — s. 408.303 (1).

19 (h) “Securities account” — s. 408.501 (1).

20 **(3)** In addition, ch. 401 contains general definitions and principles of
21 construction and interpretation applicable throughout this chapter.

22 **(4)** The characterization of a person, business or transaction for purposes of
23 this chapter does not determine the characterization of the person, business or
24 transaction for purposes of any other law, regulation or rule.

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1 **408.103 Rules for determining whether certain obligations and**
2 **interests are securities or financial assets. (1)** A share or similar equity
3 interest issued by a corporation, business trust, joint stock company or similar entity
4 is a security.

5 **(2)** An “investment company security” is a security. In this chapter,
6 “investment company security” means a share or similar equity interest issued by
7 an entity that is registered as an investment company under the federal investment
8 company laws, an interest in a unit investment trust that is so registered, or a
9 face-amount certificate issued by a face-amount certificate company that is so
10 registered. “Investment company security” does not include an insurance policy or
11 endowment policy or annuity contract issued by an insurance company.

12 **(3)** An interest in a partnership or limited liability company is not a security
13 unless it is dealt in or traded on securities exchanges or in securities markets, its
14 terms expressly provide that it is a security governed by this chapter or it is an
15 investment company security. However, an interest in a partnership or limited
16 liability company is a financial asset if it is held in a securities account.

17 **(4)** A writing that is a security certificate is governed by this chapter and not
18 by ch. 403, even though it also meets the requirements of that chapter. However, a
19 negotiable instrument governed by ch. 403 is a financial asset if it is held in a
20 securities account.

21 **(5)** An option or similar obligation issued by a clearing corporation to its
22 participants is not a security, but is a financial asset.

23 **(6)** A commodity contract, as defined in s. 409.115 (1) (b), is not a security or
24 a financial asset.

SENATE BILL 308**SECTION 8****408.104 Acquisition of security or financial asset or interest therein.**

(1) A person acquires a security or an interest therein, under this chapter, if:

(a) The person is a purchaser to whom a security is delivered pursuant to s. 408.301; or

(b) The person acquires a security entitlement to the security pursuant to s. 408.501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in subch. V, but is a purchaser of any security, security entitlement or other financial asset held by the securities intermediary only to the extent provided in s. 408.503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule or agreement to transfer, deliver, present, surrender, exchange or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to sub. (1) or (2).

408.105 Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

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1 (c) The person has a duty, imposed by statute or regulation, to investigate
2 whether an adverse claim exists, and the investigation so required would establish
3 the existence of the adverse claim.

4 (2) Having knowledge that a financial asset or interest therein is or has been
5 transferred by a representative imposes no duty of inquiry into the rightfulness of
6 a transaction and is not notice of an adverse claim. However, a person who knows
7 that a representative has transferred a financial asset or interest therein in a
8 transaction that is, or whose proceeds are being used, for the individual benefit of the
9 representative or otherwise in breach of duty has notice of an adverse claim.

10 (3) An act or event that creates a right to immediate performance of the
11 principal obligation represented by a security certificate or sets a date on or after
12 which the certificate is to be presented or surrendered for redemption or exchange
13 does not itself constitute notice of an adverse claim except in the case of a transfer
14 more than:

15 (a) One year after a date set for presentment or surrender for redemption or
16 exchange; or

17 (b) Six months after a date set for payment of money against presentation or
18 surrender of the certificate, if money was available for payment on that date.

19 (4) A purchaser of a certificated security has notice of an adverse claim if the
20 security certificate:

21 (a) Whether in bearer or registered form, has been endorsed "for collection" or
22 "for surrender" or for some other purpose not involving transfer; or

23 (b) Is in bearer form and has on it an unambiguous statement that it is the
24 property of a person other than the transferor, but the mere writing of a name on the
25 certificate is not such a statement.

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1 **(5)** Filing of a financing statement under ch. 409 is not notice of an adverse
2 claim to a financial asset.

3 **408.106 Control. (1)** A purchaser has “control” of a certificated security in
4 bearer form if the certificated security is delivered to the purchaser.

5 **(2)** A purchaser has “control” of a certificated security in registered form if the
6 certificated security is delivered to the purchaser and:

7 (a) The certificate is endorsed to the purchaser or in blank by an effective
8 endorsement; or

9 (b) The certificate is registered in the name of the purchaser, upon original
10 issue or registration of transfer by the issuer.

11 **(3)** A purchaser has “control” of an uncertificated security if:

12 (a) The uncertificated security is delivered to the purchaser; or

13 (b) The issuer has agreed that it will comply with instructions originated by the
14 purchaser without further consent by the registered owner.

15 **(4)** A purchaser has “control” of a security entitlement if:

16 (a) The purchaser becomes the entitlement holder; or

17 (b) The securities intermediary has agreed that it will comply with entitlement
18 orders originated by the purchaser without further consent by the entitlement
19 holder.

20 **(5)** If an interest in a security entitlement is granted by the entitlement holder
21 to the entitlement holder’s own securities intermediary, the securities intermediary
22 has control.

23 **(6)** A purchaser who has satisfied the requirements of sub. (3) (b) or (4) (b) has
24 control even if the registered owner in the case of sub. (3) (b) or the entitlement holder
25 in the case of sub. (4) (b) retains the right to make substitutions for the uncertificated

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1 security or security entitlement, to originate instructions or entitlement orders to the
2 issuer or securities intermediary or otherwise to deal with the uncertificated security
3 or security entitlement.

4 (7) An issuer or a securities intermediary may not enter into an agreement of
5 the kind described in sub. (3) (b) or (4) (b) without the consent of the registered owner
6 or entitlement holder, but an issuer or a securities intermediary is not required to
7 enter into such an agreement even though the registered owner or entitlement
8 holder so directs. An issuer or securities intermediary that has entered into such an
9 agreement is not required to confirm the existence of the agreement to another party
10 unless requested to do so by the registered owner or entitlement holder.

11 **408.107 Whether endorsement, instruction or entitlement order is**
12 **effective. (1)** In this chapter, “appropriate person” means:

13 (a) With respect to an endorsement, the person specified by a security
14 certificate or by an effective special endorsement to be entitled to the security;

15 (b) With respect to an instruction, the registered owner of an uncertificated
16 security;

17 (c) With respect to an entitlement order, the entitlement holder;

18 (d) If the person designated in par. (a), (b) or (c) is deceased, the designated
19 person’s successor taking under other law or the designated person’s personal
20 representative acting for the estate of the decedent; or

21 (e) If the person designated in par. (a), (b) or (c) lacks capacity, the designated
22 person’s guardian, conservator or other similar representative who has power under
23 other law to transfer the security or financial asset.

24 (2) An endorsement, instruction or entitlement order is effective if:

25 (a) It is made by the appropriate person;

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1 (b) It is made by a person who has power under the law of agency to transfer
2 the security or financial asset on behalf of the appropriate person, including, in the
3 case of an instruction or entitlement order, a person who has control under s. 408.106
4 (3) (b) or (4) (b); or

5 (c) The appropriate person has ratified it or is otherwise precluded from
6 asserting its ineffectiveness.

7 **(3)** An endorsement, instruction or entitlement order made by a representative
8 is effective even if:

9 (a) The representative has failed to comply with a controlling instrument or
10 with the law of the state having jurisdiction of the representative relationship,
11 including any law requiring the representative to obtain court approval of the
12 transaction; or

13 (b) The representative's action in making the endorsement, instruction or
14 entitlement order or using the proceeds of the transaction is otherwise a breach of
15 duty.

16 **(4)** If a security is registered in the name of or specially endorsed to a person
17 described as a representative, or if a securities account is maintained in the name
18 of a person described as a representative, an endorsement, instruction or entitlement
19 order made by the person is effective even though the person is no longer serving in
20 the described capacity.

21 **(5)** Effectiveness of an endorsement, instruction or entitlement order is
22 determined as of the date the endorsement, instruction or entitlement order is made,
23 and an endorsement, instruction or entitlement order does not become ineffective by
24 reason of any later change of circumstances.

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1 **408.108 Warranties in direct holding.** (1) A person who transfers a
2 certificated security to a purchaser for value warrants to the purchaser, and an
3 endorser, if the transfer is by endorsement, warrants to any subsequent purchaser,
4 that:

5 (a) The certificate is genuine and has not been materially altered;

6 (b) The transferor or endorser does not know of any fact that might impair the
7 validity of the security;

8 (c) There is no adverse claim to the security;

9 (d) The transfer does not violate any restriction on transfer;

10 (e) If the transfer is by endorsement, the endorsement is made by an
11 appropriate person, or if the endorsement is by an agent, the agent has actual
12 authority to act on behalf of the appropriate person; and

13 (f) The transfer is otherwise effective and rightful.

14 (2) A person who originates an instruction for registration of transfer of an
15 uncertificated security to a purchaser for value warrants to the purchaser that:

16 (a) The instruction is made by an appropriate person, or if the instruction is by
17 an agent, the agent has actual authority to act on behalf of the appropriate person;

18 (b) The security is valid;

19 (c) There is no adverse claim to the security; and

20 (d) At the time the instruction is presented to the issuer:

21 1. The purchaser will be entitled to the registration of transfer;

22 2. The transfer will be registered by the issuer free from all liens, security
23 interests, restrictions and claims other than those specified in the instruction;

24 3. The transfer will not violate any restriction on transfer; and

25 4. The requested transfer will otherwise be effective and rightful.

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1 **(3)** A person who transfers an uncertificated security to a purchaser for value
2 and does not originate an instruction in connection with the transfer warrants that:

- 3 (a) The uncertificated security is valid;
4 (b) There is no adverse claim to the security;
5 (c) The transfer does not violate any restriction on transfer; and
6 (d) The transfer is otherwise effective and rightful.

