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LRB-3505/P1

ARG:.....

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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D-Note

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1 AN ACT...; relating to: adopting amendments to the Uniform Commercial Code
2 Article 9, relating to secured transactions, recommended by the National
3 Conference of Commissioners on Uniform State Laws. *ol*

Analysis by the Legislative Reference Bureau

In 2001 Wisconsin Act 10, this state adopted the Revised Uniform Commercial Code (UCC) Article 9-Secured Transactions, which was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1998, with amendments approved by NCCUSL in 1999 and 2000. UCC Article 9 governs transactions that involve the granting of credit secured by personal property of a debtor. The creditor's interest is called a "security interest." UCC Article 9 regulates the creation and enforcement of security interests in movable property, intangible property, and fixtures (items of personal property affixed to real property), but not in real property. Under UCC Article 9, if a debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. A creditor with a "perfected" security interest usually has "priority" in the distribution of the debtor's assets as compared to creditors with later-acquired security interests (junior secured creditors) and unsecured creditors. Before or at the time a security interest is perfected, it must "attach." Attachment arises when the security interest becomes effective between the creditor and the debtor and usually occurs when their security agreement becomes effective. Perfection of a security interest establishes the creditor's priority in relation to other creditors of the debtor in the same collateral and usually occurs with the filing by the creditor of a "financing statement" in a central filing office - in Wisconsin, the Department of Financial Institutions (DFI).

(The only local filing of financing statements, in the local real estate records, is for security interests in fixtures or in certain land-related collateral such as timber.) However, filing a financing statement is not the only method for perfection, depending upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral, and "control" is the method of perfection for certain kinds of collateral.✓

This bill adopts the 2010 amendments to UCC Article 9 approved by NCCUSL. Among the changes to UCC Article 9 are the following:

1. The bill makes modifications with respect to how a debtor's name must be identified on a financing statement. Most significantly, if the debtor is an individual to whom the Department of Transportation (DOT) has issued an operator's license or identification card that has not expired, the financing statement, to be sufficient, must provide the name of the individual as it appears on the operator's license or identification card.✓ If the debtor is an individual who does not hold an unexpired DOT-issued operator's license or identification card, the financing statement must provide the individual name of the debtor or the surname and first personal name of the debtor.✓ The bill also makes changes as to how the debtor's name must appear on a financing statement whenever collateral is held in a trust and also requires certain additional information on the financing statement if collateral is held in a trust or is being administered by a personal representative.✓ The bill makes other minor modifications or clarifications relating to how debtor names must appear on financing statements.✓

2. Under current law, the law of the jurisdiction (state) where a debtor is located, while the debtor is located there, governs perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in collateral. If the debtor moves to a new state or collateral is transferred to a new debtor in a new state after a security interest is perfected, the security interest remains perfected until the earliest of the following, as applicable: the time perfection would have ceased under the law of the original state; the expiration of four months after the change of the debtor's location to the new state; or the expiration of one year after the transfer of collateral to a person that becomes a debtor and is located in the new state. If the security interest becomes perfected under the law of the new state before any of these time periods elapse, the security interest remains perfected; otherwise, the security interest becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

The bill includes provisions applicable to the filing of a financing statement when the debtor has changed location to a new state and a security interest attaches within four months after this change of location.✓ The bill specifies circumstances in which a financing statement filed before the change of location under the law of the original state is effective to perfect a security interest and specifies when the security interest remains perfected under the law of the new state. The bill also includes provisions applicable if a financing statement naming an original debtor is filed under the law of the original state where the debtor was located and a new debtor is located in a new state.✓ The bill specifies circumstances in which a financing

statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound by the security agreement and specifies when the security interest remains perfected under the law of the new state.

3. Under current law, among the reasons a filing office (usually DFI) may refuse filing of an initial financing statement or certain amendments is that, if the debtor is an organization, the financing statement or amendment does not provide a type of organization for the debtor, a jurisdiction of organization for the debtor, or an organizational identification number for the debtor or indicate that the debtor has no such number. This bill eliminates these omissions as reasons for refusing to file an initial financing statement or amendment to a financing statement.

4. Under current law, if a person believes that a filed record indexed under the person's name is inaccurate or was wrongfully filed, the person may file a correction statement. This bill changes the term from "correction statement" to "information statement." The bill also specifies that a secured party of record may file an information statement, containing certain information, relating to a filed record if the secured party believes that the person that filed the record was not entitled to file it.

5. Under current law, certain agreement terms involving account debtors (persons obligated on an account, chattel paper, or general intangible) or in promissory notes relating to the debtor's consent to certain matters affecting a security interest are ineffective except with respect to the sale of a promissory note or payment intangible. This bill narrows this exception so that it does not apply if the sale is a disposition of collateral after default or is an acceptance of collateral in satisfaction of the debtor's obligation.

6. The bill makes changes relating to a secured party's control of electronic chattel paper by specifying that, for a secured party to have control, a system employed for evidencing the transfer of interests in the chattel paper must reliably establish the secured party as the person to which the chattel paper was assigned.

7. The bill includes several definitional changes, including changes to improve compatibility of provisions with the use of electronic records. The bill also creates a new term and definition of "public organic record" for public records relating to entity formation or organization.

8. The bill makes various minor and technical changes to UCC Article 9. The bill also includes transitional provisions relating to the applicability of the bill's changes to existing security interests.

