

408.403 History: 1963 c. 158; Stats. 1963 s. 408.403.

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408.406 History: 1963 c. 158; Stats. 1963 s. 408.406.

CHAPTER 409.

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

Editor's Notes: (1) For notes of decisions construing prior statutes on subjects within the scope of this chapter see Wis. Annotations, 1960, and Wis. Stats. 1963. See also *Opitz v. Brawley*, 10 W (2d) 93, 102 NW (2d) 117.

(2) For foreign decisions construing the Uniform Commercial Code: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper, and other relevant information, see Uniform Laws, Annotated.

409.101 History: 1963 c. 158; Stats. 1963 s. 409.101.

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

409.102 History: 1963 c. 158; Stats. 1963 s. 409.102.

Introduction to secured financing. Norris and DeGuire, 48 MLR 481. Surety's rights as security interest. 49 MLR 164.

409.103 History: 1963 c. 158; Stats. 1963 s. 409.103.

409.104 History: 1963 c. 158; Stats. 1963 s. 409.104.

Legislative Council Note, 1963: There is a decisional rule in this state to the effect that all property of a public utility is incidental to its franchise and therefore assumes the character of personal property, even though the particular property normally would be real estate. See *Superior Water, Light & Power Co. v. Superior*, 174 Wis. 257, 181 NW 113, 183 NW 254 (1921); *Ireland v. Tomahawk Light, Telephone & Improvement Co.* 185 Wis. 148, 200 NW 642 (1924). To make clear that this rule does not enlarge this chapter of the Code to encompass any property normally considered to be real estate, the study committee added to sub. (10) the phrase "and including an interest in or lien on real estate owned by a public utility even though for some purposes such real estate is deemed to be personal property."

Subsection (12) was added by the study committee to make clear that a co-op member contract does not come within the scope of this chapter of the Code. Such contracts technically may come within the definition of security agreement in that they secure the performance of an obligation, i.e., the obligation of the member to market his crops to the association, but they are not the type of security agreements with which this chapter generally is concerned. [Bill 1-S]

409.105 History: 1963 c. 158; Stats. 1963 s. 409.105; 1969 c. 39.

Legislative Council Note, 1969: This amendment [of sub. (1) (b)] which was proposed by the UCC editorial board, makes clear that a ship charter is not chattel paper. [Bill 2-A]

409.106 History: 1963 c. 158; Stats. 1963 s. 409.106; 1969 c. 39.

Legislative Council Note, 1969: This amendment, which, as in s. 409.105 (1) (b), was proposed by the UCC editorial board, makes clear that rights arising out of a ship charter are contract rights and neither accounts nor general intangibles. [Bill 2-A]

409.107 History: 1963 c. 158; Stats. 1963 s. 409.107.

409.108 History: 1963 c. 158; Stats. 1963 s. 409.108.

409.109 History: 1963 c. 158; Stats. 1963 s. 409.109.

409.110 History: 1963 c. 158; Stats. 1963 s. 409.110.

409.111 History: 1963 c. 158; Stats. 1963 s. 409.111.

409.112 History: 1963 c. 158; Stats. 1963 s. 409.112.

409.113 History: 1963 c. 158; Stats. 1963 s. 409.113.

409.201 History: 1963 c. 158; Stats. 1963 s. 409.201.

409.202 History: 1963 c. 158; Stats. 1963 s. 409.202.

409.203 History: 1963 c. 158; Stats. 1963 s. 409.203; 1967 c. 92 s. 22.

Legislative Council Note, 1963: Subsection (2) is not part of the official text of the Code. It is derived from Wis. Stat. s. 241.08. The study committee deemed it advisable to continue the special policy of this section.

Subsection (3) is part of the official text (s. 9-203 (2)) but the words "chs. 115, 214, s. 182.025, or any other similar statute which may be applicable to the particular transaction" were inserted where the official text shows a blank. They are designed to make clear that certain regulatory and other legislation is preserved intact. [Bill 1-S]

409.204 History: 1963 c. 158; Stats. 1963 s. 409.204.

Law of mortgages on merchandise. Skilton, 1963 WLR 359.