7 **(4)** A person who endorses a security certificate warrants to the issuer that:

- 8 (a) There is no adverse claim to the security; and
9 (b) The endorsement is effective.

10 **(5)** A person who originates an instruction for registration of transfer of an
11 uncertificated security warrants to the issuer that:

- 12 (a) The instruction is effective; and
13 (b) At the time the instruction is presented to the issuer the purchaser will be
14 entitled to the registration of transfer.

15 **(6)** A person who presents a certificated security for registration of transfer or
16 for payment or exchange warrants to the issuer that the person is entitled to the
17 registration, payment or exchange, but a purchaser for value and without notice of
18 adverse claims to whom transfer is registered warrants only that the person has no
19 knowledge of any unauthorized signature in a necessary endorsement.

20 **(7)** If a person acts as agent of another in delivering a certificated security to
21 a purchaser, the identity of the principal was known to the person to whom the
22 certificate was delivered, and the certificate delivered by the agent was received by
23 the agent from the principal or received by the agent from another person at the
24 direction of the principal, the person delivering the security certificate warrants only

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1 that the delivering person has authority to act for the principal and does not know
2 of any adverse claim to the certificated security.

3 (8) A secured party who redelivers a security certificate received, or after
4 payment and on order of the debtor delivers the security certificate to another
5 person, makes only the warranties of an agent under sub. (7).

6 (9) Except as otherwise provided in sub. (7), a broker acting for a customer
7 makes to the issuer and a purchaser the warranties provided in subs. (1) to (6). A
8 broker that delivers a security certificate to its customer, or causes its customer to
9 be registered as the owner of an uncertificated security, makes to the customer the
10 warranties provided in sub. (1) or (2), and has the rights and privileges of a purchaser
11 under this section. The warranties of and in favor of the broker acting as an agent
12 are in addition to applicable warranties given by and in favor of the customer.

13 **408.109 Warranties in indirect holding.** (1) A person who originates an
14 entitlement order to a securities intermediary warrants to the securities
15 intermediary that:

16 (a) The entitlement order is made by an appropriate person, or if the
17 entitlement order is by an agent, the agent has actual authority to act on behalf of
18 the appropriate person; and

19 (b) There is no adverse claim to the security entitlement.

20 (2) A person who delivers a security certificate to a securities intermediary for
21 credit to a securities account or originates an instruction with respect to an
22 uncertificated security directing that the uncertificated security be credited to a
23 securities account makes to the securities intermediary the warranties specified in
24 s. 408.108 (1) or (2).

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1 **(3)** If a securities intermediary delivers a security certificate to its entitlement
2 holder or causes its entitlement holder to be registered as the owner of an
3 uncertificated security, the securities intermediary makes to the entitlement holder
4 the warranties specified in s. 408.108 (1) or (2).

5 **408.110 Applicability; choice of law.** **(1)** The local law of the issuer's
6 jurisdiction, as specified in sub. (4), governs:

7 (a) The validity of a security;

8 (b) The rights and duties of the issuer with respect to registration of transfer;

9 (c) The effectiveness of registration of transfer by the issuer;

10 (d) Whether the issuer owes any duties to an adverse claimant to a security;

11 and

12 (e) Whether an adverse claim can be asserted against a person to whom
13 transfer of a certificated or uncertificated security is registered or a person who
14 obtains control of an uncertificated security.

15 **(2)** The local law of the securities intermediary's jurisdiction, as specified in
16 sub. (5), governs:

17 (a) Acquisition of a security entitlement from the securities intermediary;

18 (b) The rights and duties of the securities intermediary and entitlement holder
19 arising out of a security entitlement;

20 (c) Whether the securities intermediary owes any duties to an adverse claimant
21 to a security entitlement; and

22 (d) Whether an adverse claim can be asserted against a person who acquires
23 a security entitlement from the securities intermediary or a person who purchases
24 a security entitlement or interest therein from an entitlement holder.

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1 **(3)** The local law of the jurisdiction in which a security certificate is located at
2 the time of delivery governs whether an adverse claim can be asserted against a
3 person to whom the security certificate is delivered.

4 **(4)** In this section, “issuer’s jurisdiction” means the jurisdiction under which
5 the issuer of the security is organized or, if permitted by the law of that jurisdiction,
6 the law of another jurisdiction specified by the issuer. An issuer organized under the
7 law of this state may specify the law of another jurisdiction as the law governing the
8 matters specified in sub. (1) (b) to (e).

9 **(5)** The following rules determine a “securities intermediary’s jurisdiction” for
10 purposes of this section:

11 (a) If an agreement between the securities intermediary and its entitlement
12 holder specifies that it is governed by the law of a particular jurisdiction, that
13 jurisdiction is the securities intermediary’s jurisdiction.

14 (b) If an agreement between the securities intermediary and its entitlement
15 holder does not specify the governing law as provided in par. (a), but expressly
16 specifies that the securities account is maintained at an office in a particular
17 jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

18 (c) If an agreement between the securities intermediary and its entitlement
19 holder does not specify a jurisdiction as provided in par. (a) or (b), the securities
20 intermediary’s jurisdiction is the jurisdiction in which is located the office identified
21 in an account statement as the office serving the entitlement holder’s account.

22 (d) If an agreement between the securities intermediary and its entitlement
23 holder does not specify a jurisdiction as provided in par. (a) or (b) and an account
24 statement does not identify an office serving the entitlement holder’s account as

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1 provided in par. (c), the securities intermediary's jurisdiction is the jurisdiction in
2 which is located the chief executive office of the securities intermediary.

3 (6) A securities intermediary's jurisdiction is not determined by the physical
4 location of certificates representing financial assets, or by the jurisdiction in which
5 is organized the issuer of the financial asset with respect to which an entitlement
6 holder has a security entitlement, or by the location of facilities for data processing
7 or other record keeping concerning the account.

8 **408.111 Clearing corporation rules.** A rule adopted by a clearing
9 corporation governing rights and obligations among the clearing corporation and its
10 participants in the clearing corporation is effective even if the rule conflicts with chs.
11 401 to 411 and affects another party who does not consent to the rule.

12 **408.112 Creditor's legal process.** (1) The interest of a debtor in a
13 certificated security may be reached by a creditor only by actual seizure of the
14 security certificate by the officer making the attachment or levy, except as otherwise
15 provided in sub. (4). However, a certificated security for which the certificate has
16 been surrendered to the issuer may be reached by a creditor by legal process upon
17 the issuer.

18 (2) The interest of a debtor in an uncertificated security may be reached by a
19 creditor only by legal process upon the issuer at its chief executive office in the United
20 States, except as otherwise provided in sub. (4).

21 (3) The interest of a debtor in a security entitlement may be reached by a
22 creditor only by legal process upon the securities intermediary with whom the
23 debtor's securities account is maintained, except as otherwise provided in sub. (4).

24 (4) The interest of a debtor in a certificated security for which the certificate
25 is in the possession of a secured party, or in an uncertificated security registered in

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1 the name of a secured party, or a security entitlement maintained in the name of a
2 secured party, may be reached by a creditor by legal process upon the secured party.

3 (5) A creditor whose debtor is the owner of a certificated security, uncertificated
4 security or security entitlement is entitled to aid from a court of competent
5 jurisdiction, by injunction or otherwise, in reaching the certificated security,
6 uncertificated security or security entitlement or in satisfying the claim by means
7 allowed at law or in equity in regard to property that cannot readily be reached by
8 other legal process.

9 **408.113 Statute of frauds inapplicable.** A contract or modification of a
10 contract for the sale or purchase of a security is enforceable whether or not there is
11 a writing signed or record authenticated by a party against whom enforcement is
12 sought, even if the contract or modification is not capable of performance within one
13 year of its making.

14 **408.114 Evidentiary rules concerning certificated securities.** The
15 following rules apply in an action on a certificated security against the issuer:

16 (1) Unless specifically denied in the pleadings, each signature on a security
17 certificate or in a necessary endorsement is admitted.

18 (2) If the effectiveness of a signature is put in issue, the burden of establishing
19 effectiveness is on the party claiming under the signature, but the signature is
20 presumed to be genuine or authorized.

21 (3) If signatures on a security certificate are admitted or established,
22 production of the certificate entitles a holder to recover on it unless the defendant
23 establishes a defense or a defect going to the validity of the security.

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1 (4) If it is shown that a defense or defect exists, the plaintiff has the burden of
2 establishing that the plaintiff or some person under whom the plaintiff claims is a
3 person against whom the defense or defect cannot be asserted.

4 **408.115 Securities intermediary and others not liable to adverse**
5 **claimant.** A securities intermediary that has transferred a financial asset pursuant
6 to an effective entitlement order, or a broker or other agent or bailee that has dealt
7 with a financial asset at the direction of its customer or principal, is not liable to a
8 person having an adverse claim to the financial asset, unless the securities
9 intermediary, or broker or other agent or bailee:

10 (1) Took the action after it had been served with an injunction, restraining
11 order, or other legal process enjoining it from doing so, issued by a court of competent
12 jurisdiction, and had a reasonable opportunity to act on the injunction, restraining
13 order or other legal process; or

14 (2) Acted in collusion with the wrongdoer in violating the rights of the adverse
15 claimant; or

16 (3) In the case of a security certificate that has been stolen, acted with notice
17 of the adverse claim.

18 **408.116 Securities intermediary as purchaser for value.** A securities
19 intermediary that receives a financial asset and establishes a security entitlement
20 to the financial asset in favor of an entitlement holder is a purchaser for value of the
21 financial asset. A securities intermediary that acquires a security entitlement to a
22 financial asset from another securities intermediary acquires the security
23 entitlement for value if the securities intermediary acquiring the security
24 entitlement establishes a security entitlement to the financial asset in favor of an
25 entitlement holder.