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

- 1 SECTION 1. 409.102 (1) (bm) 2. of the statutes is amended to read:
- 2 409.102 (1) (bm) 2. ~~To execute or otherwise adopt a symbol, or encrypt or~~
- 3 ~~similarly process a record in whole or in part, with the~~ With present intent of the

1 ~~authenticating person to identify the person and to adopt or accept a record, to attach~~
2 ~~to or logically associate with the record an electronic sound, symbol, or process.~~

3 History: 2001 a. 10; 2003 a. 321; 2009 a. 322. ✓

3 SECTION 2. 409.102 (1) (cg) of the statutes is amended to read:

4 409.102 (1) (cg) "Certificate of title" means a certificate of title with respect to
5 which a statute provides for the security interest in question to be indicated on the
6 certificate as a condition or result of the security interest's obtaining priority over the
7 rights of a lien creditor with respect to the collateral. The term includes another
8 record maintained as an alternative to a certificate of title by the governmental unit
9 that issues certificates of title if a statute permits the security interest in question
10 to be indicated on the record as a condition or result of the security interest's
11 obtaining priority over the rights of a lien creditor with respect to the collateral.

12 History: 2001 a. 10; 2003 a. 321; 2009 a. 322. ✓

12 SECTION 3. 409.102 (1) (mg) of the statutes is amended to read:

13 409.102 (1) (mg) "Jurisdiction of organization", with respect to a registered
14 organization, means the jurisdiction under whose law the organization is formed or
15 organized.

16 History: 2001 a. 10; 2003 a. 321; 2009 a. 322. ✓

16 SECTION 4. 409.102 (1) (qp) of the statutes is created to read:

17 409.102 (1) (qp) "Public organic record" means a record that is available to the
18 public for inspection and is:

19 1. A record consisting of the record initially filed with or issued by a state or
20 the United States to form or organize an organization and any record filed with or
21 issued by the state or the United States which amends or restates the initial record;

22 2. An organic record of a business trust consisting of the record initially filed
23 with a state and any record filed with the state which amends or restates the initial

1 record, if a statute of the state governing business trusts requires that the record be
2 filed with the state; or

3 3. A record consisting of legislation enacted by the legislature of a state or the
4 Congress of the United States which forms or organizes an organization, any record
5 amending the legislation, and any record filed with or issued by the state or the
6 United States which amends or restates the name of the organization.

7 **SECTION 5.** 409.102 (1) (rg) of the statutes is amended to read:

8 409.102 (1) (rg) "Registered organization" means an organization formed or
9 organized solely under the law of a single state or the United States and as to which
10 the state or the United States must maintain a public record showing the
11 organization to have been organized by the filing of a public organic record with, the
12 issuance of a public organic record by, or the enactment of legislation by the state or
13 the United States. The term includes a business trust that is formed or organized
14 under the law of a single state if a statute of the state governing business trusts
15 requires that the business trust's organic record be filed with the state.

16 History: 2001 a. 10; 2003 a. 321; 2009 a. 322.

17 **SECTION 6.** 409.105 (intro.) of the statutes is renumbered 409.105 (1m) and
18 amended to read:

19 409.105 (1m) GENERAL RULE: CONTROL OF ELECTRONIC CHATTEL PAPER. A secured
20 party has control of electronic chattel paper if a system employed for evidencing the
21 transfer of interests in the chattel paper reliably establishes the secured party as the
person to which the chattel paper was assigned.

(1m)
α
SECTION 6

1

(2m) SPECIFIC FACTS GIVING CONTROL. A system satisfies sub. (1) if the record

2 or records comprising the chattel paper are created, stored, and assigned in such a
3 manner that:

History: 2001 a. 10.

4 **SECTION 7.** 409.105 (1) to (6) of the statutes are renumbered 409.105 (2m) (a)
5 to (f), and 409.105 (2m) (a), (d) and (f), as renumbered, are amended to read:

6 409.105 (2m) (a) A single authoritative copy of the record or records exists
7 which is unique, identifiable, and, except as otherwise provided in subs. (4) to (6)
8 pars. (d) to (f), unalterable;

9

(b) Copies or revisions amendments that add or change an identified assignee
10 of the authoritative copy can be made only with the participation consent of the
11 secured party;

12 (f) Any revision amendment of the authoritative copy is readily identifiable as
13 an authorized or unauthorized revision.

History: 2001 a. 10.

14 **SECTION 8.** 409.307 (6) (b) of the statutes is amended to read:

15 409.307 (6) (b) In the state that the registered organization, branch, or agency
16 designates, if the law of the United States authorizes the registered organization,
17 branch, or agency to designate its state of location, including by designating its main
18 office, home office, or other comparable office; or

History: 2001 a. 10.

19 **SECTION 9.** 409.311 (1) (c) of the statutes is amended to read:

20 409.311 (1) (c) A ~~certificate of title~~ statute of another jurisdiction which
21 provides for a security interest to be indicated on ~~the~~ a certificate of title as a
22 condition or result of the security interest's obtaining priority over the rights of a lien
23 creditor with respect to the property.

History: 2001 a. 10.

1 **SECTION 10.** 409.316 (title) of the statutes is amended to read:

2 **409.316** (title) ~~Continued perfection of security interest following~~
3 **Effect of change in governing law.**

4 History: 2001 a. 10.

SECTION 11. 409.316 (8) and (9) of the statutes are created to read:

5 **409.316 (8) EFFECT ON FILED FINANCING STATEMENT OF CHANGE IN GOVERNING LAW.**

6 The following rules apply to collateral to which a security interest attaches within
7 4 months after the debtor changes its location to another jurisdiction:

8 (a) A financing statement filed before the change pursuant to the law of the
9 jurisdiction designated in s. 409.301 (1) or 409.305 (3) is effective to perfect a security
10 interest in the collateral if the financing statement would have been effective to
11 perfect a security interest in the collateral had the debtor not changed its location.

