

1 (4) FIRST-TO-FILE PRIORITY RULE FOR CERTAIN COLLATERAL. Subject to sub. (5) and
2 except as otherwise provided in sub. (6), if a security interest in chattel paper, deposit
3 accounts, negotiable documents, instruments, investment property or
4 letter-of-credit rights is perfected by a method other than filing, conflicting
5 perfected security interests in proceeds of the collateral rank according to priority in
6 time of filing.

7 (5) APPLICABILITY OF SUB. (4). Subsection (4) applies only if the proceeds of the
8 collateral are not cash proceeds, chattel paper, negotiable documents, instruments,
9 investment property or letter-of-credit rights.

10 (6) LIMITATIONS ON SUBS. (1) TO (5). Subsections (1) to (5) are subject to:

11 (a) Subsection (7) and the other provisions of this subchapter;

12 (b) Section 404.210 with respect to a security interest of a collecting bank;

13 (c) Section 405.118 with respect to a security interest of an issuer or nominated
14 person; and

15 (d) Section *** 409.110 with respect to a security interest arising under ch. 402
16 or 411.

17 (7) PRIORITY UNDER AGRICULTURAL LIEN STATUTE. A perfected agricultural lien on
18 collateral has priority over a conflicting security interest in or agricultural lien on
19 the same collateral if the statute creating the agricultural lien so provides.

20 **409.323 Future advances. (1) WHEN PRIORITY BASED ON TIME OF ADVANCE.**
21 Except as otherwise provided in sub. (3), for purposes of determining the priority of
22 a perfected security interest under ***s. 409.322 (1) (a), perfection of the security
23 interest dates from the time an advance is made to the extent that the security
24 interest secures an advance that:

25 (a) Is made while the security interest is perfected only:

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- 1 1. Under ***s. 409.309 when it attaches; or
- 2 2. Temporarily under ***s. 409.312 (5), (6) or (7); and
- 3 (b) Is not made pursuant to a commitment entered into before or while the
- 4 security interest is perfected by a method other than under ***s. 409.309 or 409.312
- 5 (5), (6) or (7).

6 **(2) LIEN CREDITOR.** Except as otherwise provided in sub. (3), a security interest
 7 is subordinate to the rights of a person that becomes a lien creditor while the security
 8 interest is perfected only to the extent that it secures advances made more than 45
 9 days after the person becomes a lien creditor unless the advance is made:

- 10 (a) Without knowledge of the lien; or
- 11 (b) Pursuant to a commitment entered into without knowledge of the lien.

12 **(3) BUYER OF RECEIVABLES.** Subsections (1) and (2) do not apply to a security
 13 interest held by a secured party that is a buyer of accounts, chattel paper, payment
 14 intangibles or promissory notes or a consignor.

15 **(4) BUYER OF GOODS.** Except as otherwise provided in sub. (5), a buyer of goods
 16 other than a buyer in ordinary course of business takes free of a security interest to
 17 the extent that it secures advances made after the earlier of:

- 18 (a) The time the secured party acquires knowledge of the buyer’s purchase; or
- 19 (b) Forty-five days after the purchase.

***NOTE: Current s. 409.307 is nonuniform in that it does not include 9-307 (3). That subsection reads: “(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.” The conversion table lists 9-307 (3) as the source for part of 9-323. Should any part of new s. 409.323 be changed or eliminated to carry forth the deletion of this subsection?

1 **(5) ADVANCES MADE PURSUANT TO COMMITMENT: PRIORITY OF BUYER OF GOODS.**
2 Subsection (4) does not apply if the advance is made pursuant to a commitment
3 entered into without knowledge of the buyer's purchase and before the expiration of
4 the 45-day period.

5 **(6) LESSEE OF GOODS.** Except as otherwise provided in sub. (7), a lessee of goods,
6 other than a lessee in ordinary course of business, takes the leasehold interest free
7 of a security interest to the extent that it secures advances made after the earlier of:

8 (a) The time the secured party acquires knowledge of the lease; or

9 (b) Forty-five days after the lease contract becomes enforceable.

10 **(7) ADVANCES MADE PURSUANT TO COMMITMENT: PRIORITY OF LESSEE OF GOODS.**
11 Subsection (6) does not apply if the advance is made pursuant to a commitment
12 entered into without knowledge of the lease and before the expiration of the 45-day
13 period.

14 APPENDIX II

15 **409.324 Priority of purchase-money security interests.**

16 [MODEL SECTION [9-324A]. PRIORITY OF PRODUCTION-MONEY
17 SECURITY INTERESTS AND AGRICULTURAL LIENS. (1) Except as otherwise
18 provided in subs. (3) to (5), if the requirements of sub. (2) are satisfied, a perfected
19 production-money security interest in production-money crops has priority over a
20 conflicting security interest in the same crops and, except as otherwise provided in
21 ***s. 409.327, also has priority in their identifiable proceeds.

22 **(2)** A production-money security interest has priority under sub. (1) if:

23 (a) The production-money security interest is perfected by filing when the
24 production-money secured party first gives new value to enable the debtor to
25 produce the crops;

1 (b) The production–money secured party sends an authenticated notification to
2 the holder of the conflicting security interest not less than 10 or more than 30 days
3 before the production–money secured party first gives new value to enable the debtor
4 to produce the crops if the holder had filed a financing statement covering the crops
5 before the date of the filing made by the production–money secured party; and

6 (c) The notification states that the production–money secured party has or
7 expects to acquire a production–money security interest in the debtor’s crops and
8 provides a description of the crops.

9 (3) Except as otherwise provided in sub. (4) or (5), if more than one security
10 interest qualifies for priority in the same collateral under sub. (1), the security
11 interests rank according to priority in time of filing under ***s. 409.322 (1).

12 (4) To the extent that a person holding a perfected security interest in
13 production–money crops that are the subject of a production–money security interest
14 gives new value to enable the debtor to produce the production–money crops and the
15 value is in fact used for the production of the production–money crops, the security
16 interests rank according to priority in time of filing under ***s. 409.322 (1).

17 (5) To the extent that a person holds both an agricultural lien and a
18 production–money security interest in the same collateral securing the same
19 obligations, the rules of priority applicable to agricultural liens govern priority.]

20 **409.324 Priority of purchase–money security interests.** (1) GENERAL
21 RULE: PURCHASE–MONEY PRIORITY. Except as otherwise provided in sub. (7), a perfected
22 purchase–money security interest in goods other than inventory or livestock has
23 priority over a conflicting security interest in the same goods, and, except as
24 otherwise provided in ***s. 409.327, a perfected security interest in its identifiable

1 proceeds also has priority, if the purchase–money security interest is perfected when
2 the debtor receives possession of the collateral or within 20 days thereafter.