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SUBCHAPTER II

ISSUE AND ISSUER

1
2
3 **408.201 Issuer. (1)** With respect to an obligation on or a defense to a security,
4 an “issuer” includes a person that:

5 (a) Places or authorizes the placing of its name on a security certificate, other
6 than as authenticating trustee, registrar, transfer agent or the like, to evidence a
7 share, participation or other interest in its property or in an enterprise, or to evidence
8 its duty to perform an obligation represented by the certificate;

9 (b) Creates a share, participation or other interest in its property or in an
10 enterprise, or undertakes an obligation, that is an uncertificated security;

11 (c) Directly or indirectly creates a fractional interest in its rights or property,
12 if the fractional interest is represented by a security certificate; or

13 (d) Becomes responsible for, or in place of, another person described as an issuer
14 in this section.

15 **(2)** With respect to an obligation on or defense to a security, a guarantor is an
16 issuer to the extent of its guaranty, whether or not its obligation is noted on a security
17 certificate.

18 **(3)** With respect to a registration of a transfer, “issuer” means a person on
19 whose behalf transfer books are maintained.

20 **408.202 Issuer’s responsibility and defenses; notice of defect or**
21 **defense. (1)** Even against a purchaser for value and without notice, the terms of
22 a certificated security include terms stated on the certificate and terms made part
23 of the security by reference on the certificate to another instrument, indenture or
24 document or to a constitution, statute, ordinance, rule, regulation, order or the like,
25 to the extent that the terms referred to do not conflict with terms stated on the

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1 certificate. A reference under this subsection does not of itself charge a purchaser
2 for value with notice of a defect going to the validity of the security, even if the
3 certificate expressly states that a person accepting it admits notice. The terms of an
4 uncertificated security include those stated in any instrument, indenture or
5 document or in a constitution, statute, ordinance, rule, regulation, order or the like,
6 pursuant to which the security is issued.

7 (2) The following rules apply if an issuer asserts that a security is not valid:

8 (a) A security other than one issued by a government or governmental
9 subdivision, agency or instrumentality, even though issued with a defect going to its
10 validity, is valid in the hands of a purchaser for value and without notice of the
11 particular defect unless the defect involves a violation of a constitutional provision.
12 In that case, the security is valid in the hands of a purchaser for value and without
13 notice of the defect, other than one who takes by original issue.

14 (b) Paragraph (a) applies to an issuer that is a government or governmental
15 subdivision, agency or instrumentality only if there has been substantial compliance
16 with the legal requirements governing the issue or the issuer has received a
17 substantial consideration for the issue as a whole or for the particular security and
18 a stated purpose of the issue is one for which the issuer has power to borrow money
19 or issue the security.

20 (3) Except as otherwise provided in s. 408.205, lack of genuineness of a
21 certificated security is a complete defense, even against a purchaser for value and
22 without notice.

23 (4) All other defenses of the issuer of a security, including nondelivery and
24 conditional delivery of a certificated security, are ineffective against a purchaser for

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1 value who has taken the certificated security without notice of the particular
2 defense.

3 (5) This section does not affect the right of a party to cancel a contract for a
4 security “when, as and if issued” or “when distributed” in the event of a material
5 change in the character of the security that is the subject of the contract or in the plan
6 or arrangement pursuant to which the security is to be issued or distributed.

7 (6) If a security is held by a securities intermediary against whom an
8 entitlement holder has a security entitlement with respect to the security, the issuer
9 may not assert any defense that the issuer could not assert if the entitlement holder
10 held the security directly.

11 **408.203 Staleness as notice of defect or defense.** After an act or event,
12 other than a call that has been revoked, creating a right to immediate performance
13 of the principal obligation represented by a certificated security or setting a date on
14 or after which the security is to be presented or surrendered for redemption or
15 exchange, a purchaser is charged with notice of any defect in its issue or defense of
16 the issuer, if the act or event:

17 (1) Requires the payment of money, the delivery of a certificated security, the
18 registration of transfer of an uncertificated security, or any of them on presentation
19 or surrender of the security certificate, the money or security is available on the date
20 set for payment or exchange, and the purchaser takes the security more than one
21 year after that date; or

22 (2) Is not covered by sub. (1) and the purchaser takes the security more than
23 2 years after the date set for surrender or presentation or the date on which
24 performance became due.

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1 **408.204 Effect of issuer's restriction on transfer.** A restriction on the
2 transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective
3 against a person without knowledge of the restriction unless:

4 (1) The security is certificated and the restriction is noted conspicuously on the
5 security certificate; or

6 (2) The security is uncertificated and the registered owner has been notified
7 of the restriction.

8 **408.205 Effect of unauthorized signature on security certificate.** An
9 unauthorized signature placed on a security certificate before or in the course of issue
10 is ineffective, but the signature is effective in favor of a purchaser for value of the
11 certificated security if the purchaser is without notice of the lack of authority and the
12 signing has been done by:

13 (1) An authenticating trustee, registrar, transfer agent or other person
14 entrusted by the issuer with the signing of the security certificate or of similar
15 security certificates, or the immediate preparation for signing of any of them; or

16 (2) An employe of the issuer, or of any of the persons listed in sub. (1), entrusted
17 with responsible handling of the security certificate.

18 **408.206 Completion or alteration of security certificate.** (1) If a security
19 certificate contains the signatures necessary to its issue or transfer but is incomplete
20 in any other respect:

21 (a) Any person may complete it by filling in the blanks as authorized; and

22 (b) Even if the blanks are incorrectly filled in, the security certificate as
23 completed is enforceable by a purchaser who took it for value and without notice of
24 the incorrectness.

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1 (2) A complete security certificate that has been improperly altered, even if
2 fraudulently, remains enforceable, but only according to its original terms.

3 **408.207 Rights and duties of issuer with respect to registered owners.**

4 (1) Before due presentment for registration of transfer of a certificated security in
5 registered form or of an instruction requesting registration of transfer of an
6 uncertificated security, the issuer or indenture trustee may treat the registered
7 owner as the person exclusively entitled to vote, receive notifications, and otherwise
8 exercise all the rights and powers of an owner.

9 (2) This chapter does not affect the liability of the registered owner of a security
10 for a call, assessment or the like.

11 **408.208 Effect of signature of authenticating trustee, registrar or**

12 **transfer agent.** (1) A person signing a security certificate as authenticating
13 trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the
14 certificated security, if the purchaser is without notice of a particular defect, that:

15 (a) The certificate is genuine;

16 (b) The person's own participation in the issue of the security is within the
17 person's capacity and within the scope of the authority received by the person from
18 the issuer; and

19 (c) The person has reasonable grounds to believe that the certificated security
20 is in the form and within the amount that the issuer is authorized to issue.

21 (2) Unless otherwise agreed, a person signing under sub. (1) does not assume
22 responsibility for the validity of the security in other respects.

23 **408.209 Issuer's lien.** A lien in favor of an issuer upon a certificated security
24 is valid against a purchaser only if the right of the issuer to the lien is noted
25 conspicuously on the security certificate.

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1 **408.210 Overissue.** (1) In this chapter, "overissue" means the issue of
2 securities in excess of the amount that the issuer has corporate power to issue, but
3 an overissue does not occur if appropriate action has cured the overissue.

4 (2) Except as otherwise provided in subs. (3) and (4), the provisions of this
5 chapter which validate a security or compel its issue or reissue do not apply to the
6 extent that validation, issue or reissue would result in overissue.

7 (3) If an identical security not constituting an overissue is reasonably available
8 for purchase, a person entitled to issue or validation may compel the issuer to
9 purchase the security and deliver it if certificated or register its transfer if
10 uncertificated, against surrender of any security certificate the person holds.

11 (4) If a security is not reasonably available for purchase, a person entitled to
12 issue or validation may recover from the issuer the price that the person or the last
13 purchaser for value paid for it with interest from the date of the person's demand.

14 SUBCHAPTER III

15 TRANSFER OF CERTIFICATED AND

16 UNCERTIFICATED SECURITIES

17 **408.301 Delivery.** (1) Delivery of a certificated security to a purchaser occurs
18 when:

19 (a) The purchaser acquires possession of the security certificate;

20 (b) Another person, other than a securities intermediary, either acquires
21 possession of the security certificate on behalf of the purchaser or, having previously
22 acquired possession of the certificate, acknowledges that it holds for the purchaser;

23 or

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1 (c) A securities intermediary acting on behalf of the purchaser acquires
2 possession of the security certificate, only if the certificate is in registered form and
3 has been specially endorsed to the purchaser by an effective endorsement.

4 (2) Delivery of an uncertificated security to a purchaser occurs when:

5 (a) The issuer registers the purchaser as the registered owner, upon original
6 issue or registration of transfer; or

7 (b) Another person, other than a securities intermediary, either becomes the
8 registered owner of the uncertificated security on behalf of the purchaser or, having
9 previously become the registered owner, acknowledges that it holds for the
10 purchaser.

11 **408.302 Rights of purchaser.** (1) Except as otherwise provided in subs. (2)
12 and (3), upon delivery of a certificated or uncertificated security to a purchaser, the
13 purchaser acquires all rights in the security that the transferor had or had power to
14 transfer.

15 (2) A purchaser of a limited interest acquires rights only to the extent of the
16 interest purchased.

17 (3) A purchaser of a certificated security who as a previous holder had notice
18 of an adverse claim does not improve its position by taking from a protected
19 purchaser.