12 (b) If a security interest perfected by a financing statement that is effective
13 under par. (a) becomes perfected under the law of the other jurisdiction before the
14 earlier of the time the financing statement would have become ineffective under the
15 law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) or the expiration of
16 the 4-month period, it remains perfected thereafter. If the security interest does not
17 become perfected under the law of the other jurisdiction before the earlier time or
18 event, it becomes unperfected and is deemed never to have been perfected as against
19 a purchaser of the collateral for value.

20 **(9) EFFECT OF CHANGE IN GOVERNING LAW ON FINANCING STATEMENT FILED AGAINST**
21 **ORIGINAL DEBTOR.** If a financing statement naming an original debtor is filed
22 pursuant to the law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) and
23 the new debtor is located in another jurisdiction, the following rules apply:

1 (a) The financing statement is effective to perfect a security interest in
2 collateral acquired by the new debtor before, and within 4 months after, the new
3 debtor becomes bound under s. 409.203 (4), if the financing statement would have
4 been effective to perfect a security interest in the collateral had the collateral been
5 acquired by the original debtor.

6 (b) A security interest perfected by the financing statement and which becomes
7 perfected under the law of the other jurisdiction before the earlier of the time the
8 financing statement would have become ineffective under the law of the jurisdiction
9 designated in s. 409.301 (1) or 409.305 (3) or the expiration of the 4-month period
10 remains perfected thereafter. A security interest that is perfected by the financing
11 statement but which does not become perfected under the law of the other
12 jurisdiction before the earlier time or event becomes unperfected and is deemed
13 never to have been perfected as against a purchaser of the collateral for value.

14 **SECTION 12.** 409.317 (2) and (4) of the statutes are amended to read:

15 409.317 (2) BUYERS THAT RECEIVE DELIVERY. Except as otherwise provided in
16 sub. (5), a buyer, other than a secured party, of tangible chattel paper, tangible
17 documents, goods, instruments, or a certificated security ~~certificate~~ takes free of a
18 security interest or agricultural lien if the buyer gives value and receives delivery of
19 the collateral without knowledge of the security interest or agricultural lien and
20 before it is perfected.

21 (4) LICENSEES AND BUYERS OF CERTAIN COLLATERAL. A licensee of a general
22 intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel~~
23 ~~paper, electronic documents, general intangibles, or investment property~~ collateral
24 other than tangible chattel paper, tangible documents, goods, instruments, or a

1 certified security takes free of a security interest if the licensee or buyer gives
2 value without knowledge of the security interest and before it is perfected.

3 History: 2001 a. 10; 2009 a. 322.

3 **SECTION 13.** 409.326 of the statutes is amended to read:

4 **409.326 Priority of security interests created by new debtor. (1)**

5 SUBORDINATION OF SECURITY INTEREST CREATED BY NEW DEBTOR. Subject to sub. (2), a
6 security interest that is created by a new debtor which is in collateral in which the
7 new debtor has or acquires rights and is perfected solely by a filed financing
8 statement that is ~~effective solely under s. 409.508 in collateral in which a new debtor~~
9 ~~has or acquires rights~~ would be ineffective to perfect the security interest but for the
10 application of s. 409.316 (9) (a) or 409.508 is subordinate to a security interest in the
11 same collateral which is perfected other than by such a filed financing statement ~~that~~
12 ~~is effective solely under s. 409.508.~~

13 **(2) PRIORITY UNDER OTHER PROVISIONS; MULTIPLE ORIGINAL DEBTORS.** The other
14 provisions of this subchapter determine the priority among conflicting security
15 interests in the same collateral perfected by filed financing statements ~~that are~~
16 ~~effective solely under s. 409.508~~ described in sub. (1). However, if the security
17 agreements to which a new debtor became bound as debtor were not entered into by
18 the same original debtor, the conflicting security interests rank according to priority
19 in time of the new debtor's having become bound.

20 History: 2001 a. 10.

20 **SECTION 14.** 409.406 (5) of the statutes is amended to read:

21 **409.406 (5) INAPPLICABILITY OF SUB. (4) TO CERTAIN SALES.** Subsection (4) does not
22 apply to the sale of a payment intangible or promissory note, other than a sale

1 pursuant to a disposition under s. 409.610 or an acceptance of collateral under s.
2 409.620.

3 History: 2001 a. 10.

3 **SECTION 15.** 409.408 (2) of the statutes is amended to read:

4 409.408 (2) APPLICABILITY OF SUB. (1) TO SALES OF CERTAIN RIGHTS TO PAYMENT.

5 Subsection (1) applies to a security interest in a payment intangible or promissory
6 note only if the security interest arises out of a sale of the payment intangible or
7 promissory note, other than a sale pursuant to a disposition under s. 409.610 or an
8 acceptance of collateral under s. 409.620.

9 History: 2001 a. 10.

9 **SECTION 16.** 409.502 (3) (c) of the statutes is renumbered 409.502 (3) (c) (intro.)

