

1973 Senate Bill 177

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## CHAPTER 215, Laws of 1973

AN ACT to repeal 409.104 (5), 409.105 (2) (c), 409.203 (2), 409.204 (3) and (4), 409.302 (5), 409.312 (5) (c) and 409.403 (5); to renumber 409.105 (1) (g) and (h), 409.203 (3), 409.313 (4m) and 409.402 (5); to renumber and amend 409.105 (1) (e), (f) and (i), 409.204 (5) and 409.313 (5); to amend 401.201 (9) and (37), 402.107 (1) and (2), 405.116 (2) (intro.), 409.102 (title) and (1), 409.104 (1), (2), (6) to (8), (11) and (12), 409.105 (1) (a) to (d), 409.106, 409.205, 409.301 (title), (1) (b) to (d), (2) and (3), 409.302 (1) (d) and (e), 409.304 (1) and (5) (a), 409.305, 409.306 (2), (3) and (4) (intro.), (a) to (c) and (d) (intro.) and 2, 409.307 (2), 409.312 (4) and (5) (intro.), 409.318 (2) to (4), 409.401 (1) (a), (b)

and (c), 409.401 (4), 409.402 (title), (1), (2), (3) and (4), 409.403 (1) to (4), 409.404 (1) and (2), 409.405 (1) and (2), 409.406, 409.407 (2), 409.501 (3) (intro.), 409.502 (2), 409.504 (1) (a), (2) and (3) and 409.505 (2); to repeal and recreate 401.105 (2) (e), 409.103, 409.203 (title) and (1), 409.204 (title), (1) and (2), 409.302 (1) (c), (3) and (4), 409.306 (1), 409.308, 409.312 (1), (3), (5) (a) and (b) and (6), 409.313 (1) to (4), 409.401 (5), 409.402 (3) 2, 3 and 4 and 409.404 (3); and to create 409.104 (13), 409.105 (1) (e), (g), (j), (k) and (n) and (2) (am) and (ar), (em), (er) and (k), 409.114, 409.203 (2) and (3), 409.301 (4), 409.302 (1) (g), 409.306 (3m), 409.312 (7), 409.313 (5) to (7) and (9), 409.401 (6), 409.402 (2) (c) and (d), 409.402 (5) to (7), 409.403 (5) to (7), 409.408, 409.409 and 409.901 to 409.905 of the statutes, relating to revising ch. 409 and other chapters of the uniform commercial code.

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

SECTION 1. 401.105 (2) (e) of the statutes is repealed and recreated to read:

401.105 (2) (e) Section 409.103 on the perfection provisions of ch. 409.

SECTION 2. 401.201 (9) and (37) of the statutes are amended to read:

401.201 (9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a ~~third~~ 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a ~~preexisting~~ preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (s. 402.401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, ~~or chattel paper, or contract rights~~ which is subject to ch. 409. The special property interest of a buyer of goods on identification of such goods to a contract for sale under s. 402.401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with ch. 409. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (s. 402.326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

SECTION 3. 402.107 (1) and (2) of the statutes are amended to read:

402.107 (1) A contract for the sale of ~~timber~~, minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in sub. (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

SECTION 4. 405.116 (2) (intro.) of the statutes is amended to read:

405.116 (2) (intro.) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of ~~a contract right~~ an account under ch. 409 and is governed by that chapter except that:

SECTION 5. 409.102 (title) and (1) of the statutes are amended to read:

**409.102 (title) Policy and subject matter of chapter.** (1) Except as otherwise provided ~~in s. 409.103 on multiple state transactions and in s. 409.104 on excluded transactions, this chapter applies so far as concerns any personal property and fixtures within the jurisdiction of this state.~~

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts ~~or contract rights~~; and also,

(b) To any sale of accounts, ~~contract rights~~ or chattel paper.

SECTION 6. 409.103 of the statutes is repealed and recreated to read:

**409.103 Perfection of security interests in multiple state transactions.** (1) DOCUMENTS, INSTRUMENTS AND ORDINARY GOODS. (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in sub. (2), mobile goods described in sub. (3), and minerals described in sub. (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by ss. 409.301 to 409.318 to perfect the security interest:

1. If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

2. If the action is taken before the expiration of the period specified in subd. 1, the security interest continues perfected thereafter;

3. For the purpose of priority over a buyer of consumer goods (s. 409.307 (2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subds. 1 and 2.

