

Stats. 1961	Stats. 1963
(2) (a)	409.307
(2) (b)	409.301 (1) (c)
	409.312 (3)
(2) (c)	None
(3)	None
241.40	409.306 (2), (3),
	(4)
	409.308
	409.315 (1)
241.41	409.310
241.42	409.317
241.43 (1)	409.401 (1)
	409.402 (1)
(2)	409.402 (3)
(3)	409.403 (4), (5)
(4)	409.403 (1), (2)
(5)	409.403 (3)
241.44	409.204 (5)
241.45	409.102
241.46	409.401 (1)
241.47	401.103
241.48	401.102 (1) and
	(2) (c)
241.49	401.110
241.495	943.25 (2)
241.50	409.101
327.27	403.804
328.26	403.307

Revisor's Note, 1963: The notes printed in the Commercial Code indicate the instances where the study committee recommended departures from the Official Text of the Commercial Code as drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. The comments to the Official Text as made by those bodies are not here printed. [Bill 1-S]

CHAPTER 401.

General Provisions.

Editor's Note: For foreign decisions construing the Uniform Commercial Code: General Provisions and other relevant information see Uniform Laws, Annotated.

401.101 History: 1963 c. 158; Stats. 1963 s. 401.101.

The impact of the uniform commercial code on Wisconsin law. Helstad, 1964 WLR 355.

401.102 History: 1963 c. 158; Stats. 1963 s. 401.102.

On construction of statutes see notes to various sections of ch. 990.

401.103 History: 1963 c. 158; Stats. 1963 s. 401.103.

401.104 History: 1963 c. 158; Stats. 1963 s. 401.104.

401.105 History: 1963 c. 158; Stats. 1963 s. 401.105.

401.106 History: 1963 c. 158; Stats. 1963 s. 401.106.

401.107 History: 1963 c. 158; Stats. 1963 s. 401.107.

401.108 History: 1963 c. 158; Stats. 1963 s. 401.108.

401.109 History: 1963 c. 158; Stats. 1963 s. 401.109.

401.110 History: 1963 c. 158; Stats. 1963 s. 401.110; 1965 c. 51.

401.201 History: 1963 c. 158; Stats. 1963 s. 401.201.

Where, pursuant to a contract for the sale of equipment, the lessee agreed to pay a stipulated sum (plus a finance fee) and the lessee had the option of becoming the owner upon full compliance with the terms of the contract, the agreement was a conditional sale within the meaning of 122.01 (1), Stats. 1961, and it was irrelevant whether it could be determined that the market value of the equipment was more or less than the lessee obligated himself to pay. *James Talcott, Inc. v. P & J Contracting Co.* 27 W (2d) 68, 133 NW (2d) 473.

401.202 History: 1963 c. 158; Stats. 1963 s. 401.202.

401.203 History: 1963 c. 158; Stats. 1963 s. 401.203.

401.204 History: 1963 c. 158; Stats. 1963 s. 401.204.

401.205 History: 1963 c. 158; Stats. 1963 s. 401.205.

401.206 History: 1963 c. 158; Stats. 1963 s. 401.206; 1965 c. 51.

401.207 History: 1963 c. 158; Stats. 1963 s. 401.207.

401.208 History: 1963 c. 158; Stats. 1963 s. 401.208.

401.209 History: 1969 c. 39; Stats. 1969 s. 401.209.

Legislative Council Note, 1969: Proposed by the UCC editorial board, this new section makes clear that an agreement by which the rights of one unsecured creditor are subordinated to the rights of another unsecured creditor of a common debtor does not of itself create a security interest. The section is intended to clarify rather than change existing law. [Bill 2-A]

CHAPTER 402.

Sales.

Editor's Notes: (1) For notes of decisions construing prior statutes on the subject of sales see Wis. Annotations, 1960, and Wis. Stats. 1963.

(2) For foreign decisions construing the Uniform Commercial Code: Sales, and other relevant information, see Uniform Laws, Annotated.

402.101 History: 1963 c. 158; Stats. 1963 s. 402.101.

The sales contract; formation, buyer's remedies, seller's remedies, creditor's remedies. Cudahy and Barnes, 49 MLR 108, 122, 131 and 135.

The impact of the uniform commercial code on Wisconsin law. Helstad, 1964 WLR 355.