10 and amended to read:

11 409.502 (3) (c) (intro.) The record satisfies the requirements for a financing
12 statement in this section other than an indication, but:

13 1. The record need not indicate that it is to be filed in the real property records;

14 and

15 History: 2001 a. 10.

15 **SECTION 17.** 409.502 (3) (c) 2. of the statutes is created to read:

16 409.502 (3) (c) 2. The record sufficiently provides the name of a debtor who is
17 an individual if it provides the individual name of the debtor or the surname and first
18 personal name of the debtor, even if the debtor is an individual to whom s. 409.503
19 (1) (dm) applies; and

20 **SECTION 18.** 409.503 (1) (a) of the statutes is amended to read:

21 409.503 (1) (a) If Except as otherwise provided in par. (c), if the debtor is a
22 registered organization or the collateral is held in a trust that is a registered
23 organization, only if the financing statement provides the name of the debtor
24 indicated that is stated to be the registered organization's name on the public organic

1 record of the debtor's most recently filed with or issued or enacted by the registered
2 organization's jurisdiction of organization which shows the debtor to have been
3 organized purports to state, amend, or restate the registered organization's name;

4 History: 2001 a. 10.

SECTION 19. 409.503 (1) (b) of the statutes is amended to read:

5 409.503 (1) (b) ~~If the debtor is a decedent's estate~~ Subject to sub. (6) [???

6 subsection (f) if the collateral is being administered by the personal representative
7 of a decedent, only if the financing statement provides, ^{keep comma} as the name of the debtor, the
8 name of the decedent and, in a separate part of the financing statement, indicates
9 that the debtor is an estate collateral is being administered by a personal
10 representative;

11 History: 2001 a. 10.

SECTION 20. 409.503 (1) (c) (intro.) of the statutes is amended to read:

12 409.503 (1) (c) (intro.) ~~If the debtor is a trust or a trustee acting with respect~~
13 ~~to property held in trust, only if the financing statement~~ collateral is held in a trust
14 that is not a registered organization, only if the financing statement:

15 History: 2001 a. 10.

SECTION 21. 409.503 (1) (c) 1. and 2. of the statutes are repealed.

16 SECTION 22. 409.503 (1) (c) 1m. and 2m. of the statutes are created to read:

17 409.503 (1) (c) 1m. Provides, as the name of the debtor:

18 a. If the organic record of the trust specifies a name for the trust, the name
19 specified; or

20 b. If the organic record of the trust does not specify a name for the trust, the
21 name of the settlor or testator; and

22 2m. In a separate part of the financing statement:

23 a. If the name is provided in accordance with subd. 1m. a., indicates that the
24 collateral is held in a trust; or

1 b. If the name is provided in accordance with subd. 1m. b., provides additional
2 information sufficient to distinguish the trust from other trusts having one or more
3 of the same settlors or the same testator and indicates that the collateral is held in
4 a trust, unless the additional information so indicates;

5 **SECTION 23.** 409.503 (1) (dm) and (e) of the statutes are created to read:

6 409.503 (1) (dm) Subject to sub. (7), if the debtor is an individual to whom this
7 state has issued an operator's license under ch. 343 or identification card under s.
8 343.50 that has not expired, only if the financing statement provides the name of the
9 individual which is indicated on the operator's license or identification card;

10 (e) If the debtor is an individual to whom par. (dm) does not apply, only if the
11 financing statement provides the individual name of the debtor or the surname and
12 first personal name of the debtor; and

13 **SECTION 24.** 409.503 (1) (d) of the statutes is renumbered 409.503 (1) (f) and
14 409.503 (1) (f) 1. and 2., as renumbered, are amended to read:

15 409.503 (1) (f) 1. If the debtor has a name, only if it the financing statement
16 provides the ~~individual or~~ organizational name of the debtor; and

17 2. If the debtor does not have a name, only if it the financing statement provides
18 the names of the partners, members, associates, or other persons comprising the
19 debtor, in a manner that each name provided would be sufficient if the person named
20 were the debtor.

21 History: 2001 a. 10.

SECTION 25. 409.503 (2) (b) of the statutes is amended to read:

22 409.503 (2) (b) Unless required under sub. (1) ~~(d)~~ (f) 2., names of partners,
23 members, associates, or other persons comprising the debtor.

24 History: 2001 a. 10.

SECTION 26. 409.503 (6), (7) and (8) of the statutes are created to read:

1 409.503 (6) NAME OF DECEDENT. The name of the decedent indicated on the order
2 appointing the personal representative of the decedent issued by the court having
3 jurisdiction over the collateral is sufficient as the "name of the decedent" under sub.
4 (1) (b).

5 (7) MULTIPLE LICENSES OR IDENTIFICATION CARDS. If this state has issued to an
6 individual more than one operator's license under ch. 343 or identification card
7 under s. 343.50 of a kind described in sub. (1) (dm), the one that was issued most
8 recently is the one to which sub. (1) (dm) refers.

9 (8) DEFINITION. In this section, the "name of the settlor or testator" means:

10 (a) If the settlor is a registered organization, the name that is stated to be the
11 settlor's name on the public organic record most recently filed with or issued or
12 enacted by the settlor's jurisdiction of organization which purports to state, amend,
13 or restate the settlor's name;

14 (b) In other cases, the name of the settlor or testator indicated in the trust's
15 organic record.