409.205 History: 1963 c. 158; Stats. 1963 s. 409.205.

409.206 History: 1963 c. 158; Stats. 1963 s. 409.206.

409.207 History: 1963 c. 158; Stats. 1963 s. 409.207.

409.208 History: 1963 c. 158; Stats. 1963 s. 409.208.

409.301 History: 1963 c. 158; Stats. 1963 s. 409.301.

An unperfected security interest in accounts receivable is subordinate to the rights of a lien creditor, which term, by statutory definition, includes "an assignee for benefit of creditors from the time of assignment". In re Voluntary Assignment of Federal Wholesale Meats & Frozen Foods, Inc. 43 W (2d) 21, 168 NW (2d) 70.

409.302 History: 1963 c. 158; Stats. 1963 s. 409.302; 1965 c. 485; 1969 c. 39.

Legislative Council Note, 1963: The study committee changed the filing exemptions in sub. (1) (c) and (d) by inserting a limit of \$250 in each case. The official text exempted purchase money security interests in farm equipment having a purchase price of \$2500 or less and all purchase money security interests in consumer goods, except fixtures and motor vehicles, regardless of purchase price. This change in the official text is a compromise between the position that there ought to be no secret liens and filing ought to be required for perfection of the security interest in every case and the position that filing is unnecessary and wasteful in the case of consumer goods and certain farm equipment because it is general knowledge that such goods usually are purchased on credit and are likely to be subject to a lien.

A reference to s. 182.025 was inserted in the introductory paragraph of sub. (3) to make clear that the present procedure for filing of public utility mortgages is to be continued. Reference in the official text of subs. (3) (b) and (4) to statutes which require indication of the security interest on a certificate of title were deleted so as to avoid giving any new vitality to provisions in the motor vehicle laws which require notation of a motor vehicle lien on the certificate of title. These provisions have been held to be of no effect insofar as the perfection of the security interest is concerned. See Commercial Credit Corp. v. Schneider, 265 Wis. 264, 61 NW (2d) 499, (1953). This will continue to be the situation under the Code; security interests in motor vehicles will be subject to the filing provisions of the Code. [Bill 1-S]

Legislative Council Note, 1969: Wisconsin, when adopting the code, changed the complete filing exemption in sub. (1) (d) of the official text by inserting the \$250 limit, as a compromise between the position that there should be no secret liens and the position that filing is unnecessary and wasteful in the case of consumer goods because it is generally known that such goods usually are purchased on credit and subject to lien. The advisory committee's study indicated that this state's \$250 limit was the lowest except for one other state and that a number of other states have adopted a \$500 limit. Also, it appears that Wisconsin banks, financial institutions and businesses for the most part do not file financing statements for less than \$500. The committee increased the filing exemption limit to \$500 to conform with general business practices and to facilitate interstate financial activities. [Bill 2-A]

409.303 History: 1963 c. 158; Stats. 1963 s. 409.303.

409.304 History: 1963 c. 158; Stats. 1963 s. 409.304.

409.305 History: 1963 c. 158; Stats. 1963 s. 409.305.

409.306 History: 1963 c. 158; Stats. 1963 s. 409.306.

409.307 History: 1963 c. 158; Stats. 1963 s. 409.307; 1969 c. 39.

Legislative Council Note, 1963: The official text of sub. (2) was changed to coincide with the changes made in s. 409.302 (1) (c) and (d). A \$250 limitation was substituted for the previous \$2500 limitation on farm goods, and the \$250 limitation also was made applicable to consumer goods. [Bill 1-S]

Legislative Council Note, 1969: This amendment of sub. (2) is necessitated by the change made in s. 409.302 (1) (d). [Bill 2-A]