3 (2) INVENTORY PURCHASE–MONEY PRIORITY. Subject to sub. (3) and except as
4 otherwise provided in sub. (7), a perfected purchase–money security interest in
5 inventory has priority over a conflicting security interest in the same inventory, has
6 priority over a conflicting security interest in chattel paper or an instrument
7 constituting proceeds of the inventory and in proceeds of the chattel paper, if so
8 provided in ***s. 409.330, and, except as otherwise provided in ***s. 409.327, also
9 has priority in identifiable cash proceeds of the inventory to the extent the
10 identifiable cash proceeds are received on or before the delivery of the inventory to
11 a buyer, if:

12 (a) The purchase–money security interest is perfected when the debtor receives
13 possession of the inventory;

14 (b) The purchase–money secured party sends an authenticated notification to
15 the holder of the conflicting security interest;

16 (c) The holder of the conflicting security interest receives the notification within
17 5 years before the debtor receives possession of the inventory; and

***NOTE: Current s. 409.312 (3) (c), Wis. stats., which is carried over to par. (c) in
this draft does not include “within 5 years”. Should “within 5 years” also be deleted in
this draft?

18 (d) The notification states that the person sending the notification has or
19 expects to acquire a purchase–money security interest in inventory of the debtor and
20 describes the inventory.

21 (3) HOLDERS OF CONFLICTING INVENTORY SECURITY INTERESTS TO BE NOTIFIED.
22 Subsection (2) (b) to (d) apply only if the holder of the conflicting security interest had
23 filed a financing statement covering the same types of inventory:

1 (a) If the purchase–money security interest is perfected by filing, before the
2 date of the filing; or

3 (b) If the purchase–money security interest is temporarily perfected without
4 filing or possession under ***s. 409.312 (6), before the beginning of the 20–day period
5 thereunder.

6 (4) LIVESTOCK PURCHASE–MONEY PRIORITY. Subject to sub. (5) and except as
7 otherwise provided in sub. (7), a perfected purchase–money security interest in
8 livestock that are farm products has priority over a conflicting security interest in
9 the same livestock, and, except as otherwise provided in ***s. 409.327, a perfected
10 security interest in their identifiable proceeds and identifiable products in their
11 unmanufactured states also has priority, if:

12 (a) The purchase–money security interest is perfected when the debtor receives
13 possession of the livestock;

14 (b) The purchase–money secured party sends an authenticated notification to
15 the holder of the conflicting security interest;

16 (c) The holder of the conflicting security interest receives the notification within
17 6 months before the debtor receives possession of the livestock; and

18 (d) The notification states that the person sending the notification has or
19 expects to acquire a purchase–money security interest in livestock of the debtor and
20 describes the livestock.

21 (5) HOLDERS OF CONFLICTING LIVESTOCK SECURITY INTERESTS TO BE NOTIFIED.
22 Subsection (4) (b) to (d) apply only if the holder of the conflicting security interest had
23 filed a financing statement covering the same types of livestock:

24 (a) If the purchase–money security interest is perfected by filing, before the
25 date of the filing; or

1 (b) If the purchase–money security interest is temporarily perfected without
2 filing or possession under ***s. 409.312 (6), before the beginning of the 20–day period
3 thereunder.

4 (6) SOFTWARE PURCHASE–MONEY PRIORITY. Except as otherwise provided in sub.
5 (7), a perfected purchase–money security interest in software has priority over a
6 conflicting security interest in the same collateral, and, except as otherwise provided
7 in ***s. 409.327, a perfected security interest in its identifiable proceeds also has
8 priority, to the extent that the purchase–money security interest in the goods in
9 which the software was acquired for use has priority in the goods and proceeds of the
10 goods under this section.

11 (7) CONFLICTING PURCHASE–MONEY SECURITY INTERESTS. If more than one security
12 interest qualifies for priority in the same collateral under sub. (1), (2), (4) or (6):

13 (a) A security interest securing an obligation incurred as all or part of the price
14 of the collateral has priority over a security interest securing an obligation incurred
15 for value given to enable the debtor to acquire rights in or the use of collateral; and

16 (b) In all other cases, ***s. 409.322 (1) applies to the qualifying security
17 interests.

18 **409.325 Priority of security interests in transferred collateral. (1)**
19 SUBORDINATION OF SECURITY INTEREST IN TRANSFERRED COLLATERAL. Except as
20 otherwise provided in sub. (2), a security interest created by a debtor is subordinate
21 to a security interest in the same collateral created by another person if:

22 (a) The debtor acquired the collateral subject to the security interest created by
23 the other person;

24 (b) The security interest created by the other person was perfected when the
25 debtor acquired the collateral; and

1 (c) There is no period thereafter when the security interest is unperfected.

2 (2) LIMITATION OF SUB. (1) SUBORDINATION. Subsection (1) subordinates a security
3 interest only if the security interest:

4 (a) Otherwise would have priority solely under ***s. 409.322 (1) or 409.324; or

5 (b) Arose solely under s. 402.711 (3) or 411.508 (5).

6 **409.326 Priority of security interests created by new debtor. (1)**

7 SUBORDINATION OF SECURITY INTEREST CREATED BY NEW DEBTOR. Subject to sub. (2), a
8 security interest created by a new debtor which is perfected by a filed financing
9 statement that is effective solely under ***s. 409.508 in collateral in which a new
10 debtor has or acquires rights is subordinate to a security interest in the same
11 collateral which is perfected other than by a filed financing statement that is
12 effective solely under ***s. 409.508.

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

20 **409.327 Priority of security interests in deposit account.** The following
21 rules govern priority among conflicting security interests in the same deposit
22 account:

23 (1) A security interest held by a secured party having control of the deposit
24 account under ***s. 409.104 has priority over a conflicting security interest held by
25 a secured party that does not have control.

1 (2) Except as otherwise provided in subs. (3) and (4), security interests
2 perfected by control under ***s. 409.314 rank according to priority in time of
3 obtaining control.

4 (3) Except as otherwise provided in sub. (4), a security interest held by the bank
5 with which the deposit account is maintained has priority over a conflicting security
6 interest held by another secured party.

7 (4) A security interest perfected by control under ***s. 409.104 (1) (c) has
8 priority over a security interest held by the bank with which the deposit account is
9 maintained.

10 **409.328 Priority of security interests in investment property.** The
11 following rules govern priority among conflicting security interests in the same
12 investment property:

13 (1) A security interest held by a secured party having control of investment
14 property under ***s. 409.106 has priority over a security interest held by a secured
15 party that does not have control of the investment property.

16 (2) Except as otherwise provided in subs. (3) and (4), conflicting security
17 interests held by secured parties each of which has control under ***s. 409.106 rank
18 according to priority in time of:

19 (a) If the collateral is a security, obtaining control;

20 (b) If the collateral is a security entitlement carried in a securities account and:

21 1. If the secured party obtained control under s. 408.106 (d) (1), the secured
22 party's becoming the person for which the securities account is maintained;

23 2. If the secured party obtained control under s. 408.106 (d) (2), the securities
24 intermediary's agreement to comply with the secured party's entitlement orders with
25 respect to security entitlements carried or to be carried in the securities account; or

1 3. If the secured party obtained control through another person under s.
2 408.106 (d) (3), the time on which priority would be based under this subsection if
3 the other person were the secured party; or

4 (c) If the collateral is a commodity contract carried with a commodity
5 intermediary, the satisfaction of the requirement for control specified in ***s.
6 409.106 (2) (b) with respect to commodity contracts carried or to be carried with the
7 commodity intermediary.