16 SECTION 27. 409.507 (3) of the statutes is amended to read:

17 409.507 (3) CHANGE IN DEBTOR'S NAME. If ~~a debtor so changes its~~ the name that
18 a filed financing statement provides for a debtor becomes insufficient as the name
19 of the debtor under s. 409.503 (1) so that the financing statement becomes seriously
20 misleading under s. 409.506:

21 (a) The financing statement is effective to perfect a security interest in
22 collateral acquired by the debtor before, or within 4 months after, the change filed
23 financing statement becomes seriously misleading; and

24 (b) The financing statement is not effective to perfect a security interest in
25 collateral acquired by the debtor more than 4 months after the change filed financing

1 statement becomes seriously misleading, unless an amendment to the financing
2 statement which renders the financing statement not seriously misleading is filed
3 within 4 months after the ~~change~~ financing statement became seriously misleading.

4 History: 2001 a. 10.

SECTION 28. 409.515 (6) of the statutes is amended to read:

5 409.515 (6) TRANSMITTING UTILITY FINANCING STATEMENT. If a debtor is a
6 transmitting utility and a filed initial financing statement so indicates, the financing
7 statement is effective until a termination statement is filed.

8 History: 2001 a. 10.

SECTION 29. 409.516 (2) (c) 2. (intro.) of the statutes is amended to read:

9 409.516 (2) (c) 2. (intro.) In the case of an amendment or ~~correction~~ information
10 statement, the record: ✓

11 History: 2001 a. 10; 2009 a. 347.

SECTION 30. 409.516 (2) (c) 3. of the statutes is amended to read:

12 409.516 (2) (c) 3. In the case of an initial financing statement that provides the
13 name of a debtor identified as an individual or an amendment that provides a name
14 of a debtor identified as an individual which was not previously provided in the
15 financing statement to which the record relates, the record does not identify the
16 debtor's ~~last name~~ surname; or

17 History: 2001 a. 10; 2009 a. 347.

SECTION 31. 409.516 (2) (e) 1. of the statutes is amended to read:

18 409.516 (2) (e) 1. Provide a mailing address for the debtor; or

19 History: 2001 a. 10; 2009 a. 347.

SECTION 32. 409.516 (2) (e) 2. of the statutes is amended to read:

20 409.516 (2) (e) 2. Indicate whether the name provided as the name of the debtor
21 is the name of an individual or an organization; ~~or~~

22 History: 2001 a. 10; 2009 a. 347. ✓

SECTION 33. 409.516 (2) (e) 3. of the statutes is repealed.

23 **SECTION 34.** 409.518 (1) of the statutes is amended to read:

1 409.518 (1) ~~CORRECTION STATEMENT~~ STATEMENT WITH RESPECT TO RECORD INDEXED
2 UNDER PERSON'S NAME. A person may file in the filing office ~~a correction~~ an information
3 statement with respect to a record indexed there under the person's name if the
4 person believes that the record is inaccurate or was wrongfully filed.

History: 2001 a. 10.

5 **SECTION 35.** 409.518 (2) (title), (intro.), (a) 2. and (b) of the statutes are
6 amended to read:

strike out both sides

7 409.518 (2) ~~SUFFICIENCY OF CORRECTION~~ CONTENTS OF STATEMENT UNDER SUB. (1).

8 (intro.) ~~A correction~~ An information statement under sub. (1) must:

9 (a) 2. If the ~~correction~~ information statement relates to a record filed or recorded
10 in a filing office described in s. 409.501 (1) (a), the date on which the initial financing
11 statement was filed or recorded and the information specified in s. 409.502 (2);

12 (b) Indicate that it is ~~a correction~~ an information statement; and

History: 2001 a. 10.

13 **SECTION 36.** 409.518 (3) of the statutes is renumbered 409.518 (5) and amended
14 to read:

15 409.518 (5) ~~RECORD NOT AFFECTED BY CORRECTION~~ INFORMATION STATEMENT. The
16 filing of ~~a correction~~ an information statement does not affect the effectiveness of an
17 initial financing statement or other filed record.

History: 2001 a. 10.

18 **SECTION 37.** 409.518 (3m) and (4) of the statutes are created to read:

19 409.518 (3m) **STATEMENT BY SECURED PARTY OF RECORD.** A person may file in the
20 filing office an information statement with respect to a record filed there if the person
21 is a secured party of record with respect to the financing statement to which the
22 record relates and believes that the person that filed the record was not entitled to
23 do so under s. 409.509 (4).

1 (4) CONTENTS OF STATEMENT UNDER SUB. (3M). An information statement under
2 sub. (3m) must:

3 (a) Identify the record to which it relates by:

4 1. The file number assigned to the initial financing statement to which the
5 record relates; and

6 2. If the information statement relates to a record filed or recorded in a filing
7 office described in s. 409.501 (1) (a), the date that the initial financing statement was
8 filed or recorded and the information specified in s. 409.502 (2);

9 (b) Indicate that it is an information statement; and

10 (c) Provide the basis for the person's belief that the person that filed the record
11 was not entitled to do so under s. 409.509 (4).

History: 2001 a. 10; 2003 a. 120; 2009 a. 347.

12 SECTION 38. 409.607 (2) (b) 1. of the statutes is amended to read:

13 409.607 (2) (b) 1. A default has occurred with respect to the obligation secured
14 by the mortgage; and

[precedes 409.802]

History: 2001 a. 10.

15 SECTION 39. Subchapter VIII of chapter 409 [precedes ...] of the statutes is
16 created to read:

17 CHAPTER 409

18 SUBCHAPTER VIII

19 TRANSITION PROVISIONS FOR 2010 AMENDMENTS
20

De

21 409.802 Savings clause. (1) PREEFFECTIVE-DATE TRANSACTIONS OR LIENS.
22 Except as otherwise provided in this subchapter, 2011 Wisconsin Act (this act)
23 applies to a transaction or lien within its scope, even if the transaction or lien was

1 entered into or created before the effective date of this subsection [LRB inserts
2 date].