409.308 History: 1963 c. 158; Stats. 1963 s. 409.308.

409.309 History: 1963 c. 158; Stats. 1963 s. 409.309.

409.310 History: 1963 c. 158; Stats. 1963 s. 409.310.

409.311 History: 1963 c. 158; Stats. 1963 s. 409.311.

A secured creditor cannot replevy property seized by a sheriff on execution in favor of another creditor where he has no right of immediate possession at the time of the execution. His only protection is the fact that the execution sale is subject to his interest. First Nat. Bank v. Sheriff of Milwaukee County, 34 W (2d) 535, 149 NW (2d) 548.

409.312 History: 1963 c. 158; Stats. 1963 s. 409.312.

409.313 History: 1963 c. 158; Stats. 1963 s. 409.313.

Fixtures; a commentary on the officially proposed changes in article 9. Henson, 52 MLR 179.

409.314 History: 1963 c. 158; Stats. 1963 s. 409.314.

409.315 History: 1963 c. 158; Stats. 1963 s. 409.315.

409.316 History: 1963 c. 158; Stats. 1963 s. 409.316.

409.317 History: 1963 c. 158; Stats. 1963 s. 409.317.

409.318 History: 1963 c. 158; Stats. 1963 s. 409.318.

409.401 History: 1963 c. 158; Stats. 1963 s. 409.401; 1965 c. 51.

Legislative Council Note, 1963: The official text of sub. (1) presented 3 options with respect to filing: (a) central filing, whereby all filing is with a central state office, except with regard to security interests in fixtures;

(b) local-central filing, whereby filing is with local registers of deeds with respect to security interests in consumer goods, farm goods and fixtures, and with a central state office with respect to other security interests; (c) dual filing, which resembles the local-central option but which in most cases of filing with the central office also requires duplicate filing with the local office. The legislative council selected the dual filing option as being the closest to the present system of filing in Wisconsin.

The official draft contained an alternate sub. (3) which was rejected by the study committee. The alternate subsection provided that a filing continues to be effective for only 4 months after a change in an event which controlled the location of the original filing and then becomes ineffective unless there is a refiling in accordance with changed circumstances. The option selected by the study committee is in accord with present chattel mortgage law but contrary to the conditional sales law. [Bill 1-S]

Editor's Note: The language of par. (c) was changed by Amendment No. 2, S, and therefore departs somewhat from the dual filing option as stated in the official text of the Code.

To "perfect" a security interest in accounts receivable under 409.401 (1), the financing statement relating thereto must be filed in both the office of the secretary of state and the office of the register of deeds in the county where the debtor's principal place of business is located. In re Voluntary Assignment of Federal Wholesale Meats & Frozen Foods, Inc. 43 W (2d) 21, 168 NW (2d) 70.

409.402 History: 1963 c. 158; Stats. 1963 s. 409.402; 1969 c. 122, 331.

Legislative Council Note, 1963: The study committee added to subs. (1) and (3) the requirement that financing statements covering crops or fixtures must contain the name of the record owner of the real estate concerned. The official text required only a description of the real estate. The name of the record owner, however, is important in those counties which do not have a tract index. [Bill 1-S]

409.403 History: 1963 c. 158; Stats. 1963 s. 409.403; 1969 c. 39.

Editor's Note: The last sentence of sub. (1) was added by Amendment No. 2, S, to Bill 1-S, and to that extent the subsection departs from the official text of the Code.

Legislative Council Note, 1969: [As to sub. (1)] Past practice has indicated that allowing only the secured party to certify the truthfulness of the copy of the financing statement hinders interstate financial activities. Alternatively allowing a public officer or notary public to make the certification will provide ample protection for all concerned and will provide a more expeditious filing procedure. [Bill 2-A]

409.404 History: 1963 c. 158; Stats. 1963 s. 409.404.

Legislative Council Note, 1963: The penalty in sub. (1) for failure to furnish a termina-

tion statement was reduced by the study committee from \$100 to \$25. [Bill 1-S]

Editor's Note: Certain changes were made in this section by Amendment No. 2, S, principally the placing of a duty upon the secured party to file a termination statement when there no longer is any outstanding secured obligation or commitment to make advances, incur obligations or otherwise give value.