402.102 History: 1963 c. 158; Stats. 1963 s. 402.102.

402.103 History: 1963 c. 158; Stats. 1963 s. 402.103.

402.104 History: 1963 c. 158; Stats. 1963 s. 402.104.

402.105 History: 1963 c. 158; Stats. 1963 s. 402.105.

402.106 History: 1963 c. 158; Stats. 1963 s. 402.106.

402.107 History: 1963 c. 158; Stats. 1963 s. 402.107.

402.201 History: 1963 c. 158, 429; Stats. 1963 s. 402.201.

Changes wrought in the statute of frauds by the uniform commercial code. Cahill, 48 MLR 571.

402.202 History: 1963 c. 158; Stats. 1963 s. 402.202.

402.203 History: 1963 c. 158; Stats. 1963 s. 402.203.

402.204 History: 1963 c. 158; Stats. 1963 s. 402.204.

402.205 History: 1963 c. 158; Stats. 1963 s. 402.205; 1969 c. 39.

Legislative Council Note, 1963: For the purpose of clarification, the phrase "unless consideration is given" was added to the official text after "3 months". [Bill 1-S]

Legislative Council Note, 1969: The phrase "unless consideration is given" has been deleted in the interest of uniformity and on the basis that it is unnecessary. An open offer accompanied by consideration would be, in effect, an option and not an offer. [Bill 2-A]

402.206 History: 1963 c. 158; Stats. 1963 s. 402.206.

402.207 History: 1963 c. 158; Stats. 1963 s. 402.207; 1969 c. 39.

Legislative Council Note, 1963: For the purpose of bringing the language of sub. (2) into conformity with the language of sub. (1), the words "or different" were added to the official text after the word "additional" in the first sentence of sub. (2). [Bill 1-S]

Legislative Council Note, 1969: The phrase "or different" had been added by Wisconsin to the official text of the code to make clear that "different" as well as "additional" terms became a part of a contract if not objected to within a reasonable time. In the interest of uniformity of language and law, the phrase "or different" is deleted. [Bill 2-A]

402.208 History: 1963 c. 158; Stats. 1963 s. 402.208.

402.209 History: 1963 c. 158; Stats. 1963 s. 402.209.

402.210 History: 1963 c. 158; Stats. 1963 s. 402.210.

402.301 History: 1963 c. 158; Stats. 1963 s. 402.301.

402.302 History: 1963 c. 158; Stats. 1963 s. 402.302.

Limitation of warranty under the uniform commercial code. Cudahy, 47 MLR 127.

Let the buyer beware: a new concept under the U.C.C. Eisenberg, 41 WBB, No. 3.

402.303 History: 1963 c. 158; Stats. 1963 s. 402.303.

402.304 History: 1963 c. 158; Stats. 1963 s. 402.304.

402.305 History: 1963 c. 158; Stats. 1963 s. 402.305.

402.306 History: 1963 c. 158; Stats. 1963 s. 402.306.

Mutuality of obligation in requirement contracts; a suggested approach under the commercial code. Simon, 1964 WLR 684.

402.307 History: 1963 c. 158; Stats. 1963 s. 402.307.

402.308 History: 1963 c. 158; Stats. 1963 s. 402.308.

402.309 History: 1963 c. 158; Stats. 1963 s. 402.309.

402.310 History: 1963 c. 158; Stats. 1963 s. 402.310.

402.311 History: 1963 c. 158; Stats. 1963 s. 402.311.

402.312 History: 1963 c. 158, 429; Stats. 1963 s. 402.312; 1969 c. 39.

Legislative Council Note, 1963: Subsection (1) (c) was added to the official text by the study committee in order to preserve the warranty of quiet possession which is part of the Uniform Sales Act [Wis. Stat. s. 121.13 (2)]. This warranty was not included in the uniform commercial code. See the official comment to s. 2—312 of the code. While the warranty of quiet possession may not be important in most commercial transactions, the study committee was of the view that the buyer ought to have the protection of this warranty in the few cases in which it may be important. The net effect of the warranty is to extend the time for bringing actions; for the statute of limitations does not begin to run until possession is disturbed while in the case of other warranties it generally will run from the time tender of delivery is made. [Bill 1-S]

Legislative Council Note, 1969: The warranty of quiet possession as to personal property was deliberately abolished by the commercial code draftsmen. Wisconsin, however, in sub. (1) (c), which it created, retained this warranty. In the interest of uniformity and in keeping with this state's overall policy of eliminating potential litigation after a reasonable period of time, the committee recommends abolition of the warranty of quiet possession as to personalty. It is believed that other provisions in s. 402.312 (1) will afford ample protection for the buyer. [Bill 2-A]

402.313 History: 1963 c. 158; Stats. 1963 s. 402.313.

Express warranties and greater consumer protection from sales talk. Gray, 50 MLR 88;

402.314 History: 1963 c. 158; Stats. 1963 s. 402.314.

402.315 History: 1963 c. 158; Stats. 1963 s. 402.315.

402.316 History: 1963 c. 158; Stats. 1963 s. 402.316.

Limitation of warranty under the uniform commercial code. Cudahy, 47 MLR 127.