8 (3) A security interest held by a securities intermediary in a security
9 entitlement or a securities account maintained with the securities intermediary has
10 priority over a conflicting security interest held by another secured party.

11 (4) A security interest held by a commodity intermediary in a commodity
12 contract or a commodity account maintained with the commodity intermediary has
13 priority over a conflicting security interest held by another secured party.

14 (5) A security interest in a certificated security in registered form which is
15 perfected by taking delivery under ***s. 409.313(1) and not by control under ***s.
16 409.314 has priority over a conflicting security interest perfected by a method other
17 than control.

18 (6) Conflicting security interests created by a broker, securities intermediary,
19 or commodity intermediary which are perfected without control under ***s. 409.106
20 rank equally.

21 (7) In all other cases, priority among conflicting security interests in
22 investment property is governed by ss. 409.322 and 409.323.

23 **409.329 Priority of security interests in letter-of-credit right.** The
24 following rules govern priority among conflicting security interests in the same
25 letter-of-credit right:

1 (1) A security interest held by a secured party having control of the
2 letter-of-credit right under ***s. 409.107 has priority to the extent of its control over
3 a conflicting security interest held by a secured party that does not have control.

4 (2) Security interests perfected by control under ***s. 409.314 rank according
5 to priority in time of obtaining control.

6 **409.330 Priority of purchaser of chattel paper or instrument. (1)**

7 PURCHASER'S PRIORITY: SECURITY INTEREST CLAIMED MERELY AS PROCEEDS. A purchaser
8 of chattel paper has priority over a security interest in the chattel paper which is
9 claimed merely as proceeds of inventory subject to a security interest if:

10 (a) In good faith and in the ordinary course of the purchaser's business, the
11 purchaser gives new value and takes possession of the chattel paper or obtains
12 control of the chattel paper under ***s. 409.105; and

13 (b) The chattel paper does not indicate that it has been assigned to an identified
14 assignee other than the purchaser.

15 (2) PURCHASER'S PRIORITY: OTHER SECURITY INTERESTS. A purchaser of chattel
16 paper has priority over a security interest in the chattel paper which is claimed other
17 than merely as proceeds of inventory subject to a security interest if the purchaser
18 gives new value and takes possession of the chattel paper or obtains control of the
19 chattel paper under *** s. 409.105 in good faith, in the ordinary course of the
20 purchaser's business, and without knowledge that the purchase violates the rights
21 of the secured party.

22 (3) CHATTEL PAPER PURCHASER'S PRIORITY IN PROCEEDS. Except as otherwise
23 provided in *** s. 409.327, a purchaser having priority in chattel paper under sub.
24 (1) or (2) also has priority in proceeds of the chattel paper to the extent that:

25 (a) Section *** 409.322 provides for priority in the proceeds; or

1 (b) The proceeds consist of the specific goods covered by the chattel paper or
2 cash proceeds of the specific goods, even if the purchaser's security interest in the
3 proceeds is unperfected.

4 (4) INSTRUMENT PURCHASER'S PRIORITY. Except as otherwise provided in ***s.
5 409.331 (1), a purchaser of an instrument has priority over a security interest in the
6 instrument perfected by a method other than possession if the purchaser gives value
7 and takes possession of the instrument in good faith and without knowledge that the
8 purchase violates the rights of the secured party.

9 (5) HOLDER OF PURCHASE-MONEY SECURITY INTEREST GIVES NEW VALUE. For
10 purposes of subs. (1) and (2), the holder of a purchase-money security interest in
11 inventory gives new value for chattel paper constituting proceeds of the inventory.

12 (6) INDICATION OF ASSIGNMENT GIVES KNOWLEDGE. For purposes of subs. (2) and
13 (4), if chattel paper or an instrument indicates that it has been assigned to an
14 identified secured party other than the purchaser, a purchaser of the chattel paper
15 or instrument has knowledge that the purchase violates the rights of the secured
16 party.

17 **409.331 Priority of rights of purchasers of instruments, documents and**
18 **securities under other chapters; priority of interests in financial assets and**
19 **security entitlements under ch. 408. (1) RIGHTS UNDER CHS. 403, 407 AND 408 NOT**
20 **LIMITED.** This chapter does not limit the rights of a holder in due course of a negotiable
21 instrument, a holder to which a negotiable document of title has been duly negotiated
22 or a protected purchaser of a security. These holders or purchasers take priority over
23 an earlier security interest, even if perfected, to the extent provided in chs. 403, 407
24 and 408.

1 **(2) PROTECTION UNDER CH. 408.** This chapter does not limit the rights of or impose
2 liability on a person to the extent that the person is protected against the assertion
3 of an adverse claim under ch. 408.

4 **(3) FILING NOT NOTICE.** Filing under this chapter does not constitute notice of
5 a claim or defense to the holders, or purchasers, or persons described in subs. (1) and
6 (2).

7 **409.332 Transfer of money; transfer of funds from deposit account. (1)**

8 **TRANSFeree OF MONEY.** A transferee of money takes the money free of a security
9 interest unless the transferee acts in collusion with the debtor in violating the rights
10 of the secured party.

11 **(2) TRANSFeree OF FUNDS FROM DEPOSIT ACCOUNT.** A transferee of funds from a
12 deposit account takes the funds free of a security interest in the deposit account
13 unless the transferee acts in collusion with the debtor in violating the rights of the
14 secured party.

15 **409.333 Priority of certain liens arising by operation of law. (1)**

16 **POSSESSORY LIEN.** In this section, “possessory lien” means an interest, other than a
17 security interest or an agricultural lien:

18 (a) Which secures payment or performance of an obligation for services or
19 materials furnished with respect to goods by a person in the ordinary course of the
20 person’s business;

21 (b) Which is created by statute or rule of law in favor of the person; and

22 (c) Whose effectiveness depends on the person’s possession of the goods.

23 **(2) PRIORITY OF POSSESSORY LIEN.** A possessory lien on goods has priority over
24 a security interest in the goods unless the lien is created by a statute that expressly
25 provides otherwise.

1 **409.334 Priority of security interests in fixtures and crops. (1) SECURITY**
 2 INTEREST IN FIXTURES UNDER THIS CHAPTER. A security interest under this chapter may
 3 be created in goods that are fixtures or may continue in goods that become fixtures.
 4 A security interest does not exist under this chapter in ordinary building materials
 5 incorporated into an improvement on land.

6 **(2) SECURITY INTEREST IN FIXTURES UNDER REAL-PROPERTY LAW.** This chapter does
 7 not prevent creation of an encumbrance upon fixtures under real property law.

8 **(3) GENERAL RULE: SUBORDINATION OF SECURITY INTEREST IN FIXTURES.** In cases
 9 not governed by subs. (4) to (8), a security interest in fixtures is subordinate to a
 10 conflicting interest of an encumbrancer or owner of the related real property other
 11 than the debtor.