(2) CERTIFICATE OF TITLE. (a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in par. (d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to sub. (1) (d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) ACCOUNTS, GENERAL INTANGIBLES AND MOBILE GOODS. (a) This subsection applies to accounts (other than an account described in sub. (5) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in sub. (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the federal aviation act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) CHATTEL PAPER. The rules stated for goods in sub. (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in sub. (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) MINERALS. Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

SECTION 7. 409.104 (1), (2), (6) to (8), (11) and (12) of the statutes are amended to read:

409.104 (1) To a security interest subject to any statute of the United States ~~such as the ship mortgage act, 1920,~~ to the extent that such statute governs the rights of parties to and ~~third~~ 3rd parties affected by transactions in particular types of property; or

(2) To a nonconsensual landlord's lien; or

(6) To a sale of accounts, ~~contract rights~~ or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, ~~contract rights~~ or chattel paper which is for the purpose of collection only, or a transfer of a ~~contract~~ right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(7) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds in s. 409.306 and priorities in proceeds in s. 409.312; or

(8) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(11) To a transfer in whole or in part of ~~any of the following:~~ any claim arising out of tort; ~~any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization;~~ or

(12) To a contract between a ~~co-operative~~ cooperative association and a member thereof, authorized by s. 185.41.; or

SECTION 8. 409.104 (5) of the statutes is repealed.

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SECTION 9. 409.104 (13) of the statutes is created to read:

409.104 (13) To a transfer of an interest in any deposit account as defined in s. 409.105 (1), except as provided with respect to proceeds under s. 409.306 and priorities in proceeds under s. 409.312.

SECTION 10. 409.105 (1) (a) to (d) of the statutes are amended to read:

409.105 (1) (a) "Account debtor" means the person who is obligated on an account, chattel paper, ~~contract right~~ or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts, ~~contract rights~~ and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, ~~contract rights~~ or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

SECTION 11. 409.105 (1) (e) of the statutes is renumbered 409.105 (1) (f) and amended to read:

409.105 (1) (f) "Document" means document of title as defined in s. 401.201, and a receipt of the kind described in s. 407.201 (2).

SECTION 12. 409.105 (1) (e) of the statutes is created to read:

409.105 (1) (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.

SECTION 13. 409.105 (1) (f) of the statutes is renumbered 409.105 (1) (h) and amended to read:

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

SECTION 14. 409.105 (1) (g) and (h) of the statutes are renumbered 409.105 (1) (i) and (L).

SECTION 15. 409.105 (1) (g) of the statutes is created to read:

409.105 (1) (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

SECTION 16. 409.105 (1) (i) of the statutes is renumbered 409.105 (1) (m) and amended to read:

409.105 (1) (m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, ~~contract rights~~ or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

SECTION 17. 409.105 (1) (j) and (k) of the statutes are created to read:

409.105 (1) (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

SECTION 18. 409.105 (1) (n) of the statutes is created to read:

409.105 (1) (n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

SECTION 19. 409.105 (2) (am) and (ar) of the statutes are created to read:

409.105 (2) (am) "Attach" -- s. 409.203.

(ar) "Construction mortgage" -- s. 409.313 (1).

SECTION 20. 409.105 (2) (c) of the statutes is repealed.

SECTION 21. 409.105 (2) (em), (er) and (k) of the statutes are created to read:

409.105 (2) (em) "Fixture" -- s. 409.313.

(er) "Fixture filing" -- s. 409.313.

(k) "United States" -- s. 409.103.

SECTION 22. 409.106 of the statutes is amended to read:

**409.106 (title) Definitions:** "account"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. ~~"Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.~~ "General intangibles" means any personal property (including things in action) other than goods, accounts, ~~contract rights~~, chattel paper, documents ~~and~~ instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are ~~contract rights and neither~~ accounts ~~nor general intangibles~~.