402.317 History: 1963 c. 158; Stats. 1963 s. 402.317.

Limitation of warranty under the uniform commercial code. Cudahy, 47 MLR 127.

402.318 History: 1963 c. 158; Stats. 1963 s. 402.318.

In enacting 402.318, the legislature has not specifically limited the seller's responsibility for product liability to the buyer's family and guests, for the section is neutral and is not intended to enlarge or restrict the developing case law on whether the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain. *Dippel v. Sciano*, 37 W (2d) 443, 155 NW (2d) 55.

Products liability; the privity requirement in Wisconsin. *Balistreri*, 47 MLR 209.

Feasibility of broadening the scope of warranty protection of third-party beneficiaries. 51 MLR 388.

402.319 History: 1963 c. 158; Stats. 1963 s. 402.319.

402.320 History: 1963 c. 158; Stats. 1963 s. 402.320.

402.321 History: 1963 c. 158; Stats. 1963 s. 402.321.

402.322 History: 1963 c. 158; Stats. 1963 s. 402.322.

402.323 History: 1963 c. 158; Stats. 1963 s. 402.323.

402.324 History: 1963 c. 158; Stats. 1963 s. 402.324.

402.325 History: 1963 c. 158; Stats. 1963 s. 402.325.

402.326 History: 1963 c. 158; Stats. 1963 s. 402.326.

Sale or return and sale on approval of goods. *Murray*, 1962 WLR 93.

402.327 History: 1963 c. 158; Stats. 1963 s. 402.327.

402.328 History: 1963 c. 158; Stats. 1963 s. 402.328.

402.401 History: 1963 c. 158; Stats. 1963 s. 402.401.

402.402 History: 1963 c. 158; Stats. 1963 s. 402.402.

402.403 History: 1963 c. 158; Stats. 1963 s. 402.403.

The provisions of 402.403, Stats. 1963, apply as between merchants where merchants buy from one another in the ordinary course of business, the term "buyer" being elsewhere defined in the uniform commercial code as

including a merchant. By virtue of applicable definitions of terms, a merchant may be a buyer in the ordinary course of business under 402.403 from another merchant if he meets 4 requirements: (1) Be honest in fact, (2) be without knowledge of any defects of title in the goods, (3) pay value, and (4) observe reasonable commercial standards. *Mattek v. Malofsky*, 42 W (2d) 16, 165 NW (2d) 406.

402.501 History: 1963 c. 158; Stats. 1963 s. 402.501.

402.502 History: 1963 c. 158; Stats. 1963 s. 402.502.

402.503 History: 1963 c. 158; Stats. 1963 s. 402.503.

402.504 History: 1963 c. 158; Stats. 1963 s. 402.504.

402.505 History: 1963 c. 158; Stats. 1963 s. 402.505.

402.506 History: 1963 c. 158; Stats. 1963 s. 402.506.

402.507 History: 1963 c. 158; Stats. 1963 s. 402.507.

402.508 History: 1963 c. 158; Stats. 1963 s. 402.508.

402.509 History: 1963 c. 158; Stats. 1963 s. 402.509.

402.510 History: 1963 c. 158; Stats. 1963 s. 402.510.

402.511 History: 1963 c. 158; Stats. 1963 s. 402.511.

402.512 History: 1963 c. 158; Stats. 1963 s. 402.512.

402.513 History: 1963 c. 158; Stats. 1963 s. 402.513.

Legislative Council Note, 1963: The phrase "unless otherwise agreed" was added to the official text of sub. (2) by the study committee so as to bring the language of this subsection into conformity with that of the other subsections of this section and so as to eliminate any possibility of a misunderstanding as to the right of the parties to contract with respect to expenses of inspection. No change in substance results from the addition of this phrase. See s. 401.102 (3) and (4). [Bill 1-S]

402.514 History: 1963 c. 158; Stats. 1963 s. 402.514.

402.515 History: 1963 c. 158; Stats. 1963 s. 402.515.

402.601 History: 1963 c. 158; Stats. 1963 s. 402.601.

402.602 History: 1963 c. 158; Stats. 1963 s. 402.602.

402.603 History: 1963 c. 158; Stats. 1963 s. 402.603.

402.604 History: 1963 c. 158; Stats. 1963 s. 402.604.

402.605 History: 1963 c. 158; Stats. 1963 s. 402.605.

402.606 History: 1963 c. 158; Stats. 1963 s. 402.606.

402.607 History: 1963 c. 158; Stats. 1963 s. 402.607.

Products liability; the privity requirement in Wisconsin. Balistreri, 47 MLR 209.