20 **408.303 Protected purchaser.** (1) In this chapter, "protected purchaser"
21 means a purchaser of a certificated or uncertificated security, or of an interest
22 therein, who:

23 (a) Gives value;

24 (b) Does not have notice of any adverse claim to the security; and

25 (c) Obtains control of the certificated or uncertificated security.

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1 (2) In addition to acquiring the rights of a purchaser, a protected purchaser also
2 acquires its interest in the security free of any adverse claim.

3 **408.304 Endorsement.** (1) An endorsement may be in blank or special. An
4 endorsement in blank includes an endorsement to bearer. A special endorsement
5 specifies to whom a security is to be transferred or who has power to transfer it. A
6 holder may convert a blank endorsement to a special endorsement.

7 (2) An endorsement purporting to be only an endorsement of part of a security
8 certificate representing units intended by the issuer to be separately transferable is
9 effective to the extent of the endorsement.

10 (3) An endorsement, whether special or in blank, does not constitute a transfer
11 until delivery of the certificate on which it appears or, if the endorsement is on a
12 separate document, until delivery of both the document and the certificate.

13 (4) If a security certificate in registered form has been delivered to a purchaser
14 without a necessary endorsement, the purchaser may become a protected purchaser
15 only when the endorsement is supplied. However, against a transferor, a transfer is
16 complete upon delivery and the purchaser has a specifically enforceable right to have
17 any necessary endorsement supplied.

18 (5) An endorsement of a security certificate in bearer form may give notice of
19 an adverse claim to the certificate, but it does not otherwise affect a right to
20 registration that the holder possesses.

21 (6) Unless otherwise agreed, a person making an endorsement assumes only
22 the obligations provided in s. 408.108 and not an obligation that the security will be
23 honored by the issuer.

24 **408.305 Instruction.** (1) If an instruction has been originated by an
25 appropriate person but is incomplete in any other respect, any person may complete

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1 it as authorized and the issuer may rely on it as completed, even though it has been
2 completed incorrectly.

3 (2) Unless otherwise agreed, a person initiating an instruction assumes only
4 the obligations imposed by s. 408.108 and not an obligation that the security will be
5 honored by the issuer.

6 **408.306 Effect of guaranteeing signature, endorsement or instruction.**

7 (1) A person who guarantees a signature of an endorser of a security certificate
8 warrants that at the time of signing:

9 (a) The signature was genuine;

10 (b) The signer was an appropriate person to endorse, or, if the signature is by
11 an agent, the agent had actual authority to act on behalf of the appropriate person;
12 and

13 (c) The signer had legal capacity to sign.

14 (2) A person who guarantees a signature of the originator of an instruction
15 warrants that at the time of signing:

16 (a) The signature was genuine;

17 (b) The signer was an appropriate person to originate the instruction, or, if the
18 signature is by an agent, the agent had actual authority to act on behalf of the
19 appropriate person, if the person specified in the instruction as the registered owner
20 was, in fact, the registered owner, as to which fact the signature guarantor does not
21 make a warranty; and

22 (c) The signer had legal capacity to sign.

23 (3) A person who specially guarantees the signature of an originator of an
24 instruction makes the warranties of a signature guarantor under sub. (2) and also
25 warrants that at the time the instruction is presented to the issuer:

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1 (a) The person specified in the instruction as the registered owner of the
2 uncertificated security will be the registered owner; and

3 (b) The transfer of the uncertificated security requested in the instruction will
4 be registered by the issuer free from all liens, security interests, restrictions and
5 claims other than those specified in the instruction.

6 (4) A guarantor under subs. (1) and (2) or a special guarantor under sub. (3)
7 does not otherwise warrant the rightfulness of the transfer.

8 (5) A person who guarantees an endorsement of a security certificate makes
9 the warranties of a signature guarantor under sub. (1) and also warrants the
10 rightfulness of the transfer in all respects.

11 (6) A person who guarantees an instruction requesting the transfer of an
12 uncertificated security makes the warranties of a special signature guarantor under
13 sub. (3) and also warrants the rightfulness of the transfer in all respects.

14 (7) An issuer may not require a special guaranty of signature, a guaranty of
15 endorsement or a guaranty of instruction as a condition to registration of transfer.

16 (8) The warranties under this section are made to a person taking or dealing
17 with the security in reliance on the guaranty, and the guarantor is liable to the person
18 for loss resulting from their breach. An endorser or originator of an instruction
19 whose signature, endorsement or instruction has been guaranteed is liable to a
20 guarantor for any loss suffered by the guarantor as a result of breach of the
21 warranties of the guarantor.

22 **408.307 Purchaser's right to requisites for registration of transfer.**

23 Unless otherwise agreed, the transferor of a security on due demand shall supply the
24 purchaser with proof of authority to transfer or with any other requisite necessary
25 to obtain registration of the transfer of the security, but if the transfer is not for value,

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1 a transferor need not comply unless the purchaser pays the necessary expenses. If
2 the transferor fails within a reasonable time to comply with the demand, the
3 purchaser may reject or rescind the transfer.

SUBCHAPTER IV

REGISTRATION

6 **408.401 Duty of issuer to register transfer.** (1) If a certificated security
7 in registered form is presented to an issuer with a request to register transfer or an
8 instruction is presented to an issuer with a request to register transfer of an
9 uncertificated security, the issuer shall register the transfer as requested if:

10 (a) Under the terms of the security the person seeking registration of transfer
11 is eligible to have the security registered in its name;

12 (b) The endorsement or instruction is made by the appropriate person or by an
13 agent who has actual authority to act on behalf of the appropriate person;

14 (c) Reasonable assurance is given that the endorsement or instruction is
15 genuine and authorized under s. 408.402;

16 (d) Any applicable law relating to the collection of taxes has been complied with;

17 (e) The transfer does not violate any restriction on transfer imposed by the
18 issuer in accordance with s. 408.204;

19 (f) A demand that the issuer not register transfer has not become effective
20 under s. 408.403, or the issuer has complied with s. 408.403 (2) but no legal process
21 or indemnity bond is obtained as provided in s. 408.403 (4); and

22 (g) The transfer is in fact rightful or is to a protected purchaser.

23 (2) If an issuer is under a duty to register a transfer of a security, the issuer is
24 liable to a person presenting a certificated security or an instruction for registration

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1 or to the person's principal for loss resulting from unreasonable delay in registration
2 or failure or refusal to register the transfer.

3 **408.402 Assurance that endorsement or instruction is effective.**

4 (1) In this section:

5 (a) "Guaranty of the signature" means a guaranty signed by or on behalf of a
6 person reasonably believed by the issuer to be responsible. An issuer may adopt
7 standards with respect to responsibility if they are not manifestly unreasonable.

8 (b) "Appropriate evidence of appointment or incumbency" means:

9 1. In the case of a fiduciary appointed or qualified by a court, a certificate issued
10 by or under the direction or supervision of the court or an officer thereof and dated
11 within 60 days before the date of presentation for transfer; or

12 2. In any other case, a copy of a document showing the appointment or a
13 certificate issued by or on behalf of a person reasonably believed by an issuer to be
14 responsible or, in the absence of that document or certificate, other evidence that the
15 issuer reasonably considers appropriate.

16 (1m) An issuer may require the following assurance that each necessary
17 endorsement or each instruction is genuine and authorized:

18 (a) In all cases, a guaranty of the signature of the person making an
19 endorsement or originating an instruction including, in the case of an instruction,
20 reasonable assurance of identity;

21 (b) If the endorsement is made or the instruction is originated by an agent,
22 appropriate assurance of actual authority to sign;

23 (c) If the endorsement is made or the instruction is originated by a fiduciary
24 pursuant to s. 408.107 (1) (d) or (e), appropriate evidence of appointment or
25 incumbency;

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1 (d) If there is more than one fiduciary, reasonable assurance that all who are
2 required to sign have done so; and

3 (e) If the endorsement is made or the instruction is originated by a person not
4 covered by another provision of this subsection, assurance appropriate to the case
5 corresponding as nearly as may be to the provisions of this subsection.

6 (2) An issuer may elect to require reasonable assurance beyond that specified
7 in this section.

8 **408.403 Demand that issuer not register transfer.** (1) A person who is
9 an appropriate person to make an endorsement or originate an instruction may
10 demand that the issuer not register transfer of a security by communicating to the
11 issuer a notification that identifies the registered owner and the issue of which the
12 security is a part and provides an address for communications directed to the person
13 making the demand. The demand is effective only if it is received by the issuer at
14 a time and in a manner affording the issuer reasonable opportunity to act on it.

15 (2) If a certificated security in registered form is presented to an issuer with
16 a request to register transfer or an instruction is presented to an issuer with a
17 request to register transfer of an uncertificated security after a demand that the
18 issuer not register transfer has become effective, the issuer shall promptly
19 communicate to the person who initiated the demand at the address provided in the
20 demand and to the person who presented the security for registration of transfer or
21 initiated the instruction requesting registration of transfer, a notification stating
22 that:

23 (a) The certificated security has been presented for registration of transfer or
24 the instruction for registration of transfer of the uncertificated security has been
25 received;

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1 (b) A demand that the issuer not register transfer had previously been received;
2 and

3 (c) The issuer will withhold registration of transfer for a period of time stated
4 in the notification in order to provide the person who initiated the demand an
5 opportunity to obtain legal process or an indemnity bond.

6 (3) The period described in sub. (2) (c) may not exceed 30 days after the date
7 of communication of the notification. A shorter period may be specified by the issuer
8 if it is not manifestly unreasonable.