SECTION 23. 409.114 of the statutes is created to read:

**409.114 Consignment.** (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under ch. 409 by s. 402.326 (3) (c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) The consignor complies with the filing provision on sales with respect to consignments (s. 402.326 (3) (c)) before the consignee receives possession of the goods; and

(b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) The holder of the security interest receives the notification before the consignee receives possession of the goods; and

(d) The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of sub. (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

SECTION 24. 409.203 (title) and (1) of the statutes are repealed and recreated to read:

**409.203 (title) Attachment and enforceability of security interest; proceeds; formal requisites.** (1) Subject to s. 404.208 on the security interest of a collecting bank and s. 409.113 on a security interest arising under ch. 402, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) Value has been given; and

(c) The debtor has rights in the collateral.

SECTION 25. 409.203 (2) of the statutes is repealed.

SECTION 26. 409.203 (3) of the statutes is renumbered 409.203 (4).

SECTION 27. 409.203 (2) and (3) of the statutes are created to read:

409.203 (2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in sub. (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds under s. 409.306.

SECTION 28. 409.204 (title), (1) and (2) of the statutes are repealed and recreated to read:

**409.204 (title) After-acquired property; future advances.** (1) Except as provided in sub. (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions under s. 409.314 when given as additional



security unless the debtor acquires rights in them within 10 days after the secured party gives value.

SECTION 29. 409.204 (3) and (4) of the statutes are repealed.

SECTION 30. 409.204 (5) of the statutes is renumbered 409.204 (3) and amended to read:

409.204 (3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (s. 409.105 (1)).

SECTION 31. 409.205 of the statutes is amended to read:

**409.205 Use or disposition of collateral without accounting permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, ~~contract rights~~ or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

SECTION 32. 409.301 (title), (1) (b) to (d), (2) and (3) of the statutes are amended to read:

**409.301 (title) Persons who take priority over unperfected security interests; rights of "lien creditor".** (1) (b) A person who becomes a lien creditor ~~without knowledge of the security interest and before it~~ the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts, ~~contract rights~~, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral ~~comes into possession of the debtor~~, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. ~~Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.~~

SECTION 33. 409.301 (4) of the statutes is created to read:

409.301 (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures

advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

SECTION 34. 409.302 (1) (c) of the statutes is repealed and recreated to read:

409.302 (1) (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

SECTION 35. 409.302 (1) (d) and (e) of the statutes are amended to read:

409.302 (1) (d) A purchase money security interest in consumer goods having a purchase price not in excess of \$500; but fixture filing is required for ~~a fixture under priority over conflicting interests in fixtures to the extent provided in s. 409.313;~~

(e) An assignment of accounts ~~or contract rights~~ which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts ~~or contract rights~~ of the assignor;

SECTION 36. 409.302 (1) (g) of the statutes is created to read:

409.302 (1) (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

SECTION 37. 409.302 (3) and (4) of the statutes are repealed and recreated to read:

409.302 (3) The filing provisions of this chapter are not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following vehicle title statutes: ss. 342.19, 342.20, 342.284 and 342.285; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of ss. 409.401 to 409.408 apply to a security interest in that collateral created by him as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (s. 409.103 (2)); or

(d) Sections 182.025, 190.11, 193.22 and other statutes providing for central filing.

(4) Compliance with a statute or treaty described in sub. (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in s. 409.103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

SECTION 38. 409.302 (5) of the statutes is repealed.

SECTION 39. 409.304 (1) and (5) (a) of the statutes are amended to read:

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

(5) (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to s. 409.312 (3); or

SECTION 40. 409.305 of the statutes is amended to read:

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

SECTION 41. 409.306 (1) of the statutes is repealed and recreated to read:

409.306 (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

SECTION 42. 409.306 (2) and (3) of the statutes are amended to read:

409.306 (2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof ~~by the debtor unless his action~~ the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) ~~The Subject to sub. (3m), the security interest in proceeds under s. 409.203 (3) is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:~~

~~(a) A filed financing statement covering the original collateral also covers proceeds; or~~

~~(b) The security interest in the proceeds is perfected before the expiration of the 10-day period.~~

SECTION 43. 409.306 (3m) of the statutes is created to read:

409.306 (3m) If proceeds are acquired with cash proceeds from the sale of the original collateral or the sale of noncash proceeds of the original collateral and are of a type of property not described in the original financing statement, a buyer for value of such noncash proceeds who buys without knowledge of the fact that the property was

purchased with cash proceeds of the original collateral and before filing of the financing statement describing such noncash proceeds, takes free of the original security interest in such proceeds.