12 **(4) FIXTURES PURCHASE-MONEY PRIORITY.** Except as otherwise provided in sub.
 13 (8), a perfected security interest in fixtures has priority over a conflicting interest of
 14 an encumbrancer or owner of the real property if the debtor has an interest of record
 15 in or is in possession of the real property and:

 ****NOTE: Current s. 409.313 (4) (a), Wis. stats., is nonuniform in that it does not
 include "or is in possession of the real estate". Should this draft include "or
 is in possession of the real property"?

- 16 (a) The security interest is a purchase-money security interest;
- 17 (b) The interest of the encumbrancer or owner arises before the goods become
- 18 fixtures; and

- 19 (c) The security interest is perfected by a fixture filing before the goods become
- 20 fixtures or within 20 days thereafter.

21 **(5) PRIORITY OF SECURITY INTEREST IN FIXTURES OVER INTERESTS IN REAL PROPERTY.**
 22 A perfected security interest in fixtures has priority over a conflicting interest of an
 23 encumbrancer or owner of the real property if:

1 (a) The debtor has an interest of record in the real property or is in possession
2 of the real property and the security interest:

***NOTE: Current s. 409.313 (4) (a), Wis. stats., is nonuniform in that it does not
include “or is in possession of the real estate”. Should this draft include “or
is in possession of the real property”?

3 1. Is perfected by a fixture filing before the interest of the encumbrancer or
4 owner is of record; and

5 2. Has priority over any conflicting interest of a predecessor in title of the
6 encumbrancer or owner;

7 (b) Before the goods become fixtures, the security interest is perfected by any
8 method permitted by this chapter and the fixtures are readily removable:

9 1. Factory or office machines;

10 2. Equipment that is not primarily used or leased for use in the operation of the
11 real property; or

12 3. Replacements of domestic appliances that are consumer goods;

13 (c) The conflicting interest is a lien on the real property obtained by legal or
14 equitable proceedings after the security interest was perfected by any method
15 permitted by this chapter; or

16 (d) The security interest is:

17 1. Created in a manufactured home in a manufactured-home transaction; and

18 2. Perfected pursuant to a statute described in ***s. 409.311 (1) (b).

19 **(6) PRIORITY BASED ON CONSENT, DISCLAIMER, OR RIGHT TO REMOVE.** A security
20 interest in fixtures, whether or not perfected, has priority over a conflicting interest
21 of an encumbrancer or owner of the real property if:

22 (a) The encumbrancer or owner has, in an authenticated record, consented to
23 the security interest or disclaimed an interest in the goods as fixtures; or

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1 (b) The debtor has a right to remove the goods as against the encumbrancer or
2 owner.

3 (7) CONTINUATION OF SUB. (6) PRIORITY. The priority of the security interest under
4 sub. (6) continues for a reasonable time if the debtor’s right to remove the goods as
5 against the encumbrancer or owner terminates.

6 (8) PRIORITY OF CONSTRUCTION MORTGAGE. A mortgage is a construction
7 mortgage to the extent that it secures an obligation incurred for the construction of
8 an improvement on land, including the acquisition cost of the land, if a recorded
9 record of the mortgage so indicates. Except as otherwise provided in subs. (5) and
10 (6), a security interest in fixtures is subordinate to a construction mortgage if a record
11 of the mortgage is recorded before the goods become fixtures and the goods become
12 fixtures before the completion of the construction. A mortgage has this priority to
13 the same extent as a construction mortgage to the extent that it is given to refinance
14 a construction mortgage.

15 (9) PRIORITY OF SECURITY INTEREST IN CROPS. A perfected security interest in
16 crops growing on real property has priority over a conflicting interest of an
17 encumbrancer or owner of the real property if the debtor has an interest of record in
18 or is in possession of the real property.

19 (10) SUB. (9) PREVAILS. Subsection (9) prevails over any inconsistent provisions
20 of the following statutes:

21 [List here any statutes containing provisions inconsistent with sub. (9).]

22 Legislative Note: States that amend statutes to remove provisions inconsistent
23 with sub. (9) need not enact sub. (10).

****NOTE: Current s. 409.313 (9), Wis. stats., is a nonuniform provision of the UCC that reads: “409.313 (9) The priority provisions of this section do not apply to security interests in vehicles for which certificates of title are required under ch. 342 and which

are subject to s. 409.302 (3) (b).” Does it need to be continued in this draft either in this section or new section 409.337?

1 **409.335 Accessions. (1) CREATION OF SECURITY INTEREST IN ACCESSION.** A
2 security interest may be created in an accession and continues in collateral that
3 becomes an accession.

4 **(2) PERFECTION OF SECURITY INTEREST.** If a security interest is perfected when
5 the collateral becomes an accession, the security interest remains perfected in the
6 collateral.

7 **(3) PRIORITY OF SECURITY INTEREST.** Except as otherwise provided in sub. (4), the
8 other provisions of this subchapter determine the priority of a security interest in an
9 accession.

10 **(4) COMPLIANCE WITH CERTIFICATE-OF-TITLE STATUTE.** A security interest in an
11 accession is subordinate to a security interest in the whole which is perfected by
12 compliance with the requirements of a certificate-of-title statute under ***s.
13 409.311 (2).

14 **(5) REMOVAL OF ACCESSION AFTER DEFAULT.** After default, subject to subch. VI, a
15 secured party may remove an accession from other goods if the security interest in
16 the accession has priority over the claims of every person having an interest in the
17 whole.

18 **(6) REIMBURSEMENT FOLLOWING REMOVAL.** A secured party that removes an
19 accession from other goods under sub. (5) shall promptly reimburse any holder of a
20 security interest or other lien on, or owner of, the whole or of the other goods, other
21 than the debtor, for the cost of repair of any physical injury to the whole or the other
22 goods. The secured party need not reimburse the holder or owner for any diminution
23 in value of the whole or the other goods caused by the absence of the accession

1 removed or by any necessity for replacing it. A person entitled to reimbursement
2 may refuse permission to remove until the secured party gives adequate assurance
3 for the performance of the obligation to reimburse.

4 **409.336 Commingled goods. (1) COMMINGLED GOODS.** In this section,
5 “commingled goods” means goods that are physically united with other goods in such
6 a manner that their identity is lost in a product or mass.

7 **(2) NO SECURITY INTEREST IN COMMINGLED GOODS AS SUCH.** A security interest does
8 not exist in commingled goods as such. However, a security interest may attach to
9 a product or mass that results when goods become commingled goods.

10 **(3) ATTACHMENT OF SECURITY INTEREST TO PRODUCT OR MASS.** If collateral becomes
11 commingled goods, a security interest attaches to the product or mass.

12 **(4) PERFECTION OF SECURITY INTEREST.** If a security interest in collateral is
13 perfected before the collateral becomes commingled goods, the security interest that
14 attaches to the product or mass under sub. (3) is perfected.

15 **(5) PRIORITY OF SECURITY INTEREST.** Except as otherwise provided in sub. (6), the
16 other provisions of this subchapter determine the priority of a security interest that
17 attaches to the product or mass under sub. (3).