402.608 History: 1963 c. 158; Stats. 1963 s. 402.608.

402.609 History: 1963 c. 158; Stats. 1963 s. 402.609.

402.610 History: 1963 c. 158; Stats. 1963 s. 402.610.

402.611 History: 1963 c. 158; Stats. 1963 s. 402.611.

402.612 History: 1963 c. 158; Stats. 1963 s. 402.612.

402.613 History: 1963 c. 158; Stats. 1963 s. 402.613.

402.614 History: 1963 c. 158; Stats. 1963 s. 402.614.

402.615 History: 1963 c. 158; Stats. 1963 s. 402.615.

402.616 History: 1963 c. 158; Stats. 1963 s. 402.616.

Legislative Council Note, 1963: The study committee deleted sub. (3) of the official text which stated that "the provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section." It was felt that this limitation on the seller's freedom to contract with respect to delayed delivery could work undue hardship, particularly in the case of the seller who has incurred considerable expense in the manufacture of a special article for the buyer which is not readily resalable elsewhere. It was the consensus of the committee that the buyer's protection against particularly onerous contractual clauses providing for delay in delivery because of various contingencies should be based on the section dealing with unconscionable clauses (s. 402.302) rather than on the outright prohibition of sub. (3) of the official text of this section. [Bill 1-S]

402.701 History: 1963 c. 158; Stats. 1963 s. 402.701.

402.702 History: 1963 c. 158; Stats. 1963 s. 402.702; 1969 c. 39.

Legislative Council Note, 1969: This amendment deleting the phrase "or lien creditor" is in accordance with the recommendations of the UCC editorial board. The change eliminates a confusing cross reference and also is designed to avoid the type of result reached in *In re Kravitz*, 278 F.2d 820 (3d Cir. 1960). That case held that the pre-code law of Pennsylvania was carried forward by the code, that under that law a defrauded seller was subordinated to a creditor who obtained a lien by levy upon the goods in the buyer's hands,

and that the buyer's trustee in bankruptcy as an "ideal lien creditor" had the rights of such a lien creditor, thus defeating the seller's right of recovery. The amendment leaves open the question of the extent to which an actual creditor, such as a secured party, may be a good faith purchaser within the meaning of this subsection. [Bill 2-A]

402.703 History: 1963 c. 158; Stats. 1963 s. 402.703.

402.704 History: 1963 c. 158; Stats. 1963 s. 402.704.

402.705 History: 1963 c. 158; Stats. 1963 s. 402.705.

402.706 History: 1963 c. 158; Stats. 1963 s. 402.706.

402.707 History: 1963 c. 158; Stats. 1963 s. 402.707.

402.708 History: 1963 c. 158; Stats. 1963 s. 402.708.

402.709 History: 1963 c. 158; Stats. 1963 s. 402.709.

402.710 History: 1963 c. 158; Stats. 1963 s. 402.710.

402.711 History: 1963 c. 158; Stats. 1963 s. 402.711.

402.712 History: 1963 c. 158; Stats. 1963 s. 402.712.

402.713 History: 1963 c. 158; Stats. 1963 s. 402.713.

402.714 History: 1963 c. 158; Stats. 1963 s. 402.714.

402.715 History: 1963 c. 158; Stats. 1963 s. 402.715.

402.716 History: 1963 c. 158; Stats. 1963 s. 402.716.

402.717 History: 1963 c. 158; Stats. 1963 s. 402.717.

402.718 History: 1963 c. 158; Stats. 1963 s. 402.718.

402.719 History: 1963 c. 158; Stats. 1963 s. 402.719.

402.720 History: 1963 c. 158; Stats. 1963 s. 402.720.

402.721 History: 1963 c. 158; Stats. 1963 s. 402.721.

402.722 History: 1963 c. 158; Stats. 1963 s. 402.722.

402.723 History: 1963 c. 158; Stats. 1963 s. 402.723.

402.724 History: 1963 c. 158; Stats. 1963 s. 402.724.

402.725 History: 1963 c. 158; Stats. 1963 s. 402.725; 1965 c. 51; 1969 c. 39.

Legislative Council Note, 1963: The official text of sub. (1) stated a 4-year limitation plus

an additional provision that the parties by their original agreement could reduce this period of limitation to not less than one year. It was the consensus of the study committee that the present 6-year limitation should be retained. [Bill 1-S]