3 (2) PREEFFECTIVE-DATE PROCEEDINGS. 2011 Wisconsin Act (this act) does not
4 affect an action, case, or proceeding commenced before the effective date of this
5 subsection [LRB inserts date].

6 **409.803 Security interest perfected before effective date. (1)**
7 CONTINUING PERFECTION: PERFECTION REQUIREMENTS SATISFIED. A security interest
8 that is a perfected security interest immediately before the effective date of this
9 subsection [LRB inserts date], is a perfected security interest under this chapter,
10 as affected by 2011 Wisconsin Act (this act) if, on the effective date of this
11 subsection [LRB inserts date], the applicable requirements for attachment and
12 perfection under this chapter, as affected by 2011 Wisconsin Act (this act) are
13 satisfied without further action.

14 (2) CONTINUING PERFECTION: PERFECTION REQUIREMENTS NOT SATISFIED. Except
15 as otherwise provided in s. 409.805, if, immediately before the effective date of this
16 subsection [LRB inserts date], a security interest is a perfected security interest,
17 but the applicable requirements for perfection under this chapter, as affected by 2011
18 Wisconsin Act (this act) are not satisfied as of the effective date of this subsection
19 [LRB inserts date], the security interest remains perfected thereafter only if the
20 applicable requirements for perfection under this chapter, as affected by 2011
21 Wisconsin Act (this act), are satisfied within one year after the effective date of
22 this subsection [LRB inserts date].

23 **409.804 Security interest unperfected before effective date.** A security
24 interest that is an unperfected security interest immediately before the effective date
25 of this section [LRB inserts date], becomes a perfected security interest:

1 (1) Without further action, on the effective date of this subsection ... [LRB
 2 inserts date], if the applicable requirements for perfection under this chapter, as
 3 affected by 2011 Wisconsin Act ... (this act), are satisfied before or at that time; or

4 (2) When the applicable requirements for perfection are satisfied if the
 5 requirements are satisfied after that time.

6 **409.805 Effectiveness of action taken before effective date. (1)**
 7 PREEFFECTIVE-DATE FILING EFFECTIVE. The filing of a financing statement before the
 8 effective date of this subsection ... [LRB inserts date], is effective to perfect a security
 9 interest to the extent the filing would satisfy the applicable requirements for
 10 perfection under this chapter, as affected by 2011 Wisconsin Act ... (this act).

11 (2) WHEN PREEFFECTIVE-DATE FILING BECOMES INEFFECTIVE. 2011 Wisconsin Act
 12 ... (this act) does not render ineffective an effective financing statement that, before
 13 the effective date of this subsection ... [LRB inserts date], is filed and satisfies the
 14 applicable requirements for perfection under the law of the jurisdiction governing
 15 perfection as provided in ch. 409, 2009 stats. However, except as otherwise provided
 16 in subs. (3) and (4) and s. 409.806, the financing statement ceases to be effective:

17 (a) If the financing statement is filed in this state, at the time the financing
 18 statement would have ceased to be effective had 2011 Wisconsin Act ... (this act) not
 19 taken effect; or

20 (b) If the financing statement is filed in another jurisdiction, at the earlier of:

21 1. The time the financing statement would have ceased to be effective under
 22 the law of that jurisdiction; or

23 2. June 30, 2018.

24 (3) CONTINUATION STATEMENT. The filing of a continuation statement on or after
 25 the effective date of this subsection ... [LRB inserts date], does not continue the

1 effectiveness of a financing statement filed before the effective date of this subsection
2 [LRB inserts date]. However, upon the timely filing of a continuation statement
3 on or after the effective date of this subsection [LRB inserts date], and in
4 accordance with the law of the jurisdiction governing perfection as provided in this
5 chapter, as affected by 2011 Wisconsin Act (this act), the effectiveness of a
6 financing statement filed in the same office in that jurisdiction before the effective
7 date of this subsection [LRB inserts date], continues for the period provided by the
8 law of that jurisdiction.

9 (4) APPLICATION OF SUB. (2) (B) 2. TO TRANSMITTING UTILITY FINANCING STATEMENT.

10 Subsection (2) (b) 2. applies to a financing statement that, before the effective date
11 of this subsection [LRB inserts date], is filed against a transmitting utility and
12 satisfies the applicable requirements for perfection under the law of the jurisdiction
13 governing perfection as provided in ch. 409, 2009 stats., only to the extent that this
14 chapter, as affected by 2011 Wisconsin Act (this act), provides that the law of a
15 jurisdiction other than the jurisdiction in which the financing statement is filed
16 governs perfection of a security interest in collateral covered by the financing
17 statement.

18 (5) APPLICATION OF SUBCH. V. A financing statement that includes a financing
19 statement filed before the effective date of this subsection [LRB inserts date], and
20 a continuation statement filed on or after the effective date of this subsection [LRB
21 inserts date], is effective only to the extent that it satisfies the requirements of subch.
22 V, as affected by 2011 Wisconsin Act (this act), for an initial financing statement.
23 A financing statement that indicates that the debtor is a decedent's estate indicates
24 that the collateral is being administered by a personal representative within the
25 meaning of s. 409.503 (1) (b), as affected by 2011 Wisconsin Act (this act). A

1 financing statement that indicates that the debtor is a trust or is a trustee acting with
2 respect to property held in trust indicates that the collateral is held in a trust within
3 the meaning of s. 409.503 (1) (c), as affected by 2011 Wisconsin Act (this act).