SECTION 44. 409.306 (4) (intro.), (a) to (c), and (d) (intro.) and 2 of the statutes are amended to read:

409.306 (4) (intro.) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is ~~not~~ neither commingled with other money ~~or~~ nor deposited in a ~~bank~~ deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a ~~bank~~ deposit account prior to the insolvency proceedings; and

(d) (intro.) In all cash and ~~bank~~ deposit accounts of the debtor, ~~if other cash in which~~ proceeds have been commingled or deposited in a bank account with other funds, but the perfected security interest under this paragraph is:

2. Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings ~~and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period less the sum of a) the payments to the secured party on account of cash proceeds received by the debtor during such period and b) the cash proceeds received by the debtor during such period to which the secured party is entitled under pars. (a) to (c).~~

SECTION 45. 409.307 (2) of the statutes is amended to read:

409.307 (2) In the case of consumer goods ~~or farm equipment~~ having an original purchase price not in excess of \$500 ~~and \$250, respectively, (other than fixtures, see s. 409.313),~~ a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes ~~or his own farming operations~~ unless prior to the purchase the secured party has filed a financing statement covering such goods.

SECTION 46. 409.308 of the statutes is repealed and recreated to read:

**409.308 Purchase of chattel paper and instruments.** A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(a) Which is perfected under s. 409.304 (permissive filing and temporary perfection) or under s. 409.306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) Which is claimed merely as proceeds of inventory subject to a security interest (s. 409.306) even though he knows that the specific paper or instrument is subject to the security interest.

SECTION 47. 409.312 (1) and (3) of the statutes are repealed and recreated to read:

409.312 (1) The rules of priority stated in ss. 409.301 to 409.311 and 409.313 to 409.318 and in the following sections shall govern when applicable: s. 404.208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; s. 409.103 on security interests related to other jurisdictions; s. 409.114 on consignments.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory 1) before the date of the filing made by the purchase money secured party, or 2) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (s. 409.304 (5)); and

(c) The holder of the conflicting security interest receives the notification before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

SECTION 48. 409.312 (4) and (5) (intro.) of the statutes are amended to read:

409.312 (4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) (intro.) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subs. (3) and (4)), priority between conflicting security interests in the same collateral shall be determined ~~as follows~~ according to the following rules:

SECTION 49. 409.312 (5) (a) and (b) and (6) of the statutes are repealed and recreated to read:

409.312 (5) (a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of sub. (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

SECTION 50. 409.312 (5) (c) of the statutes is repealed.

SECTION 51. 409.312 (7) of the statutes is created to read:

409.312 (7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the

purposes of sub. (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

SECTION 52. 409.313 (1) to (4) of the statutes are repealed and recreated to read:

409.313 (1) In this section and in the provisions of ss. 409.401 to 409.408 referring to fixture filing, unless the context otherwise requires:

(a) Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law.

(b) A “fixture filing” is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of s. 409.402 (5).

(c) A mortgage is a “construction mortgage” to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this chapter may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate; or

(b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate; or

(c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

SECTION 53. 409.313 (4m) of the statutes is repealed.

SECTION 54. 409.313 (5) of the statutes is renumbered 409.313 (8) and amended to read:

409.313 (8) When ~~under subs. (2) or (3) and (4) a~~ the secured party has priority over ~~the claims of all persons who have interests in all owners and encumbrancers of~~ the real estate, he may, on default, subject to ss. 409.501 to 409.507 remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

SECTION 55. 409.313 (5) to (7) and (9) of the statutes are created to read:

409.313 (5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding sub. (4) (a) but otherwise subject to subs. (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(9) The priority provisions of this section do not apply to security interests in vehicles for which certificates of title are required under ch. 340 and which are subject to s. 409.302 (3) (b).