9 (4) An issuer is not liable to a person who initiated a demand that the issuer
10 not register transfer for any loss the person suffers as a result of registration of a
11 transfer pursuant to an effective endorsement or instruction if the person who
12 initiated the demand does not, within the time stated in the issuer's communication,
13 either:

14 (a) Obtain an appropriate restraining order, injunction or other process from
15 a court of competent jurisdiction enjoining the issuer from registering the transfer;
16 or

17 (b) File with the issuer an indemnity bond, sufficient in the issuer's judgment
18 to protect the issuer and any transfer agent, registrar or other agent of the issuer
19 involved from any loss it or they may suffer by refusing to register the transfer.

20 (5) This section does not relieve an issuer from liability for registering transfer
21 pursuant to an endorsement or instruction that was not effective.

22 **408.404 Wrongful registration.** (1) Except as otherwise provided in s.
23 408.406, an issuer is liable for wrongful registration of transfer if the issuer has
24 registered a transfer of a security to a person not entitled to it, and the transfer was
25 registered:

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- 1 (a) Pursuant to an ineffective endorsement or instruction;
- 2 (b) After a demand that the issuer not register transfer became effective under
3 s. 408.403 (1) and the issuer did not comply with s. 408.403 (2);
- 4 (c) After the issuer had been served with an injunction, restraining order, or
5 other legal process enjoining it from registering the transfer, issued by a court of
6 competent jurisdiction, and the issuer had a reasonable opportunity to act on the
7 injunction, restraining order or other legal process; or
- 8 (d) By an issuer acting in collusion with the wrongdoer.
- 9 **(2)** An issuer that is liable for wrongful registration of transfer under sub. (1)
10 on demand shall provide the person entitled to the security with a like certificated
11 or uncertificated security, and any payments or distributions that the person did not
12 receive as a result of the wrongful registration. If an overissue would result, the
13 issuer's liability to provide the person with a like security is governed by s. 408.210.
- 14 **(3)** Except as otherwise provided in sub. (1) or in a law relating to the collection
15 of taxes, an issuer is not liable to an owner or other person suffering loss as a result
16 of the registration of a transfer of a security if registration was made pursuant to an
17 effective endorsement or instruction.
- 18 **408.405 Replacement of lost, destroyed or wrongfully taken security**
19 **certificate. (1)** If an owner of a certificated security, whether in registered or bearer
20 form, claims that the certificate has been lost, destroyed or wrongfully taken, the
21 issuer shall issue a new certificate if the owner:
- 22 (a) So requests before the issuer has notice that the certificate has been
23 acquired by a protected purchaser;
- 24 (b) Files with the issuer a sufficient indemnity bond; and
- 25 (c) Satisfies other reasonable requirements imposed by the issuer.

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1 **(2)** If, after the issue of a new security certificate, a protected purchaser of the
2 original certificate presents it for registration of transfer, the issuer shall register the
3 transfer unless an overissue would result. In that case, the issuer's liability is
4 governed by s. 408.210. In addition to any rights on the indemnity bond, an issuer
5 may recover the new certificate from a person to whom it was issued or any person
6 taking under that person, except a protected purchaser.

7 **408.406 Obligation to notify issuer of lost, destroyed or wrongfully**
8 **taken security certificate.** If a security certificate has been lost, apparently
9 destroyed or wrongfully taken, and the owner fails to notify the issuer of that fact
10 within a reasonable time after the owner has notice of it and the issuer registers a
11 transfer of the security before receiving notification, the owner may not assert
12 against the issuer a claim for registering the transfer under s. 408.404 or a claim to
13 a new security certificate under s. 408.405.

14 **408.407 Authenticating trustee, transfer agent and registrar.** A person
15 acting as authenticating trustee, transfer agent, registrar or other agent for an
16 issuer in the registration of a transfer of its securities, in the issue of new security
17 certificates or uncertificated securities, or in the cancellation of surrendered security
18 certificates has the same obligation to the holder or owner of a certificated or
19 uncertificated security with regard to the particular functions performed as the
20 issuer has in regard to those functions.

SUBCHAPTER V**SECURITY ENTITLEMENTS**

23 **408.501 Securities account; acquisition of security entitlement from**
24 **securities intermediary.** **(1)** In this chapter, "securities account" means an
25 account to which a financial asset is or may be credited in accordance with an

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1 agreement under which the person maintaining the account undertakes to treat the
2 person for whom the account is maintained as entitled to exercise the rights that
3 comprise the financial asset.

4 (2) Except as otherwise provided in subs. (4) and (5), a person acquires a
5 security entitlement if a securities intermediary:

6 (a) Indicates by book entry that a financial asset has been credited to the
7 person's securities account;

8 (b) Receives a financial asset from the person or acquires a financial asset for
9 the person and, in either case, accepts it for credit to the person's securities account;
10 or

11 (c) Becomes obligated under other law, regulation or rule to credit a financial
12 asset to the person's securities account.

13 (3) If a condition of sub. (2) has been met, a person has a security entitlement
14 even though the securities intermediary does not itself hold the financial asset.

15 (4) If a securities intermediary holds a financial asset for another person, and
16 the financial asset is registered in the name of, payable to the order of, or specially
17 endorsed to the other person, and has not been endorsed to the securities
18 intermediary or in blank, the other person is treated as holding the financial asset
19 directly rather than as having a security entitlement with respect to the financial
20 asset.

21 (5) Issuance of a security is not establishment of a security entitlement.

22 **408.502 Assertion of adverse claim against entitlement holder.** An
23 action based on an adverse claim to a financial asset, whether framed in conversion,
24 replevin, constructive trust, equitable lien or other theory, may not be asserted

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1 against a person who acquires a security entitlement under s. 408.501 for value and
2 without notice of the adverse claim.

3 **408.503 Property interest of entitlement holder in financial asset held**
4 **by securities intermediary.** (1) To the extent necessary for a securities
5 intermediary to satisfy all security entitlements with respect to a particular
6 financial asset, all interests in that financial asset held by the securities
7 intermediary are held by the securities intermediary for the entitlement holders, are
8 not property of the securities intermediary, and are not subject to claims of creditors
9 of the securities intermediary, except as otherwise provided in s. 408.511.

10 (2) An entitlement holder's property interest with respect to a particular
11 financial asset under sub. (1) is a prorated property interest in all interests in that
12 financial asset held by the securities intermediary, without regard to the time the
13 entitlement holder acquired the security entitlement or the time the securities
14 intermediary acquired the interest in that financial asset.

15 (3) An entitlement holder's property interest with respect to a particular
16 financial asset under sub. (1) may be enforced against the securities intermediary
17 only by exercise of the entitlement holder's rights under ss. 408.505 to 408.508.

18 (4) (a) An entitlement holder's property interest with respect to a particular
19 financial asset under sub. (1) may be enforced against a purchaser of the financial
20 asset or interest therein only if:

21 1. Insolvency proceedings have been initiated by or against the securities
22 intermediary;

23 2. The securities intermediary does not have sufficient interests in the financial
24 asset to satisfy the security entitlements of all of its entitlement holders to that
25 financial asset;

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1 3. The securities intermediary violated its obligations under s. 408.504 by
2 transferring the financial asset or interest therein to the purchaser; and

3 4. The purchaser is not protected under sub. (5).

4 (b) The trustee or other liquidator, acting on behalf of all entitlement holders
5 having security entitlements with respect to a particular financial asset, may recover
6 the financial asset, or interest therein, from the purchaser. If the trustee or other
7 liquidator elects not to pursue that right, an entitlement holder whose security
8 entitlement remains unsatisfied has the right to recover its interest in the financial
9 asset from the purchaser.

10 **(5)** An action based on the entitlement holder's property interest with respect
11 to a particular financial asset under sub. (1), whether framed in conversion, replevin,
12 constructive trust, equitable lien, or other theory, may not be asserted against any
13 purchaser of a financial asset or interest therein who gives value, obtains control,
14 and does not act in collusion with the securities intermediary in violating the
15 securities intermediary's obligations under s. 408.504.

16 **408.504 Duty of securities intermediary to maintain financial asset.**

17 **(1)** A securities intermediary shall promptly obtain and thereafter maintain a
18 financial asset in a quantity corresponding to the aggregate of all security
19 entitlements it has established in favor of its entitlement holders with respect to that
20 financial asset. The securities intermediary may maintain those financial assets
21 directly or through one or more other securities intermediaries.

22 **(2)** Except to the extent otherwise agreed by its entitlement holder, a securities
23 intermediary may not grant any security interests in a financial asset it is obligated
24 to maintain pursuant to sub. (1).

25 **(3)** A securities intermediary satisfies the duty in sub. (1) if:

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1 (a) The securities intermediary acts with respect to the duty as agreed upon by
2 the entitlement holder and the securities intermediary; or

3 (b) In the absence of agreement, the securities intermediary exercises due care
4 in accordance with reasonable commercial standards to obtain and maintain the
5 financial asset.

6 **(4)** This section does not apply to a clearing corporation that is itself the obligor
7 of an option or similar obligation to which its entitlement holders have security
8 entitlements.

9 **408.505 Duty of securities intermediary with respect to payments and**
10 **distributions.** (1) A securities intermediary shall take action to obtain a payment
11 or distribution made by the issuer of a financial asset. A securities intermediary
12 satisfies the duty if:

13 (a) The securities intermediary acts with respect to the duty as agreed upon by
14 the entitlement holder and the securities intermediary; or

15 (b) In the absence of agreement, the securities intermediary exercises due care
16 in accordance with reasonable commercial standards to attempt to obtain the
17 payment or distribution.

18 **(2)** A securities intermediary is obligated to its entitlement holder for a
19 payment or distribution made by the issuer of a financial asset if the payment or
20 distribution is received by the securities intermediary.