18 **(6) CONFLICTING SECURITY INTERESTS IN PRODUCT OR MASS.** If more than one
19 security interest attaches to the product or mass under sub. (3), the following rules
20 determine priority:

21 (a) A security interest that is perfected under sub. (4) has priority over a
22 security interest that is unperfected at the time the collateral becomes commingled
23 goods.

1 (b) If more than one security interest is perfected under sub. (4), the security
2 interests rank equally in proportion to value of the collateral at the time it became
3 commingled goods.

4 **409.337 Priority of security interests in goods covered by certificate of**
5 **title.** If, while a security interest in goods is perfected by any method under the law
6 of another jurisdiction, this state issues a certificate of title that does not show that
7 the goods are subject to the security interest or contain a statement that they may
8 be subject to security interests not shown on the certificate:

9 (1) A buyer of the goods, other than a person in the business of selling goods of
10 that kind, takes free of the security interest if the buyer gives value and receives
11 delivery of the goods after issuance of the certificate and without knowledge of the
12 security interest; and

13 (2) The security interest is subordinate to a conflicting security interest in the
14 goods that attaches, and is perfected under ***s. 409.311 (2), after issuance of the
15 certificate and without the conflicting secured party's knowledge of the security
16 interest.

***NOTE: Current s. 409.313 (9), Wis. stats., is a nonuniform provision of the UCC
that reads: "409.313 (9) The priority provisions of this section do not apply to security
interests in vehicles for which certificates of title are required under ch. 342 and which
are subject to s. 409.302 (3) (b)." Does it need to be continued in this draft either in this
section or new section 409.334?

17 **409.338 Priority of security interest or agricultural lien perfected by**
18 **filed financing statement providing certain incorrect information.** If a
19 security interest or agricultural lien is perfected by a filed financing statement
20 providing information described in ***s. 409.516 (2) (e) which is incorrect at the time
21 the financing statement is filed:

1 (1) The security interest or agricultural lien is subordinate to a conflicting
2 perfected security interest in the collateral to the extent that the holder of the
3 conflicting security interest gives value in reasonable reliance upon the incorrect
4 information; and

5 (2) A purchaser, other than a secured party, of the collateral takes free of the
6 security interest or agricultural lien to the extent that, in reasonable reliance upon
7 the incorrect information, the purchaser gives value and, in the case of chattel paper,
8 documents, goods, instruments or a security certificate, receives delivery of the
9 collateral.

10 **409.339 Priority subject to subordination.** This chapter does not preclude
11 subordination by agreement by a person entitled to priority.

12 **409.340 Effectiveness of right of recoupment or set-off against deposit**
13 **account.** (1) EXERCISE OF RECOUPMENT OR SET-OFF. Except as otherwise provided in
14 sub. (3), a bank with which a deposit account is maintained may exercise any right
15 of recoupment or set-off against a secured party that holds a security interest in the
16 deposit account.

17 (2) RECOUPMENT OR SETOFF NOT AFFECTED BY SECURITY INTEREST. Except as
18 otherwise provided in sub. (3), the application of this chapter to a security interest
19 in a deposit account does not affect a right of recoupment or set-off of the secured
20 party as to a deposit account maintained with the secured party.

21 (3) WHEN SET-OFF INEFFECTIVE. The exercise by a bank of a set-off against a
22 deposit account is ineffective against a secured party that holds a security interest
23 in the deposit account which is perfected by control under ***s. 409.104 (1) (c), if the
24 set-off is based on a claim against the debtor.

1 to dispose of or use collateral, without more, does not subject a secured party to
2 liability in contract or tort for the debtor's acts or omissions.

3 **409.403 Agreement not to assert defenses against assignee. (1) VALUE.**

4 In this section, "value" has the meaning provided in s. 403.303 (1).

5 **(2) AGREEMENT NOT TO ASSERT CLAIM OR DEFENSE.** Except as otherwise provided
6 in this section, an agreement between an account debtor and an assignor not to assert
7 against an assignee any claim or defense that the account debtor may have against
8 the assignor is enforceable by an assignee that takes an assignment:

9 (a) For value;

10 (b) In good faith;

11 (c) Without notice of a claim of a property or possessory right to the property
12 assigned; and

13 (d) Without notice of a defense or claim in recoupment of the type that may be
14 asserted against a person entitled to enforce a negotiable instrument under s.
15 403.305 (1).

16 **(3) WHEN SUB. (2) NOT APPLICABLE.** Subsection (2) does not apply to defenses of
17 a type that may be asserted against a holder in due course of a negotiable instrument
18 under s. 403.305 (2).

19 **(4) OMISSION OF REQUIRED STATEMENT IN CONSUMER TRANSACTION.** In a consumer
20 transaction, if a record evidences the account debtor's obligation, law other than this
21 chapter requires that the record include a statement to the effect that the rights of
22 an assignee are subject to claims or defenses that the account debtor could assert
23 against the original obligee, and the record does not include such a statement:

24 (a) The record has the same effect as if the record included such a statement;

25 and

1 (b) The account debtor may assert against an assignee those claims and
2 defenses that would have been available if the record included such a statement.

3 (5) RULE FOR INDIVIDUAL UNDER OTHER LAW. This section is subject to law other
4 than this chapter which establishes a different rule for an account debtor who is an
5 individual and who incurred the obligation primarily for personal, family or
6 household purposes.

7 (6) OTHER LAW NOT DISPLACED. Except as otherwise provided in sub. (4), this
8 section does not displace law other than this chapter which gives effect to an
9 agreement by an account debtor not to assert a claim or defense against an assignee.

10 **409.404 Rights acquired by assignee; claims and defenses against**
11 **assignee. (1) ASSIGNEE'S RIGHTS SUBJECT TO TERMS, CLAIMS, AND DEFENSES; EXCEPTIONS.**
12 Unless an account debtor has made an enforceable agreement not to assert defenses
13 or claims, and subject to subs. (2) to (5), the rights of an assignee are subject to:

14 (a) All terms of the agreement between the account debtor and assignor and any
15 defense or claim in recoupment arising from the transaction that gave rise to the
16 contract; and

17 (b) Any other defense or claim of the account debtor against the assignor which
18 accrues before the account debtor receives a notification of the assignment
19 authenticated by the assignor or the assignee.

20 (2) ACCOUNT DEBTOR'S CLAIM REDUCES AMOUNT OWED TO ASSIGNEE. Subject to sub.
21 (3) and except as otherwise provided in sub. (4), the claim of an account debtor
22 against an assignor may be asserted against an assignee under sub. (1) only to reduce
23 the amount the account debtor owes.

24 (3) RULE FOR INDIVIDUAL UNDER OTHER LAW. This section is subject to law other
25 than this chapter which establishes a different rule for an account debtor who is an

1 individual and who incurred the obligation primarily for personal, family or
2 household purposes.

3 (4) OMISSION OF REQUIRED STATEMENT IN CONSUMER TRANSACTION. In a consumer
4 transaction, if a record evidences the account debtor's obligation, law other than this
5 chapter requires that the record include a statement to the effect that the account
6 debtor's recovery against an assignee with respect to claims and defenses against the
7 assignor may not exceed amounts paid by the account debtor under the record, and
8 the record does not include such a statement, the extent to which a claim of an
9 account debtor against the assignor may be asserted against an assignee is
10 determined as if the record included such a statement.