SECTION 56. 409.318 (2) to (4) of the statutes are amended to read:

409.318 (2) So far as the right to payment or a part thereof under an assigned contract ~~right has not already become an account~~ has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the ~~account~~ amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account

debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor ~~which is ineffective if it prohibits assignment of an account or contract right to which they are parties is ineffective~~ prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

SECTION 57. 409.401 (1) (a), (b) and (c) of the statutes are amended to read:

409.401 (1) (a) When the collateral is equipment used in farming operations, or farm products, or accounts, ~~contract rights~~ or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the register of deeds in the county where the land ~~on which the crops are growing or to be grown~~ is located;

(b) When the collateral is ~~goods which at the time the security interest attaches are or are to become fixtures~~ timber to be cut or is minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or when the financing statement is filed as a fixture filing (s. 409.313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate ~~concerned~~ would be filed or recorded;

(c) In all other cases, in the office of the secretary of state ~~and in addition:~~

~~1. If the debtor has a place of business in this state, then in the office of the register of deeds in the county where the debtor's principal place of business is located; or~~

~~2. If the debtor has no place of business in this state but resides in this state, then in the office of the register of deeds in the county where he resides; or~~

~~3. If the debtor has no place of business in this state and does not reside in this state but the collateral is goods to be kept in this state, then in the office of the register of deeds in the county where the goods are kept.~~

SECTION 58. 409.401 (4) of the statutes is amended to read:

409.401 (4) ~~If collateral is brought into this state from another jurisdiction, the~~ The rules stated in s. 409.103 determine whether filing is necessary in this state.

SECTION 59. 409.401 (5) of the statutes is repealed and recreated to read:

409.401 (5) Notwithstanding the preceding subsections, and subject to s. 409.302 (3), the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing under s. 409.313 as to the collateral described therein which is or is to become fixtures.

SECTION 60. 409.401 (6) of the statutes is created to read:

409.401 (6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

SECTION 61. 409.402 (title) and (1) of the statutes are amended to read:



**409.402 (title) Formal requisites of financing statement; amendments; mortgage as financing statement.** (1) (a) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor ~~and the secured party~~, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(b) When the financing statement covers crops growing or to be grown ~~or goods which are or are to become fixtures~~, the statement must also contain ~~the legal a~~ description of the real estate concerned ~~and the name of the record owner thereof~~. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or when the financing statement is filed as a fixture filing (s. 409.313) and the collateral is goods which are or are to become fixtures, the statement must also comply with sub. (5). In each county, the register of deeds shall enter evidence of financing statements covering fixtures on all indices kept by him regarding the transfer of real estate. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by ~~both parties~~ the debtor. An accurate reproduction of the security agreement or the financing statement, certified to be a true copy by the secured party, public officer or notary public, or a carbon copy bearing signatures appearing by carbon impression, may be filed.

SECTION 62. 409.402 (2) of the statutes is amended to read:

409.402 (2) A financing statement which otherwise complies with sub. (1) is sufficient ~~although when~~ it is signed ~~only~~ by the secured party ~~when~~ instead of the debtor if it is filed to perfect a security interest in:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state ~~or when the debtor's location is changed to this state~~. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; ~~or~~

(b) Proceeds under s. 409.306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; ~~or~~

SECTION 63. 409.402 (2) (c) and (d) of the statutes are created to read:

409.402 (2) (c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (sub. (7)).

SECTION 64. 409.402 (3) 2, 3 and 4 of the statutes are repealed and recreated to read:

409.402 (3) 2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Enter Description of Real Estate).....

3. The above goods are to become fixtures on (Legal Description of Real Estate) ..... and this financing statement is to be filed in the real estate records.

4. (If products of collateral are claimed) Products of the collateral are also covered.

Signature of Debtor (or Assignor) .....

Signature of Secured Party (or Assignee) .....

(use whichever is applicable)

SECTION 65. 409.402 (4) of the statutes is amended to read:

409.402 (4) The term "financing statement" as used in this chapter means the original financing statement and any amendments but if A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment which changes only the name or the address of either party need be signed only by the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

SECTION 66. 409.402 (5) of the statutes is renumbered 409.402 (8).

SECTION 67. 409.402 (5) to (7) of the statutes are created to read:

409.402 (5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or a financing statement filed as a fixture filing (s. 409.313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a legal description of the real estate.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if a) the goods are described in the mortgage by item or type, b) the goods are or are to become fixtures related to the real estate described in the mortgage, c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

SECTION 68. 409.403 (1) to (4) of the statutes are amended to read:

409.403 (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter. ~~An accurate reproduction of the financing statement, certified to be a true copy by the secured party, public officer or notary public, or a carbon copy bearing signatures appearing by carbon impression, may be filed. In the case of a filing under s. 409.401 (1) (c), duplicate copies of the financing, continuation or termination statement or statement of assignment or release and twice the fee specified in sub. (5), ss. 409.404 (3), 409.405 (1) and (2) and 409.406 for any service rendered with respect to the statement except the issuance of a certificate under s. 409.407 (2), shall be submitted to the secretary of state. Upon receipt, the secretary of state shall return one copy of the statement filed and one-half of the fee received to the register of deeds of the county of the debtor's residence.~~

(2) ~~A~~ Except as provided in sub. (6) a filed financing statement which states a maturity date of the obligation secured of 5 years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60 day period after a stated maturity date or on the expiration of such the 5-year period, as the case may be, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon such lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse. A filed financing statement which states that the obligation secured is payable on demand is effective for 5 years from the date of filing.

(3) ~~A continuation statement may be filed by the secured party (a) within 6 months before and 60 days after a stated maturity date of 5 years or less, and (b) otherwise within 6 months prior to the expiration of the 5-year period specified in sub. (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in sub. (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under sub. (6) shall be retained.~~

(4) ~~A~~ Except as provided in sub. (7), a filing officer shall mark each statement with a ~~consecutive~~ file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

SECTION 69. 409.403 (5) of the statutes is repealed.

SECTION 70. 409.403 (5) to (7) of the statutes are created to read:

409.403 (5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$2 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be an additional \$1 per page, plus in each case, if the financing statement is subject to s. 409.402 (5), \$1. The uniform fee for each name more than one required to be indexed shall be \$1. The secured party may at his option show a trade name for any person and an extra uniform indexing fee of \$1 shall be paid with respect thereto. In the case of a filing under s. 409.401 (1) (c), sub. (1) controls as to fees.

(6) If the debtor is a transmitting utility (s. 409.401 (5)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under s. 409.402 (6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or is filed as a fixture filing, the filing officer shall index it under the names of the debtor in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

SECTION 71. 409.404 (1) and (2) of the statutes are amended to read:

409.404 (1) ~~Whenever~~ If a financing statement covering consumer goods is filed on or after July 1, 1974, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file, and on written demand by the debtor also send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a separate written statement of assignment signed by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof is \$2 complying with s. 409.405 (2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within 10 days after receipt of the debtor's written demand therefor he shall be liable to the debtor for \$25, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index and file it. If he has received the termination statement in duplicate or in triplicate in the case of a filing under s. 409.401 (1) (c), he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

SECTION 72. 409.404 (3) of the statutes is repealed and recreated to read:

409.404 (3) If the termination statement is in the standard form prescribed by the secretary of state, the uniform fee for filing and indexing the termination statement shall be \$2, and otherwise shall be \$4, plus in each case an additional fee of \$1 for each name more than one against which the termination statement is required to be indexed. In the case of a filing under s. 409.401 (1) (c), s. 409.403 (1) controls as to fees.

SECTION 73. 409.405 (1) and (2) of the statutes are amended to read:

409.405 (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in s. 409.403 (4). The uniform fee for filing, indexing and furnishing

filing data for a financing statement so indicating an assignment is \$2 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$4, plus in each case an additional fee of \$1 for each name more than one against which the financing statement is required to be indexed. In the case of a filing under s. 409.401 (1) (c), s. 409.403 (1) controls as to fees.

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment is \$2 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$4, plus in each case an additional fee of \$1 for each name more than one against which the statement of assignment is required to be indexed. In the case of a filing under s. 409.401 (1) (c), s. 409.403 (1) controls as to fees. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (s. 409.402 (6)) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this code.

SECTION 74. 409.406 of the statutes is amended to read:

**409.406 Release of collateral; duties of filing officer; fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is \$2 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$4, plus in each case an additional fee of \$1 for each name more than one against which the statement of release is required to be indexed. In the case of a filing under s. 409.401 (1) (c), s. 409.403 (1) controls as to fees.

SECTION 75. 409.407 (2) of the statutes is amended to read:

**409.407 (2) ISSUANCE OF CERTIFICATE; FEES.** Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement filed or continued within the preceding 6 years naming a particular debtor and any statement of

assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate is \$3 if the request for the certificate is in the standard form prescribed by the secretary of state and otherwise shall be \$4, plus \$1 for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment for a uniform fee of \$1 for each page of the copied statement plus 50 cents for the certificate.