409.405 History: 1963 c. 158; Stats. 1963 s. 409.405.

409.406 History: 1963 c. 158; Stats. 1963 s. 409.406.

409.407 History: 1963 c. 158; Stats. 1963 s. 409.407; 1965 c. 104; 1969 c. 39.

Legislative Council Note, 1963: The last sentence of sub. (1) is not part of the official text. It was added by the study committee to make clear that a filing officer who notes certain information upon a duplicate furnished by the person filing a financing statement does not thereby certify that the duplicate is a true copy of the original. No special fee is allowed for such notation, and so the filing officer should not be required to compare the 2 documents to see that the one is an exact copy of the other. In the last sentence of sub. (2), however, the study committee added the word "certified" before "copy" to make clear that the filing officer must furnish a certified copy when he is paid the fee specified in that sentence. [Bill 1-S]

Editor's Note: The material designated as sub. (2) in the original bill was deleted by Amendment No. 2, S.

Legislative Council Note, 1969: The last sentence of sub. (1) is considered unnecessary by the advisory committee and, in the interest of uniformity, it has been deleted. No change in the law is intended or made by this amendment.

In sub. (2) the code phrase "presently effective" has been substituted for the Wisconsin term "unterminated" in the interest of uniformity. In actual practice, the use of the term "unterminated" creates administrative problems because it does not take into consideration lapsed financing statements. [Bill 2-A]

409.501 History: 1963 c. 158; Stats. 1963 s. 409.501.

Remedies in default. Sauer, 48 MLR 507.

409.502 History: 1963 c. 158; Stats. 1963 s. 409.502.

409.503 History: 1963 c. 158; Stats. 1963 s. 409.503.

409.504 History: 1963 c. 158; Stats. 1963 s. 409.504.

409.505 History: 1963 c. 158; Stats. 1963 s. 409.505.

Legislative Council Note, 1963: The last sentence of sub. (1) was added by the study committee to clarify the meaning of "cash price" and "loan". [Bill 1-S]

409.506 History: 1963 c. 158; Stats. 1963 s. 409.506.

409.507 History: 1963 c. 158; Stats. 1963 s. 409.507.

CHAPTER 440.

Department of Regulation and Licensing.

440.01 History: 1969 c. 336 s. 156; Stats. 1969 s. 440.01.

440.02 History: 1969 c. 336 s. 156; Stats. 1969 s. 440.02.

440.26 History: 1919 c. 444; Stats. 1919 s. 1636—12m; 1923 c. 291 s. 3; Stats. 1923 s. 175.07; 1925 c. 289; 1931 c. 52; 1935 c. 405; 1957 c. 97; 1965 c. 377; 1969 c. 336 s. 151; 1969 c. 467; Stats. 1969 s. 440.26.

See note to sec. 1, art. I, on exercises of police power, and note to sec. 1, art. IV, on delegation of power, citing *Pinkerton v. Buech*, 173 W 433, 181 NW 125.

The requirement that a license to private detectives shall be issued to applicants of good character, competency, and integrity furnishes to the fire and police commissioners a standard for their guidance. *Pinkerton v. Buech*, 173 W 433, 181 NW 125.

A firm of private detectives, employed prior to the act, cannot recover for services performed after its passage and publication, where they have not complied with the provisions as to license and bond. *Andrews v. La Crosse R. Corp.* 196 W 622, 220 NW 214.

A license to act as a detective may be revoked by the secretary of state, and, after revocation, the licensee may not act as a detective. A person directly injured by the wilful or malicious act of such licensed person may sue on his bond. 9 Atty. Gen. 447.