21 **408.506 Duty of securities intermediary to exercise rights as directed**
22 **by entitlement holder.** A securities intermediary shall exercise rights with
23 respect to a financial asset if directed to do so by an entitlement holder. A securities
24 intermediary satisfies the duty if:

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1 (1) The securities intermediary acts with respect to the duty as agreed upon
2 by the entitlement holder and the securities intermediary; or

3 (2) In the absence of agreement, the securities intermediary either places the
4 entitlement holder in a position to exercise the rights directly or exercises due care
5 in accordance with reasonable commercial standards to follow the direction of the
6 entitlement holder.

7 **408.507 Duty of securities intermediary to comply with entitlement**
8 **order.** (1) A securities intermediary shall comply with an entitlement order if the
9 entitlement order is originated by the appropriate person, the securities
10 intermediary has had reasonable opportunity to assure itself that the entitlement
11 order is genuine and authorized, and the securities intermediary has had reasonable
12 opportunity to comply with the entitlement order. A securities intermediary satisfies
13 the duty if:

14 (a) The securities intermediary acts with respect to the duty as agreed upon by
15 the entitlement holder and the securities intermediary; or

16 (b) In the absence of agreement, the securities intermediary exercises due care
17 in accordance with reasonable commercial standards to comply with the entitlement
18 order.

19 (2) If a securities intermediary transfers a financial asset pursuant to an
20 ineffective entitlement order, the securities intermediary shall reestablish a security
21 entitlement in favor of the person entitled to it, and pay or credit any payments or
22 distributions that the person did not receive as a result of the wrongful transfer. If
23 the securities intermediary does not reestablish a security entitlement, the
24 securities intermediary is liable to the entitlement holder for damages.

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1 **408.508 Duty of securities intermediary to change entitlement**
2 **holder's position to other form of security holding.** A securities intermediary
3 shall act at the direction of an entitlement holder to change a security entitlement
4 into another available form of holding for which the entitlement holder is eligible,
5 or to cause the financial asset to be transferred to a securities account of the
6 entitlement holder with another securities intermediary. A securities intermediary
7 satisfies the duty if:

8 (1) The securities intermediary acts as agreed upon by the entitlement holder
9 and the securities intermediary; or

10 (2) In the absence of agreement, the securities intermediary exercises due care
11 in accordance with reasonable commercial standards to follow the direction of the
12 entitlement holder.

13 **408.509 Specification of duties of securities intermediary by other**
14 **statute or regulation; manner of performance of duties of securities**
15 **intermediary; and exercise of rights of entitlement holder.** (1) If the
16 substance of a duty imposed upon a securities intermediary by ss. 408.504 to 408.508
17 is the subject of any other statute, regulation or rule, compliance with that statute,
18 regulation or rule satisfies the duty.

19 (2) To the extent that specific standards for the performance of the duties of a
20 securities intermediary or the exercise of the rights of an entitlement holder are not
21 specified by other statute, regulation or rule or by agreement between the securities
22 intermediary and entitlement holder, the securities intermediary shall perform its
23 duties and the entitlement holder shall exercise its rights in a commercially
24 reasonable manner.

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1 **(3)** The obligation of a securities intermediary to perform the duties imposed
2 by ss. 408.504 to 408.508 is subject to:

3 (a) Rights of the securities intermediary arising out of a security interest under
4 a security agreement with the entitlement holder or otherwise; and

5 (b) Rights of the securities intermediary under any other law, regulation, rule
6 or agreement to withhold performance of its duties as a result of unfulfilled
7 obligations of the entitlement holder to the securities intermediary.

8 **(4)** Sections 408.504 to 408.508 do not require a securities intermediary to take
9 any action that is prohibited by any other statute, regulation or rule.

10 **408.510 Rights of purchaser of security entitlement from entitlement**

11 **holder. (1)** An action based on an adverse claim to a financial asset or security
12 entitlement, whether framed in conversion, replevin, constructive trust, equitable
13 lien or other theory, may not be asserted against a person who purchases a security
14 entitlement, or an interest therein, from an entitlement holder if the purchaser gives
15 value, does not have notice of the adverse claim and obtains control.

16 **(2)** If an adverse claim could not have been asserted against an entitlement
17 holder under s. 408.502, the adverse claim cannot be asserted against a person who
18 purchases a security entitlement, or an interest therein, from the entitlement holder.

19 **(3)** In a case not covered by the priority rules in ch. 409, a purchaser for value
20 of a security entitlement, or an interest therein, who obtains control has priority over
21 a purchaser of a security entitlement, or an interest therein, who does not obtain
22 control. Purchasers who have control rank equally, except that a securities
23 intermediary as purchaser has priority over a conflicting purchaser who has control
24 unless otherwise agreed by the securities intermediary.

SENATE BILL 308**SECTION 8****408.511 Priority among security interests and entitlement holders. (1)**

1 Except as otherwise provided in subs. (2) and (3), if a securities intermediary does
2 not have sufficient interests in a particular financial asset to satisfy both its
3 obligations to entitlement holders who have security entitlements to that financial
4 asset and its obligation to a creditor of the securities intermediary who has a security
5 interest in that financial asset, the claims of entitlement holders, other than the
6 creditor, have priority over the claim of the creditor.
7

8 (2) A claim of a creditor of a securities intermediary who has a security interest
9 in a financial asset held by a securities intermediary has priority over claims of the
10 securities intermediary's entitlement holders who have security entitlements with
11 respect to that financial asset if the creditor has control over the financial asset.

12 (3) If a clearing corporation does not have sufficient financial assets to satisfy
13 both its obligations to entitlement holders who have security entitlements with
14 respect to a financial asset and its obligation to a creditor of the clearing corporation
15 who has a security interest in that financial asset, the claim of the creditor has
16 priority over the claims of entitlement holders.

SUBCHAPTER VI**TRANSITIONAL PROVISIONS**

17
18
19 **408.603 Saving provision. (1)** If a security interest in a security is perfected
20 on or before the effective date of this subsection [revisor inserts date], and the
21 action by which the security interest was perfected would suffice to perfect a security
22 interest under this chapter, no further action is required to continue perfection.

23 (2) If a security interest in a security is perfected on or before the effective date
24 of this subsection [revisor inserts date], under ch. 408, 1995 stats., but the action
25 by which the security interest was perfected would not suffice to perfect a security

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1 interest under this chapter, the security interest remains perfected for a period of 4
2 months after the effective date of this subsection ... [revisor inserts date], and
3 continues perfected thereafter if appropriate action to perfect under this chapter is
4 taken within that period. If a security interest is perfected on or before the effective
5 date of this subsection ... [revisor inserts date], and the security interest can be
6 perfected by filing under this chapter, a financing statement signed by the secured
7 party instead of the debtor may be filed within that period to continue perfection or
8 thereafter to perfect.

9 **SECTION 9.** 409.103 (6) of the statutes is repealed and recreated to read:

10 409.103 (6) INVESTMENT PROPERTY. (a) This subsection applies to investment
11 property.

12 (b) Except as otherwise provided in par. (f), during the time that a security
13 certificate is located in a jurisdiction, perfection of a security interest, the effect of
14 perfection or nonperfection, and the priority of a security interest in the certificated
15 security represented thereby are governed by the local law of that jurisdiction.

16 (c) Except as otherwise provided in par. (f), perfection of a security interest, the
17 effect of perfection or nonperfection, and the priority of a security interest in an
18 uncertificated security are governed by the local law of the issuer's jurisdiction as
19 specified in s. 408.110 (4).

20 (d) Except as otherwise provided in par. (f), perfection of a security interest, the
21 effect of perfection or nonperfection, and the priority of a security interest in a
22 security entitlement or securities account are governed by the local law of the
23 securities intermediary's jurisdiction as specified in s. 408.110 (5).

24 (e) Except as otherwise provided in par. (f), perfection of a security interest, the
25 effect of perfection or nonperfection, and the priority of a security interest in a

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1 commodity contract or commodity account are governed by the local law of the
2 commodity intermediary's jurisdiction. The following rules determine a "commodity
3 intermediary's jurisdiction" for purposes of this paragraph:

4 1. If an agreement between the commodity intermediary and commodity
5 customer specifies that it is governed by the law of a particular jurisdiction, that
6 jurisdiction is the commodity intermediary's jurisdiction.

7 2. If an agreement between the commodity intermediary and commodity
8 customer does not specify the governing law as provided in subd. 1., but expressly
9 specifies that the commodity account is maintained at an office in a particular
10 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

11 3. If an agreement between the commodity intermediary and commodity
12 customer does not specify a jurisdiction as provided in subd. 1. or 2., the commodity
13 intermediary's jurisdiction is the jurisdiction in which is located the office identified
14 in an account statement as the office serving the commodity customer's account.

15 4. If an agreement between the commodity intermediary and commodity
16 customer does not specify a jurisdiction as provided in subd. 1. or 2. and an account
17 statement does not identify an office serving the commodity customer's account as
18 provided in subd. 3., the commodity intermediary's jurisdiction is the jurisdiction in
19 which is located the chief executive office of the commodity intermediary.

20 (f) Perfection of a security interest by filing, automatic perfection of a security
21 interest in investment property granted by a broker or securities intermediary, and
22 automatic perfection of a security interest in a commodity contract or commodity
23 account granted by a commodity intermediary are governed by the local law of the
24 jurisdiction in which the debtor is located.

25 **SECTION 10.** 409.105 (1) (h) of the statutes is amended to read:

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1 409.105 (1) (h) “Goods” includes all things which are movable at the time the
2 security interest attaches or which are fixtures (s. 409.313), but does not include
3 money, documents, instruments, investment property, accounts, chattel paper,
4 general intangibles or minerals or the like (including oil and gas) before extraction.
5 “Goods” also includes standing timber which is to be cut and removed under a
6 conveyance or contract for sale, the unborn young of animals and growing crops.