4 **409.806 When initial financing statement suffices to continue**
5 **effectiveness of financing statement. (1) INITIAL FINANCING STATEMENT IN LIEU**
6 **OF CONTINUATION STATEMENT.** The filing of an initial financing statement in the office
7 specified in s. 409.501 continues the effectiveness of a financing statement filed
8 before the effective date of this subsection [LRB inserts date], if:

9 (a) The filing of an initial financing statement in that office would be effective
10 to perfect a security interest under this chapter, as affected by 2011 Wisconsin Act
11 (this act);

12 (b) The preeffective-date financing statement was filed in an office in another
13 state; and

14 (c) The initial financing statement satisfies sub. (3).

15 **(2) PERIOD OF CONTINUED EFFECTIVENESS.** The filing of an initial financing
16 statement under sub. (1) continues the effectiveness of the preeffective-date
17 financing statement:

18 (a) If the initial financing statement is filed before the effective date of this
19 paragraph [LRB inserts date], for the period provided in s. 409.515, 2009 stats.,
20 with respect to an initial financing statement; and

21 (b) If the initial financing statement is filed on or after the effective date of this
22 paragraph [LRB inserts date], for the period provided in s. 409.515, as affected
23 by 2011 Wisconsin Act (this act), with respect to an initial financing statement.

24 **(3) REQUIREMENTS FOR INITIAL FINANCING STATEMENT UNDER SUB. (1).** To be
25 effective for purposes of sub. (1), an initial financing statement must:

1 (a) Satisfy the requirements of subch. V, as affected by 2011 Wisconsin Act
2 (this act), for an initial financing statement;

3 (b) Identify the preeffective-date financing statement by indicating the office
4 in which the financing statement was filed and providing the dates of filing and file
5 numbers, if any, of the financing statement and of the most recent continuation
6 statement filed with respect to the financing statement; and

7 (c) Indicate that the preeffective-date financing statement remains effective.

8 **409.807 Amendment of preeffective-date financing statement. (1)**

9 PREEFFECTIVE-DATE FINANCING STATEMENT. In this section, “preeffective-date
10 financing statement” means a financing statement filed before the effective date of
11 this subsection [LRB inserts date].

12 (2) APPLICABLE LAW. On or after the effective date of this subsection [LRB
13 inserts date], a person may add or delete collateral covered by, continue or terminate
14 the effectiveness of, or otherwise amend the information provided in, a
15 preeffective-date financing statement only in accordance with the law of the
16 jurisdiction governing perfection as provided in this chapter, as affected by 2011
17 Wisconsin Act (this act). However, the effectiveness of a preeffective-date
18 financing statement also may be terminated in accordance with the law of the
19 jurisdiction in which the financing statement is filed.

20 (3) METHOD OF AMENDING: GENERAL RULE. Except as otherwise provided in sub.
21 (4), if the law of this state governs perfection of a security interest, the information
22 in a preeffective-date financing statement may be amended on or after the effective
23 date of this subsection [LRB inserts date], only if:

24 (a) The preeffective-date financing statement and an amendment are filed in
25 the office specified in s. 409.501;

1 (b) An amendment is filed in the office specified in s. 409.501 concurrently with,
2 or after the filing in that office of, an initial financing statement that satisfies s.
3 409.806 (3); or

4 (c) An initial financing statement that provides the information as amended
5 and satisfies s. 409.806 (3) is filed in the office specified in s. 409.501.

6 (4) METHOD OF AMENDING: CONTINUATION. If the law of this state governs
7 perfection of a security interest, the effectiveness of a preeffective-date financing
8 statement may be continued only under s. 409.805 (3) and (5) or 409.806.

9 (5) METHOD OF AMENDING: ADDITIONAL TERMINATION RULE. Whether or not the law
10 of this state governs perfection of a security interest, the effectiveness of a
11 preeffective-date financing statement filed in this state may be terminated on or
12 after the effective date of this subsection [LRB inserts date], by filing a
13 termination statement in the office in which the preeffective-date financing
14 statement is filed, unless an initial financing statement that satisfies s. 409.806 (3)
15 has been filed in the office specified by the law of the jurisdiction governing perfection
16 as provided in this chapter, as affected by 2011 Wisconsin Act (this act), as the
17 office in which to file a financing statement.

18 **409.808 Persons entitled to file initial financing statement or**
19 **continuation statement.** A person may file an initial financing statement or a
20 continuation statement under this subchapter if:

21 (1) The secured party of record authorizes the filing; and

22 (2) The filing is necessary under this subchapter:

23 (a) To continue the effectiveness of a financing statement filed before the
24 effective date of this paragraph [LRB inserts date]; or

25 (b) To perfect or continue the perfection of a security interest.

1 **409.809 Priority.** 2011 Wisconsin Act ... (this act) determines the priority of
2 conflicting claims to collateral. However, if the relative priorities of the claims were
3 established before the effective date of this section ... [LRB inserts date], ch. 409,
4 2009 stats., determines priority.

5 **SECTION 40. Effective date.**

6 (1) This act takes effect on July 1, 2013.

7 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3505/P1dn

ARG:/:....

med

Date

ATTN: Lance Burri

Please review the attached draft carefully to ensure that it is consistent with your intent.