11 (5) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE. This section does
12 not apply to an assignment of a health-care-insurance receivable.

13 **409.405 Modification of assigned contract. (1) EFFECT OF MODIFICATION ON**
14 **ASSIGNEE.** A modification of or substitution for an assigned contract is effective
15 against an assignee if made in good faith. The assignee acquires corresponding
16 rights under the modified or substituted contract. The assignment may provide that
17 the modification or substitution is a breach of contract by the assignor. This
18 subsection is subject to subs. (2) to (4).

19 (2) APPLICABILITY OF SUB. (1). Subsection (1) applies to the extent that:

20 (a) The right to payment or a part thereof under an assigned contract has not
21 been fully earned by performance; or

22 (b) The right to payment or a part thereof has been fully earned by performance
23 and the account debtor has not received notification of the assignment under ***s.
24 409.406 (1).

1 **(3) RULE FOR INDIVIDUAL UNDER OTHER LAW.** This section is subject to law other
2 than this chapter which establishes a different rule for an account debtor who is an
3 individual and who incurred the obligation primarily for personal, family or
4 household purposes.

5 **(4) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE.** This section does
6 not apply to an assignment of a health-care-insurance receivable.

7 **409.406 Discharge of account debtor; notification of assignment;**
8 **identification and proof of assignment; restrictions on assignment of**
9 **accounts, chattel paper, payment intangibles and promissory notes**
10 **ineffective. (1) DISCHARGE OF ACCOUNT DEBTOR; EFFECT OF NOTIFICATION.** Subject to
11 subs. (2) to (9), an account debtor on an account, chattel paper or a payment
12 intangible may discharge its obligation by paying the assignor until, but not after,
13 the account debtor receives a notification, authenticated by the assignor or the
14 assignee, that the amount due or to become due has been assigned and that payment
15 is to be made to the assignee. After receipt of the notification, the account debtor may
16 discharge its obligation by paying the assignee and may not discharge the obligation
17 by paying the assignor.

18 **(2) WHEN NOTIFICATION INEFFECTIVE.** Subject to sub. (8), notification is
19 ineffective under sub. (1):

20 (a) If it does not reasonably identify the rights assigned;

21 (b) To the extent that an agreement between an account debtor and a seller of
22 a payment intangible limits the account debtor's duty to pay a person other than the
23 seller and the limitation is effective under law other than this chapter; or

1 (c) At the option of an account debtor, if the notification notifies the account
2 debtor to make less than the full amount of any installment or other periodic
3 payment to the assignee, even if:

4 1. Only a portion of the account, chattel paper or general intangible has been
5 assigned to that assignee;

6 2. A portion has been assigned to another assignee; or

7 3. The account debtor knows that the assignment to that assignee is limited.

8 (3) PROOF OF ASSIGNMENT. Subject to sub. (8), if requested by the account debtor,
9 an assignee shall seasonably furnish reasonable proof that the assignment has been
10 made. Unless the assignee complies, the account debtor may discharge its obligation
11 by paying the assignor, even if the account debtor has received a notification under
12 sub. (1).

13 (4) TERM RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE. Except as otherwise
14 provided in sub. (5) and ss. 409.407 and 411.303, and subject to sub. (8), a term in an
15 agreement between an account debtor and an assignor or in a promissory note is
16 ineffective to the extent that it:

17 (a) Prohibits, restricts or requires the consent of the account debtor or person
18 obligated on the promissory note to the assignment or transfer of, or the creation,
19 attachment, perfection or enforcement of a security interest in, the account, chattel
20 paper, payment intangible or promissory note; or

21 (b) Provides that the creation, attachment, perfection or enforcement of the
22 security interest may give rise to a default, breach, right of recoupment, claim,
23 defense, termination, right of termination or remedy under the account, chattel
24 paper, payment intangible or promissory note.

1 **(5) INAPPLICABILITY OF SUB. (4) TO CERTAIN SALES.** Subsection (4) does not apply
2 to the sale of a payment intangible or promissory note.

3 **(6) LEGAL RESTRICTIONS ON ASSIGNMENT GENERALLY INEFFECTIVE.** Except as
4 otherwise provided in ss. 409.407 and 411.303 and subject to subs. (8) and (9), a rule
5 of law, statute or rule, that prohibits, restricts or requires the consent of a
6 government, governmental body or official or account debtor to the assignment or
7 transfer of, or creation of a security interest in, an account or chattel paper is
8 ineffective to the extent that the rule of law, statute or rule:

9 (a) Prohibits, restricts or requires the consent of the government, governmental
10 body or official or account debtor to the assignment or transfer of, or the creation,
11 attachment, perfection or enforcement of a security interest in, the account or chattel
12 paper; or

13 (b) Provides that the creation, attachment, perfection or enforcement of the
14 security interest may give rise to a default, breach, right of recoupment, claim,
15 defense, termination, right of termination or remedy under the account or chattel
16 paper.

17 **(7) SUB. (2)(C) NOT WAIVABLE.** Subject to sub. (8), an account debtor may not waive
18 or vary its option under sub. (2) (c).

19 **(8) RULE FOR INDIVIDUAL UNDER OTHER LAW.** This section is subject to law other
20 than this chapter which establishes a different rule for an account debtor who is an
21 individual and who incurred the obligation primarily for personal, family or
22 household purposes.

23 **(9) INAPPLICABILITY TO HEALTH-CARE-INSURANCE RECEIVABLE.** This section does
24 not apply to an assignment of a health-care-insurance receivable.

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1 **(10) SECTION PREVAILS OVER SPECIFIED INCONSISTENT LAW.** This section prevails
2 over any inconsistent provisions of the following statutes and rules:

3 [**List here any statutes and rules containing provisions inconsistent with this**
4 **section.]**

5 Legislative Note: States that amend statutes and rules to remove provisions
6 inconsistent with this section need not enact sub. (10).

7 **409.407 Restrictions on creation or enforcement of security interest in**
8 **leasehold interest or in lessor’s residual interest. (1) TERM RESTRICTING**
9 **ASSIGNMENT GENERALLY INEFFECTIVE.** Except as otherwise provided in sub. (2), a term
10 in a lease agreement is ineffective to the extent that it:

11 (a) Prohibits, restricts or requires the consent of a party to the lease to the
12 creation, attachment, perfection or enforcement of a security interest in an interest
13 of a party under the lease contract or in the lessor’s residual interest in the goods;
14 or

15 (b) Provides that the creation, attachment, perfection or enforcement of the
16 security interest may give rise to a default, breach, right of recoupment, claim,
17 defense, termination, right of termination or remedy under the lease.

18 **(2) EFFECTIVENESS OF CERTAIN TERMS.** Except as otherwise provided in s. 411.303
19 (7), a term described in sub. (1) (b) is effective to the extent that there is:

20 (a) A transfer by the lessee of the lessee’s right of possession or use of the goods
21 in violation of the term; or

22 (b) A delegation of a material performance of either party to the lease contract
23 in violation of the term.