7 **SECTION 11.** 409.105 (1) (i) of the statutes is amended to read:

8 409.105 (1) (i) “Instrument” means a negotiable instrument as defined in s.
9 403.104 ~~or a certificated security as defined in s. 408.102~~ or any other writing which
10 evidences a right to the payment of money and is not itself a security agreement or
11 lease and is of a type which is in ordinary course of business transferred by delivery
12 with any necessary endorsement or assignment.

13 **SECTION 12.** 409.105 (2) (an) of the statutes is created to read:

14 409.105 (2) (an) “Commodity contract” — s. 409.115 (1) (b).

15 **SECTION 13.** 409.105 (2) (ap) of the statutes is created to read:

16 409.105 (2) (ap) “Commodity customer” — s. 409.115 (1) (c).

17 **SECTION 14.** 409.105 (2) (aq) of the statutes is created to read:

18 409.105 (2) (aq) “Commodity intermediary” — s. 409.115 (1) (d).

19 **SECTION 15.** 409.105 (2) (cb) of the statutes is created to read:

20 409.105 (2) (cb) “Control” — s. 409.115 (1) (e).

21 **SECTION 16.** 409.105 (2) (gm) of the statutes is created to read:

22 409.105 (2) (gm) “Investment property” — s. 409.115 (1) (f).

23 **SECTION 17.** 409.105 (3) (a) of the statutes is renumbered 409.105 (3) (am).

24 **SECTION 18.** 409.105 (3) (ac) of the statutes is created to read:

25 409.105 (3) (ac) “Broker” — s. 408.102 (1) (c).

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1 **SECTION 19.** 409.105 (3) (ag) of the statutes is created to read:

2 409.105 (3) (ag) “Certificated security” — s. 408.102 (1) (d).

3 **SECTION 20.** 409.105 (3) (as) of the statutes is created to read:

4 409.105 (3) (as) “Clearing corporation” — s. 408.102 (1) (e).

5 **SECTION 21.** 409.105 (3) (bh) of the statutes is created to read:

6 409.105 (3) (bh) “Delivery” — s. 408.301.

7 **SECTION 22.** 409.105 (3) (bp) of the statutes is created to read:

8 409.105 (3) (bp) “Entitlement holder” — s. 408.102 (1) (g).

9 **SECTION 23.** 409.105 (3) (bt) of the statutes is created to read:

10 409.105 (3) (bt) “Financial asset” — s. 408.102 (1) (i).

11 **SECTION 24.** 409.105 (3) (f) of the statutes is created to read:

12 409.105 (3) (f) “Securities intermediary” — s. 408.102 (1) (n).

13 **SECTION 25.** 409.105 (3) (g) of the statutes is created to read:

14 409.105 (3) (g) “Security” — s. 408.102 (1) (o).

15 **SECTION 26.** 409.105 (3) (h) of the statutes is created to read:

16 409.105 (3) (h) “Security certificate” — s. 408.102 (1) (p).

17 **SECTION 27.** 409.105 (3) (i) of the statutes is created to read:

18 409.105 (3) (i) “Security entitlement” — s. 408.102 (1) (q).

19 **SECTION 28.** 409.105 (3) (j) of the statutes is created to read:

20 409.105 (3) (j) “Uncertificated security” — s. 408.102 (1) (r).

21 **SECTION 29.** 409.106 of the statutes is amended to read:

22 **409.106 Definitions: “account”; “general intangibles”.** “Account” means
23 any right to payment for goods sold or leased or for services rendered which is not
24 evidenced by an instrument or chattel paper, whether or not it has been earned by
25 performance. “General intangibles” means any personal property (including things

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1 in action) other than goods, accounts, chattel paper, documents, instruments,
2 investment property and money. All rights to payment earned or unearned under
3 a charter or other contract involving the use or hire of a vessel and all rights incident
4 to the charter or contract are accounts.

5 **SECTION 30.** 409.115 of the statutes is created to read:

6 **409.115 Investment property. (1)** In this chapter:

7 (a) "Commodity account" means an account maintained by a commodity
8 intermediary in which a commodity contract is carried for a commodity customer.

9 (b) "Commodity contract" means a commodity futures contract, an option on a
10 commodity futures contract, a commodity option or other contract that, in each case,
11 is:

12 1. Traded on or subject to the rules of a board of trade that has been designated
13 as a contract market for such a contract pursuant to the federal commodities laws;
14 or

15 2. Traded on a foreign commodity board of trade, exchange or market, and is
16 carried on the books of a commodity intermediary for a commodity customer.

17 (c) "Commodity customer" means a person for whom a commodity intermediary
18 carries a commodity contract on its books.

19 (d) "Commodity intermediary" means:

20 1. A person who is registered as a futures commission merchant under the
21 federal commodities laws; or

22 2. A person who in the ordinary course of its business provides clearance or
23 settlement services for a board of trade that has been designated as a contract
24 market pursuant to the federal commodities laws.

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1 (e) "Control" with respect to a certificated security, uncertificated security, or
2 security entitlement has the meaning specified in s. 408.106. A secured party has
3 control over a commodity contract if, by agreement among the commodity customer,
4 the commodity intermediary, and the secured party, the commodity intermediary has
5 agreed that it will apply any value distributed on account of the commodity contract
6 as directed by the secured party without further consent by the commodity customer.
7 If a commodity customer grants a security interest in a commodity contract to its own
8 commodity intermediary, the commodity intermediary as secured party has control.
9 A secured party has control over a securities account or commodity account if the
10 secured party has control over all security entitlements or commodity contracts
11 carried in the securities account or commodity account.

12 (f) "Investment property" means:

- 13 1. A security, whether certificated or uncertificated;
- 14 2. A security entitlement;
- 15 3. A securities account;
- 16 4. A commodity contract; or
- 17 5. A commodity account.

18 **(2)** Attachment or perfection of a security interest in a securities account is also
19 attachment or perfection of a security interest in all security entitlements carried in
20 the securities account. Attachment or perfection of a security interest in a
21 commodity account is also attachment or perfection of a security interest in all
22 commodity contracts carried in the commodity account.

23 **(3)** A description of collateral in a security agreement or financing statement
24 is sufficient to create or perfect a security interest in a certificated security,
25 uncertificated security, security entitlement, securities account, commodity contract

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1 or commodity account whether it describes the collateral by those terms, or as
2 investment property, or by description of the underlying security, financial asset or
3 commodity contract. A description of investment property collateral in a security
4 agreement or financing statement is sufficient if it identifies the collateral by specific
5 listing, by category, by quantity, by a computational or allocational formula or
6 procedure, or by any other method, if the identity of the collateral is objectively
7 determinable.

8 (4) Perfection of a security interest in investment property is governed by the
9 following rules:

10 (a) A security interest in investment property may be perfected by control.

11 (b) Except as otherwise provided in pars. (c) and (d), a security interest in
12 investment property may be perfected by filing.

13 (c) If the debtor is a broker or securities intermediary, a security interest in
14 investment property is perfected when it attaches. The filing of a financing
15 statement with respect to a security interest in investment property granted by a
16 broker or securities intermediary has no effect for purposes of perfection or priority
17 with respect to that security interest.

18 (d) If a debtor is a commodity intermediary, a security interest in a commodity
19 contract or a commodity account is perfected when it attaches. The filing of a
20 financing statement with respect to a security interest in a commodity contract or a
21 commodity account granted by a commodity intermediary has no effect for purposes
22 of perfection or priority with respect to that security interest.

23 (5) Priority between conflicting security interests in the same investment
24 property is governed by the following rules:

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1 (a) A security interest of a secured party who has control over investment
2 property has priority over a security interest of a secured party who does not have
3 control over the investment property.

4 (b) Except as otherwise provided in pars. (c) and (d), conflicting security
5 interests of secured parties each of whom has control rank equally.

6 (c) Except as otherwise agreed by the securities intermediary, a security
7 interest in a security entitlement or a securities account granted to the debtor's own
8 securities intermediary has priority over any security interest granted by the debtor
9 to another secured party.

10 (d) Except as otherwise agreed by the commodity intermediary, a security
11 interest in a commodity contract or a commodity account granted to the debtor's own
12 commodity intermediary has priority over any security interest granted by the
13 debtor to another secured party.

14 (e) Conflicting security interests granted by a broker, a securities intermediary
15 or a commodity intermediary which are perfected without control rank equally.

16 (f) In all other cases, priority between conflicting security interests in
17 investment property is governed by s. 409.312 (5), (6) and (7). Section 409.312 (4)
18 does not apply to investment property.

19 **(6)** If a security certificate in registered form is delivered to a secured party
20 pursuant to agreement, a written security agreement is not required for attachment
21 or enforceability of the security interest, delivery suffices for perfection of the
22 security interest, and the security interest has priority over a conflicting security
23 interest perfected by means other than control, even if a necessary endorsement is
24 lacking.

25 **SECTION 31.** 409.116 of the statutes is created to read:

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1 **409.116 Security interest arising in purchase or delivery of financial**
2 **asset. (1)** If a person buys a financial asset through a securities intermediary in a
3 transaction in which the buyer is obligated to pay the purchase price to the securities
4 intermediary at the time of the purchase, and the securities intermediary credits the
5 financial asset to the buyer's securities account before the buyer pays the securities
6 intermediary, the securities intermediary has a security interest in the buyer's
7 security entitlement securing the buyer's obligation to pay. A security agreement is
8 not required for attachment or enforceability of the security interest, and the
9 security interest is automatically perfected.