Legislative Council Note, 1969: To [As to sub. (1)] protect the inexperienced buyer from unwittingly reducing his rights to sue for breach of contract, Wisconsin adopted the sentence "This period of limitation may not be varied by agreement of the parties" in lieu of the code language "By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it". This amendment partially restores the code language but would restrict the right to vary periods of limitation to parties who are merchants. While uniformity between the Wisconsin statutes and the UCC official text is desirable, the protection of buyers other than merchants is deemed more important. [As to sub. (2)] This amendment deletes the reference to the warranty of quiet possession (see note to 402.312) and thus restores uniformity with the official code text. [Bill 2-A]

CHAPTER 403.

Commercial Paper.

Editor's Notes: (1) For notes of decisions construing prior statutes on the subject of commercial paper see Wis. Annotations, 1960, and Wis. Stats. 1963.

(2) For foreign decisions construing the Uniform Commercial Code: Commercial Paper and other relevant information see Uniform Laws, Annotated.

403.101 History: 1963 c. 158; Stats. 1963 s. 403.101.

The impact of the uniform commercial code on Wisconsin law. Helstad, 1964 WLR 355.

403.102 History: 1963 c. 158; Stats. 1963 s. 403.102.

403.103 History: 1963 c. 158; Stats. 1963 s. 403.103.

Legislative Council Note, 1963: For the purpose of clarification, the study committee changed the words "investment securities" in the official text to read "securities as defined by s. 408.102." [Bill 1-S]

403.104 History: 1963 c. 158; Stats. 1963 s. 403.104; 1969 c. 39.

Editor's Note: In *Marine Bank v. Kalt-Zimmers Co.*, 293 US 357, the U. S. supreme court held that the decision in *Pollard v. Tobin*, 211 W 405, 247 NW 453, that certain bonds were negotiable under ch. 116, Stats. 1931 (the negotiable instruments law), was binding on the federal courts. See also *Erie Railroad Co. v. Tompkins*, 304 US 64.

403.105 History: 1963 c. 158; Stats. 1963 s. 403.105.

403.106 History: 1963 c. 158; Stats. 1963 s. 403.106.

403.107 History: 1963 c. 158; Stats. 1963 s. 403.107.

403.108 History: 1963 c. 158; Stats. 1963 s. 403.108.

403.109 History: 1963 c. 158; Stats. 1963 s. 403.109.

403.110 History: 1963 c. 158; Stats. 1963 s. 403.110.

403.111 History: 1963 c. 158; Stats. 1963 s. 403.111.

403.112 History: 1963 c. 158; Stats. 1963 s. 403.112.

403.113 History: 1963 c. 158; Stats. 1963 s. 403.113.

403.114 History: 1963 c. 158; Stats. 1963 s. 403.114.

403.115 History: 1963 c. 158; Stats. 1963 s. 403.115.

403.116 History: 1963 c. 158; Stats. 1963 s. 403.116.

403.117 History: 1963 c. 158; Stats. 1963 s. 403.117.

403.118 History: 1963 c. 158; Stats. 1963 s. 403.118; 1965 c. 51; 1969 c. 39.

Legislative Council Note, 1963: Subsection (7) is not part of the official text of the code. It is derived from the second sentence of Wis. Stat. s. 116.14. The study committee saw no good reason for repealing this codification of a common-law rule. It will not affect uniformity. [Bill 1-S]

Legislative Council Note, 1969: Subsection (7), not a part of the official UCC text, was derived from s. 116.14, Wis. Stat. 1963, which in turn purported to codify an old common-law rule. The need for the provision is not apparent, and the committee concluded that it ought to be repealed in the interest of uniformity. [Bill 2-A]

403.119 History: 1963 c. 158; Stats. 1963 s. 403.119.

403.120 History: 1963 c. 158; Stats. 1963 s. 403.120.

403.121 History: 1963 c. 158; Stats. 1963 s. 403.121.

Legislative Council Note, 1963: The official draft of the code here presented a choice of alternatives. The study committee selected the alternative (Alternative B) which in its opinion states current practice in Wisconsin. The rejected alternative (Alternative A) would have made a note or acceptance which states that it is payable at a bank the equivalent of a draft drawn on the bank, payable when due out of any funds the maker or acceptor has in the bank at the time without any further instructions from him. [Bill 1-S]

403.122 History: 1963 c. 158; Stats. 1963 s. 403.122.

403.201 History: 1963 c. 158; Stats. 1963 s. 403.201.

403.202 History: 1963 c. 158; Stats. 1963 s. 403.202.