24 **(3) SECURITY INTEREST NOT MATERIAL IMPAIRMENT.** The creation, attachment,
25 perfection or enforcement of a security interest in the lessor’s interest under the lease

1 contract or the lessor's residual interest in the goods is not a transfer that materially
2 impairs the lessee's prospect of obtaining return performance or materially changes
3 the duty of or materially increases the burden or risk imposed on the lessee within
4 the purview of s. 411.303 (4) unless, and then only to the extent that, enforcement
5 actually results in a delegation of material performance of the lessor.

6 **409.408 Restrictions on assignment of promissory notes,**
7 **health-care-insurance receivables and certain general intangibles**
8 **ineffective. (1) TERM RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE.** Except as
9 otherwise provided in sub. (2), a term in a promissory note or in an agreement
10 between an account debtor and a debtor which relates to a health-care-insurance
11 receivable or a general intangible, including a contract, permit, license or franchise,
12 and which term prohibits, restricts or requires the consent of the person obligated
13 on the promissory note or the account debtor to, the assignment or transfer of, or
14 creation, attachment or perfection of a security interest in, the promissory note,
15 health-care-insurance receivable or general intangible, is ineffective to the extent
16 that the term:

17 (a) Would impair the creation, attachment or perfection of a security interest;

18 or

19 (b) Provides that the creation, attachment or perfection of the security interest
20 may give rise to a default, breach, right of recoupment, claim, defense, termination,
21 right of termination or remedy under the promissory note, health-care-insurance
22 receivable or general intangible.

23 **(2) APPLICABILITY OF SUB. (1) TO SALES OF CERTAIN RIGHTS TO PAYMENT.** Subsection
24 (1) applies to a security interest in a payment intangible or promissory note only if
25 the security interest arises out of a sale of the payment intangible or promissory note.

SECTION 111

1 **(3) LEGAL RESTRICTIONS ON ASSIGNMENT GENERALLY INEFFECTIVE.** A rule of law,
 2 statute or rule that prohibits, restricts or requires the consent of a government,
 3 governmental body or official, person obligated on a promissory note or account
 4 debtor to the assignment or transfer of, or creation of a security interest in, a
 5 promissory note, health-care-insurance receivable or general intangible, including
 6 a contract, permit, license or franchise between an account debtor and a debtor, is
 7 ineffective to the extent that the rule of law, statute or rule:

8 (a) Would impair the creation, attachment or perfection of a security interest;
 9 or

10 (b) Provides that the creation, attachment or perfection of the security interest
 11 may give rise to a default, breach, right of recoupment, claim, defense, termination,
 12 right of termination or remedy under the promissory note, health-care-insurance
 13 receivable or general intangible.

14 **(4) LIMITATION ON INEFFECTIVENESS UNDER SUBS. (1) AND (3).** To the extent that a
 15 term in a promissory note or in an agreement between an account debtor and a debtor
 16 which relates to a health-care-insurance receivable or general intangible or a rule
 17 of law, statute or rule described in sub. (3) would be effective under law other than
 18 this chapter but is ineffective under sub. (1) or (3), the creation, attachment or
 19 perfection of a security interest in the promissory note, health-care-insurance
 20 receivable or general intangible:

21 (a) Is not enforceable against the person obligated on the promissory note or the
 22 account debtor;

23 (b) Does not impose a duty or obligation on the person obligated on the
 24 promissory note or the account debtor;

1 (c) Does not require the person obligated on the promissory note or the account
2 debtor to recognize the security interest, pay or render performance to the secured
3 party or accept payment or performance from the secured party;

4 (d) Does not entitle the secured party to use or assign the debtor's rights under
5 the promissory note, health-care-insurance receivable or general intangible,
6 including any related information or materials furnished to the debtor in the
7 transaction giving rise to the promissory note, health-care-insurance receivable or
8 general intangible;

9 (e) Does not entitle the secured party to use, assign, possess or have access to
10 any trade secrets or confidential information of the person obligated on the
11 promissory note or the account debtor; and

12 (f) Does not entitle the secured party to enforce the security interest in the
13 promissory note, health-care-insurance receivable or general intangible.

14 (5) SECTION PREVAILS OVER SPECIFIED INCONSISTENT LAW. This section prevails
15 over any inconsistent provisions of the following statutes and rules:

16 [List here any statutes and rules containing provisions inconsistent with this
17 section.]

18 Legislative Note: States that amend statutes and rules to remove provisions
19 inconsistent with this section need not enact sub. (5).

20 **409.409 Restrictions on assignment of letter-of-credit rights**
21 **ineffective.** (1) TERM OR LAW RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE. A
22 term in a letter of credit or a rule of law, statute, rule, custom or practice applicable
23 to the letter of credit which prohibits, restricts or requires the consent of an
24 applicant, issuer or nominated person to a beneficiary's assignment of or creation of

SECTION 111

1 a security interest in a letter-of-credit right is ineffective to the extent that the term
2 or rule of law, statute, rule, custom or practice:

3 (a) Would impair the creation, attachment or perfection of a security interest
4 in the letter-of-credit right; or

5 (b) Provides that the creation, attachment or perfection of the security interest
6 may give rise to a default, breach, right of recoupment, claim, defense, termination,
7 right of termination or remedy under the letter-of-credit right.

8 (2) LIMITATION ON INEFFECTIVENESS UNDER SUB. (1). To the extent that a term in
9 a letter of credit is ineffective under sub. (1) but would be effective under law other
10 than this chapter or a custom or practice applicable to the letter of credit, to the
11 transfer of a right to draw or otherwise demand performance under the letter of
12 credit, or to the assignment of a right to proceeds of the letter of credit, the creation,
13 attachment or perfection of a security interest in the letter-of-credit right:

14 (a) Is not enforceable against the applicant, issuer, nominated person or
15 transferee beneficiary;

16 (b) Imposes no duties or obligations on the applicant, issuer, nominated person
17 or transferee beneficiary; and

18 (c) Does not require the applicant, issuer, nominated person or transferee
19 beneficiary to recognize the security interest, pay or render performance to the
20 secured party or accept payment or other performance from the secured party.

SUBCHAPTER V

FILING

23 **409.501 Filing office.** (1) FILING OFFICES. Except as otherwise provided in sub.

24 (2), if the local law of this state governs perfection of a security interest or

1 agricultural lien, the office in which to file a financing statement to perfect the
2 security interest or agricultural lien is:

3 (a) The office designated for the filing or recording of a record of a mortgage on
4 the related real property, if:

- 5 1. The collateral is as-extracted collateral or timber to be cut; or
6 2. The financing statement is filed as a fixture filing and the collateral is goods
7 that are or are to become fixtures; or

8 (b) The office of the department or any office duly authorized by department,
9 in all other cases, including a case in which the collateral is goods that are or are to
10 become fixtures and the financing statement is not filed as a fixture filing.

****NOTE: This draft inserts “department”, and defines the term as under current
law as the department of financial institutions and takes the brackets off “or any office
duly authorized by department”. Should “or any office duly authorized by department”
be deleted from this draft?