10 **(2)** If a certificated security, or other financial asset represented by a writing
11 which in the ordinary course of business is transferred by delivery with any
12 necessary endorsement or assignment is delivered pursuant to an agreement
13 between persons in the business of dealing with such securities or financial assets
14 and the agreement calls for delivery rather than payment, the person delivering the
15 certificate or other financial asset has a security interest in the certificated security
16 or other financial asset securing the seller's right to receive payment. A security
17 agreement is not required for attachment or enforceability of the security interest,
18 and the security interest is automatically perfected.

19 **SECTION 32.** 409.203 (1) (intro.) of the statutes is amended to read:

20 409.203 **(1)** (intro.) Subject to s. 404.210 on the security interest of a collecting
21 bank, ~~s. 408.321 on security interests in securities~~ ss. 409.115 and 409.116 on
22 security interests in investment property, and s. 409.113 on a security interest
23 arising under ch. 402 or 411, a security interest is not enforceable against the debtor
24 or 3rd parties with respect to the collateral and does not attach unless:

25 **SECTION 33.** 409.203 (1) (a) of the statutes is amended to read:

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1 409.203 (1) (a) The collateral is in the possession of the secured party pursuant
2 to agreement, the collateral is investment property and the secured party has control
3 pursuant to agreement, or the debtor has signed a security agreement which
4 contains a description of the collateral and in addition, when the security interest
5 covers crops growing or to be grown or timber to be cut, a description of the land
6 concerned;

7 **SECTION 34.** 409.301 (1) (d) of the statutes is amended to read:

8 409.301 (1) (d) In the case of accounts ~~and~~, general intangibles, and investment
9 property, a person who is not a secured party and who is a transferee to the extent
10 that that person gives value without knowledge of the security interest and before
11 it is perfected.

12 **SECTION 35.** 409.302 (1) (b) of the statutes is amended to read:

13 409.302 (1) (b) A security interest temporarily perfected in instruments,
14 certificated securities, or documents without delivery under s. 409.304 or in proceeds
15 for a 10-day period under s. 409.306;

16 **SECTION 36.** 409.302 (1) (f) of the statutes is amended to read:

17 409.302 (1) (f) A security interest of a collecting bank (s. 404.210) ~~or in~~
18 securities (s. 408.321) or arising under ch. 402 or 411 (see s. 409.113) or covered in
19 sub. (3);

20 **SECTION 37.** 409.302 (1) (g) of the statutes is amended to read:

21 409.302 (1) (g) An assignment for the benefit of all the creditors of the
22 transferor, and subsequent transfers by the assignee thereunder; ~~or~~

23 **SECTION 38.** 409.302 (1) (h) of the statutes is repealed and recreated to read:

24 409.302 (1) (h) A security interest in investment property which is perfected
25 without filing under s. 409.115 or 409.116; or

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1 **SECTION 39.** 409.302 (1) (i) of the statutes is created to read:

2 409.302 (1) (i) A security interest created by a master lease entered into by the
3 state under s. 16.76 (4).

4 **SECTION 40.** 409.303 (1) of the statutes is amended to read:

5 409.303 (1) A security interest is perfected when it has attached and when all
6 of the applicable steps required for perfection have been taken. Such steps are
7 specified in ss. 409.115, 409.302, 409.304, 409.305 and 409.306. If such steps are
8 taken before the security interest attaches, it is perfected at the time when it
9 attaches.

10 **SECTION 41.** 409.304 (1) of the statutes is amended to read:

11 409.304 (1) A security interest in chattel paper or negotiable documents may
12 be perfected by filing. A security interest in money or instruments, other than
13 ~~certificated securities or instruments~~ which constitute part of chattel paper, can be
14 perfected only by the secured party's taking possession, except as provided in subs.
15 (4) and (5) and s. 409.306 (2) and (3) on proceeds.

16 **SECTION 42.** 409.304 (4) of the statutes is amended to read:

17 409.304 (4) A security interest in instruments, ~~other than~~ certificated
18 securities, or negotiable documents is perfected without filing or the taking of
19 possession for a period of 21 days from the time it attaches to the extent that it arises
20 for new value given under a written security agreement.

21 **SECTION 43.** 409.304 (5) (intro.) of the statutes is amended to read:

22 409.304 (5) (intro.) A security interest remains perfected for a period of 21 days
23 without filing where a secured party having a perfected security interest in an
24 instrument (~~other than~~, a certificated security), a negotiable document or goods in
25 possession of a bailee other than one who has issued a negotiable document therefor:

SENATE BILL 308**SECTION 44**

1 **SECTION 44.** 409.304 (5) (b) of the statutes is amended to read:

2 409.304 (5) (b) Delivers the instrument or certificated security to the debtor for
3 the purpose of ultimate sale or exchange or of presentation, collection, renewal or
4 registration of transfer.

5 **SECTION 45.** 409.305 of the statutes is amended to read:

6 **409.305 When possession by secured party perfects security interest**
7 **without filing.** A security interest in letters of credit and advices of credit (s.
8 405.116 (2) (a)), goods, instruments (~~other than certificated securities~~), money,
9 negotiable documents or chattel paper may be perfected by the secured party's taking
10 possession of the collateral. If such collateral other than goods covered by a
11 negotiable document is held by a bailee, the secured party is deemed to have
12 possession from the time the bailee receives notification of the secured party's
13 interest. A security interest is perfected by possession from the time possession is
14 taken without relation back and continues only so long as possession is retained,
15 unless otherwise specified in this chapter. The security interest may be otherwise
16 perfected as provided in this chapter before or after the period of possession by the
17 secured party.

18 **SECTION 46.** 409.306 (1) of the statutes is amended to read:

19 409.306 (1) "Proceeds" includes whatever is received upon the sale, exchange,
20 collection or other disposition of collateral or proceeds. Insurance payable by reason
21 of loss or damage to the collateral is proceeds, except to the extent that it is payable
22 to a person other than a party to the security agreement. Any payments or
23 distributions made with respect to investment property collateral are proceeds.
24 Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds
25 are "noncash proceeds".

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1 **SECTION 47.** 409.306 (3) of the statutes is repealed and recreated to read:

2 409.306 **(3)** (a) Subject to sub. (3m), the security interest in proceeds is a
3 continuously perfected security interest if the interest in the original collateral was
4 perfected but it ceases to be a perfected security interest and becomes unperfected
5 10 days after receipt of the proceeds by the debtor unless:

6 1. A filed financing statement covers the original collateral and the proceeds
7 are collateral in which a security interest may be perfected by filing in the office or
8 offices where the financing statement has been filed and, if the proceeds are acquired
9 with cash proceeds, the description of collateral in the financing statement indicates
10 the types of property constituting the proceeds;

11 2. A filed financing statement covers the original collateral and the proceeds
12 are identifiable cash proceeds;

13 3. The original collateral was investment property and the proceeds are
14 identifiable cash proceeds; or

15 4. The security interest in the proceeds is perfected before the expiration of the
16 10-day period.

17 (b) Except as provided in this section, a security interest in proceeds may be
18 perfected only by the methods or under the circumstances permitted in this chapter
19 for original collateral of the same type.

20 **SECTION 48.** 409.309 of the statutes is amended to read:

21 **409.309 Protection of purchasers of instruments, documents and**
22 **securities.** Nothing in this chapter limits the rights of a holder in due course of a
23 negotiable instrument (s. 403.302) or a holder to whom a negotiable document of title
24 has been duly negotiated (s. 407.501) or a bona fide protected purchaser of a security
25 (s. ~~408.302~~ 408.303) and such holders or purchasers take priority over an earlier

SENATE BILL 308**SECTION 48**

1 security interest even though perfected. Filing under this chapter does not
2 constitute notice of the security interest to such holders or purchasers.

3 **SECTION 49.** 409.312 (1) of the statutes is amended to read:

4 409.312 (1) The rules of priority stated in ss. 409.301 to 409.311 and 409.313
5 to 409.318 and in the following sections shall govern when applicable: s. 404.210
6 with respect to the security interests of collecting banks in items being collected,
7 accompanying documents and proceeds; s. 409.103 on security interests related to
8 other jurisdictions; s. 409.114 on consignments; and s. 409.115 on security interests
9 in investment property.

10 **SECTION 50.** 409.312 (7) of the statutes is amended to read:

11 409.312 (7) If future advances are made while a security interest is perfected
12 by filing, the taking of possession, or under s. ~~408.321 on securities~~, 409.115 or
13 409.116 on investment property, the security interest has the same priority for the
14 purposes of sub. (5) or s. 409.115 (5) with respect to the future advances as it does with
15 respect to the first advance. If a commitment is made before or while the security
16 interest is so perfected, the security interest has the same priority with respect to
17 advances made pursuant thereto. In other cases a perfected security interest has
18 priority from the date the advance is made.

19 **SECTION 51.** 551.33 (6) of the statutes is amended to read:

20 551.33 (6) The division may by rule establish standards for the conduct of
21 business by broker-dealers, agents, investment advisers and clearing corporations
22 as defined in s. 408.102 (1) ~~(e)~~ (e).

23 **SECTION 52.** 766.01 (9) (c) of the statutes is amended to read:

24 766.01 (9) (c) An uncertificated security, as defined under s. 408.102 (1) ~~(h)~~ (r),
25 is "held" by the person identified as the registered owner of the security upon books

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1 maintained for that purpose by or on behalf of the issuer. If the registered owner of
2 an uncertificated security is identified as a brokerage account, the security is “held”
3 as provided under par. (b).

4 **SECTION 53. Initial applicability.**

5 (1) This act first applies to actions or proceedings commenced on the effective
6 date of this subsection.

7 (END)