A partnership detective agency having its office in another state, but desiring to act as or advertise itself as a private detective agency in this state, must make application for a license. 10 Atty. Gen. 251.

See note to 192.47, citing 10 Atty. Gen. 899.

Where a partnership licensed as a detective agency is dissolved, the partner continuing the business as sole proprietor must obtain a new license. 11 Atty. Gen. 267.

The license does not give the right to carry concealed weapons. 11 Atty. Gen. 373.

A night watchman is not a detective. 11 Atty. Gen. 474.

A license issued to a nonresident does not authorize him to open a branch office in this state. In order that a licensed nonresident may take a partner and open a branch office, application must be made by the partnership, naming the city in which such office is to be established. 12 Atty. Gen. 3.

A nonresident may be licensed as a private detective in Wisconsin, but he is required to establish a place of business or office in the state. 14 Atty. Gen. 492.

Officers of a corporation or members of a partnership operating a private detective agency who act as private detectives in their individual capacities must secure licenses. 19 Atty. Gen. 60.

One who solicits business for a private detective agency in this state is required to have a license. 19 Atty. Gen. 155.

The exception of "any watchman privately

employed" from the detective license law refers to an employe rather than to an independent contractor. 20 Atty. Gen. 590.

A copartnership may be licensed as a detective agency under 175.07, upon filing of but one bond and payment of \$200 fee as principal. Members of a copartnership operating a private detective agency who act as private detectives in their individual capacities must secure individual licenses under 175.07 (5). 27 Atty. Gen. 686.

Employees of a corporation engaged in making investigations and reports with respect to efficiency and honesty of employes of a certain business are private detectives within 175.07 and are required to be licensed and bonded. 28 Atty. Gen. 485.

A merchant patrol agency contracting for a monthly fee to inspect premises between certain hours of the night, seeing that doors are locked, etc., is a "private guard" within the meaning of 175.07. 36 Atty. Gen. 164.

Persons engaged in posing as patrons for the purpose of checking honesty, efficiency and neatness of employes and the condition of the premises of hotels, restaurants and theaters and rendering reports thereon to the employer are required to be licensed as "private detectives" under 175.07. 36 Atty. Gen. 322.

An agency and employes thereof engaged in the business of theater checking must be licensed as private detectives. 37 Atty. Gen. 469.

Open checking by a third-party independent contractor of theater attendance and box office receipts with full knowledge of all parties observed and in accordance with specific terms of the contract between distributor and exhibitor is not a private detective activity subject to license. Persons engaged in "blind checking," or in making any observation and reports outside the scope of the distributor-exhibitor contract are private detectives and must be licensed. 37 Atty. Gen. 542.

Persons whose sole activities consist of obtaining ticket stubs from theaters at sporadic intervals and forwarding such stubs to others need not be licensed as private detectives. 40 Atty. Gen. 497.

440.41 History: 1961 c. 600; Stats. 1961 s. 175.13; 1969 c. 276, 330; 1969 c. 336 ss. 153, 154; Stats. 1969 s. 440.41.

A charitable organization which received contributions in 1961 must file a report as provided in 175.13, Stats. 1961. 51 Atty. Gen. 7.

175.13, Stats. 1961, is not applicable to an arm or agency of the state. It does apply to private nonprofit units engaged in solicitation of contributions to aid the university. 51 Atty. Gen. 14.

440.61 History: 1939 c. 370, 486; Stats. 1939 s. 129.11; 1943 c. 229; Stats. 1943 s. 110.10; 1951 c. 261 s. 10; 1953 c. 631; 1955 c. 316; 1969 c. 336 ss. 13, 14; Stats. 1969 s. 440.61.

On peddlers, truckers, transient merchants, secondhand dealers and showmen see notes to 440.81 to 440.96.

The exception to the itinerant merchant trucker law contained in 129.11 (2) (b), Stats.