I have included created s. 409.503 (7) as it appears in NCCUSL's suggested amendments but I do not believe this provision is necessary because DOT does not issue multiple licenses or identification cards.

In two sections, the NCCUSL suggested amendments offer alternative treatments. With regard to s. 409.503 in the attached draft, I have incorporated Alternative A. I have confirmed that DOT and DFI information systems are compatible if Alternative A is adopted. With regard to s. 409.518 in the attached draft, I have incorporated Alternative B, which is consistent with current law in Wisconsin.

I note that the attached draft does not include any amendment to Wisconsin's current forms, as they appear in s. 409.521 (2) and (3).

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3505/P1dn
ARG:med:rs

January 3, 2012

ATTN: Lance Burri

Please review the attached draft carefully to ensure that it is consistent with your intent.

I have included created s. 409.503 (7) as it appears in NCCUSL's suggested amendments but I do not believe this provision is necessary because DOT does not issue multiple licenses or identification cards.

343.05 ARG

In two sections, the NCCUSL suggested amendments offer alternative treatments. With regard to s. 409.503 in the attached draft, I have incorporated Alternative A. I have confirmed that DOT and DFI information systems are compatible if Alternative A is adopted. With regard to s. 409.518 in the attached draft, I have incorporated Alternative B, which is consistent with current law in Wisconsin.

I note that the attached draft does not include any amendment to Wisconsin's current forms, as they appear in s. 409.521 (2) and (3).

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

1/9

LRB - 3505

• conf. call

1:30 pm

• Nolan, Jay, ~~Chris~~^{Kris}, Heather, Lance, AEG• forms? what changes are needed?
• will need changes to formsp. 11, line 8: court could appoint
an• personal representative too narrow
• sub. (v) also
• where else• they will let me know what
changes are needed

*instruction notes
ARG*

*court - appointed fiduciary
or administrator*

1 organization, only if the financing statement provides the name of the debtor
2 indicated that is stated to be the registered organization's name on the public organic
3 record of the debtor's most recently filed with or issued or enacted by the registered
4 organization's jurisdiction of organization which shows the debtor to have been
5 organized purports to state, amend, or restate the registered organization's name;

6 **SECTION 19.** 409.503 (1) (b) of the statutes is amended to read:

7 409.503 (1) (b) ~~If the debtor is a decedent's estate~~ *or other* Subject to sub. (6), if the
8 collateral is being administered by the personal representative of a decedent, only
9 if the financing statement provides, as the name of the debtor, the name of the
10 decedent and, in a separate part of the financing statement, indicates that the debtor
11 is an estate collateral is being administered by a personal representative;

12 **SECTION 20.** 409.503 (1) (c) (intro.) of the statutes is amended to read:

13 409.503 (1) (c) (intro.) ~~If the debtor is a trust or a trustee acting with respect~~
14 ~~to property held in trust, only if the financing statement collateral is held in a trust~~
15 that is not a registered organization, only if the financing statement:

16 **SECTION 21.** 409.503 (1) (c) 1. and 2. of the statutes are repealed.

17 **SECTION 22.** 409.503 (1) (c) 1m. and 2m. of the statutes are created to read:

18 409.503 (1) (c) 1m. Provides, as the name of the debtor:

19 a. If the organic record of the trust specifies a name for the trust, the name
20 specified; or

21 b. If the organic record of the trust does not specify a name for the trust, the
22 name of the settlor or testator; and

23 2m. In a separate part of the financing statement:

24 a. If the name is provided in accordance with subd. 1m. a., indicates that the
25 collateral is held in a trust; or

Gary, Aaron

From: Heather MacKinnon [hmackinnon@wisbank.com]
Sent: Tuesday, January 17, 2012 10:09 AM
To: Gary, Aaron
Cc: Jay Risch; Burri, Lance; Mike Semmann; nolan.zadra@usbank.com; Kristine Clevon
Subject: RE: Dial In Info for Today's Conference Call at 1:30
Attachments: UCC Financing Statements 2010 Amendments.pdf

Aaron

Attached please find four forms: (1) UCC Financing Statement; (2) UCC Financing Statement Addendum; (3) UCC Financing Statement Amendment; and (4) UCC Financing Statement Amendment Addendum. The revision date of the forms is 04/20/11.

These are the revised UCC Financing Statements which have been issued by IACA (International Association of Commercial Administrators) and incorporated into the April 27 2011 draft of the 2010 Amendments.

I have confirmed with NCCUSL Legislative Counsel Nicole Julal that the four forms are the final version of the 2010 Amendment and are the forms for use under the 2010 Amendments.

Also, in the January 6, 2012 telephone call, it was discussed to revise language referencing personal representative so as to broaden the language to incorporate others that may be acting on the behalf of a decedent. So as to ensure the WI forms remain uniform forms, we have decided to not change the language. We have no other recommended revisions to the draft other than to recommend inclusion of the attached four forms.

Please incorporate into the draft the four attached forms into section 409.521(2) and (3).

If you would prefer the forms be faxed, please let me know and I can forward them to you right away. Thank you,

Heather

Heather A. MacKinnon
 Director - Legal
 Wisconsin Bankers Association
 4721 S. Biltmore Lane
 Madison, WI 53718
 608/441-1200, ext. 246
<http://www.wisbank.com>

The information contained in this electronic communication and any attached documentation is intended to be general information only and does not constitute legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.

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From: nolan.zadra@usbank.com [mailto:nolan.zadra@usbank.com]