SECTION 76. 409.408 of the statutes is created to read:

**409.408 Financing statements covering consigned or leased goods.** A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the terms specified in s. 409.402. Sections 409.401 to 409.409 apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (s. 401.201 (37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

SECTION 77. 409.409 of the statutes is created to read:

**409.409 Microfilming records.** Whenever in this chapter a filing officer is required to mark, index or file any financing statement, termination statement, continuation statement, statement of assignment or statement of release, he may destroy the original statement after a microfilm or other photographic copy has been prepared and filed for retention.

SECTION 78. 409.501 (3) (intro.) of the statutes is amended to read:

409.501 (3) (intro.) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (~~s. ss. 409.504 (3) and~~ 409.505 (1)) and with respect to redemption of collateral (s. 409.506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

SECTION 79. 409.502 (2) of the statutes is amended to read:

409.502 (2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, ~~contract rights~~, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

SECTION 80. 409.504 (1) (a), (2) and (3) of the statutes are amended to read:

409.504 (1) (a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, ~~contract rights~~, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state ~~or who is known by the secured party to have a security interest in the collateral~~. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

SECTION 81. 409.505 (2) of the statutes is amended to read:

409.505 (2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state ~~or is known by the secured party in possession to have a security interest in it~~. If the debtor or other person entitled to receive notification objects in writing within ~~30~~ 21 days from the receipt of the notification or if any other secured party objects in writing within ~~30~~ 21 days after the secured party obtains possession the secured party must dispose of the collateral under s. 409.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

SECTION 82. 409.901 to 409.905 of the statutes are created to read:

**409.901 Transition provisions -- General rule.** Transactions validly entered into after July 1, 1965, and before July 1, 1974, and which were subject to this code and which would be subject to this code as amended if they had been entered into after July 1, 1974, and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by this code as amended effective July 1, 1974. Security interests arising out of such transactions which are perfected prior to July 1, 1974, shall remain perfected until they lapse as provided in this code as amended, and may be continued as permitted by this code as amended, except as stated in s. 409.903.

**409.902 Transition provision on change of requirement of filing.** A security interest for the perfection of which filing or the taking of possession was required under this code prior to July 1, 1974, and which attached prior to July 1, 1974, but was not perfected shall be deemed perfected on July 1, 1974, if this code as amended



effective July 1, 1974, permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

**409.903 Transition provision on change of place of filing.** (1) A financing statement or continuation statement filed prior to July 1, 1974, which shall not have lapsed prior to that date shall remain effective for the period provided in this code prior to July 1, 1974, but not less than 5 years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to July 1, 1974, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under this code as amended effective July 1, 1974.

(3) The effectiveness of any financing statement or continuation statement filed prior to July 1, 1974, may be continued by a continuation statement as permitted by this code as amended effective July 1, 1974, except that if this code as amended requires a filing in an office where there was no previous financing statement, a new financing statement conforming to s. 409.904 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if this code as amended effective July 1, 1974, had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as of July 1, 1974, as to such goods under s. 409.402 (6) as amended.

**409.904 Required Refilings.** (1) If a security interest is perfected or has priority when this code as amended effective July 1, 1974, takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under this code as amended the perfection and priority rights of the security interest continue until 3 years after July 1, 1974. The perfection will then lapse unless a financing statement is filed under sub. (3) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected on July 1, 1974, under a law other than this code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse 3 years after July 1, 1974, unless a financing statement is filed under sub. (3) or unless the security interest is perfected otherwise than by filing, or unless under s. 409.302 (3) the other law continues to govern filing.

(3) A financing statement may be filed within 6 months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by the amendments to this code effective July 1, 1974), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under this code or under any statute or other law repealed or modified by the amendments to this code is still effective. Sections 409.103 and 409.401 determine the proper place to file such a financing statement. Except as specified in this subsection, s. 409.403 (3) for continuation statements applies to such a financing statement.

**409.905 Transition provisions as to priorities.** Except as otherwise provided in ss. 409.901 to 409.905, provisions of this code in effect prior to July 1, 1974, shall apply

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to any questions of priority if the positions of the parties were fixed prior to July 1, 1974. In other cases questions of priority shall be determined by this code as amended effective July 1, 1974.

SECTION 83. This act shall take effect July 1, 1974.

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