11 (2) FILING OFFICE FOR TRANSMITTING UTILITIES. The office in which to file a
12 financing statement to perfect a security interest in collateral, including fixtures, of
13 a transmitting utility is the office of the department. The financing statement also
14 constitutes a fixture filing as to the collateral indicated in the financing statement
15 which is or is to become fixtures.

****NOTE: This draft inserts “department”, and defines the term as under current
law as the department of financial institutions.

16 **409.502 Contents of financing statement; record of mortgage as**
17 **financing statement; time of filing financing statcment. (1) SUFFICIENCY OF**
18 **FINANCING STATEMENT.** Subject to sub. (2), a financing statement is sufficient only if
19 it:

20 (a) Provides the name of the debtor;

1 (b) Provides the name of the secured party or a representative of the secured
2 party; and

3 (c) Indicates the collateral covered by the financing statement.

4 **(2) REAL-PROPERTY-RELATED FINANCING STATEMENTS.** Except as otherwise
5 provided in ~~***s.~~ 409.501 (2), to be sufficient, a financing statement that covers
6 as-extracted collateral or timber to be cut, or which is filed as a fixture filing and
7 covers goods that are or are to become fixtures, must satisfy sub. (1) and also:

8 (a) Indicate that it covers this type of collateral;

9 (b) Indicate that it is to be filed [for record] in the real property records;

10 (c) Provide a description of the real property to which the collateral is related
11 [sufficient to give constructive notice of a mortgage under the law of this state if the
12 description were contained in a record of the mortgage of the real property]; and

13 (d) If the debtor does not have an interest of record in the real property, provide
14 the name of a record owner.

15 **(3) RECORD OF MORTGAGE AS FINANCING STATEMENT.** A record of a mortgage is
16 effective, from the date of recording, as a financing statement filed as a fixture filing
17 or as a financing statement covering as-extracted collateral or timber to be cut only
18 if:

19 (a) The record indicates the goods or accounts that it covers;

20 (b) The goods are or are to become fixtures related to the real property described
21 in the record or the collateral is related to the real property described in the record
22 and is as-extracted collateral or timber to be cut;

23 (c) The record satisfies the requirements for a financing statement in this
24 section other than an indication that it is to be filed in the real property records; and

25 (d) The record is [duly] recorded.

1 (4) FILING BEFORE SECURITY AGREEMENT OR ATTACHMENT. A financing statement
2 may be filed before a security agreement is made or a security interest otherwise
3 attaches.

4 Legislative Note: Language in brackets is optional. Where the state has any
5 special recording system for real property other than the usual grantor–grantee
6 index (as, for instance, a tract system or a title registration or Torrens system) local
7 adaptations of sub. (2) and ***s. 409.519 (4) and (5) may be necessary. See, e.g., Mass.
8 Gen. Laws Chapter 106, ***s. 409.410.

***NOTE: Current s. 409.402 (1) (b), Wis. stats., has two nonuniform provisions. The second sentence is added “ 409.402(1)(b) (2nd sentence) In each county, the register of deeds shall enter evidence of financing statements covering fixtures on all indices kept by the register of deeds regarding the transfer of real estate.”. The last sentence is changed to “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.”. The conversion table gives 9–402 (1) as one of the sources for new 9–502, the others being 9–402 (5) and (6). Should these nonuniform provisions be included in this draft?

***NOTE: Current s. 409.402 (5), Wis. stats., is a nonuniform provision. It omits all bracketed language [for record] [sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the laws of this state.]and the last sentence (If a debtor does not have an interest of record in the real estate, the financing statement must show the name of the record owner.) and substitutes legal description for description. “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.”. The conversion table gives 9–402 (5) as a source for new 9–502. Should any of the nonuniform changes be included in this draft?

***NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: “409.402(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.”. The conversion table lists 9–402 (1) through (8) as sources for 9–502, 9–503 (a) (4), 9–504, 9–506, 9–507, 9–512, and 9–521. Should this subsection be included in this draft?

9 **409.503 Name of debtor and secured party. (1) SUFFICIENCY OF DEBTOR'S**
10 NAME. A financing statement sufficiently provides the name of the debtor:

1 (a) If the debtor is a registered organization, only if the financing statement
2 provides the name of the debtor indicated on the public record of the debtor's
3 jurisdiction of organization which shows the debtor to have been organized;

4 (b) If the debtor is a decedent's estate, only if the financing statement provides
5 the name of the decedent and indicates that the debtor is an estate;

6 (c) If the debtor is a trust or a trustee acting with respect to property held in
7 trust, only if the financing statement:

8 1. Provides the name specified for the trust in its organic documents or, if no
9 name is specified, provides the name of the settlor and additional information
10 sufficient to distinguish the debtor from other trusts having one or more of the same
11 settlors; and

12 2. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is
13 a trustee acting with respect to property held in trust; and

14 (d) In other cases:

15 1. If the debtor has a name, only if it provides the individual or organizational
16 name of the debtor; and

17 2. If the debtor does not have a name, only if it provides the names of the
18 partners, members, associates or other persons comprising the debtor.

****NOTE: Current s. 409.402 (7). Wis. stats., is a nonuniform provision. Limited liability company is added after partnership. ULA states that the last sentence is deleted, but it appears in the current text. It reads: "409.402 (7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, limited liability company or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the debtor's 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." Should the nonuniform provisions be included in this draft?

***NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: “409.402(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.”. The conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

1 (2) ADDITIONAL DEBTOR-RELATED INFORMATION. A financing statement that
2 provides the name of the debtor in accordance with sub. (1) is not rendered ineffective
3 by the absence of:

4 (a) A trade name or other name of the debtor; or

5 (b) Unless required under sub. (1) (d) 2., names of partners, members,
6 associates or other persons comprising the debtor.

7 (3) DEBTOR'S TRADE NAME INSUFFICIENT. A financing statement that provides
8 only the debtor's trade name does not sufficiently provide the name of the debtor.

9 (4) REPRESENTATIVE CAPACITY. Failure to indicate the representative capacity
10 of a secured party or representative of a secured party does not affect the sufficiency
11 of a financing statement.

12 (5) MULTIPLE DEBTORS AND SECURED PARTIES. A financing statement may provide
13 the name of more than one debtor and the name of more than one secured party.

14 **409.504 Indication of collateral.** A financing statement sufficiently
15 indicates the collateral that it covers only if the financing statement provides:

16 (1) A description of the collateral pursuant to ***s. 409.108; or

17 (2) An indication that the financing statement covers all assets or all personal
18 property.

***NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: “409.402(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.”. The conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

1 **409.505 Filing and compliance with other statutes and treaties for**
2 **consignments, leases, other bailments and other transactions.** (1) USE OF
3 TERMS OTHER THAN DEBTOR AND SECURED PARTY. A consignor, lessor or other bailor of
4 goods, a licensor or a buyer of a payment intangible or promissory note may file a
5 financing statement, or may comply with a statute or treaty described in ***s.
6 409.311 (1), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”,
7 “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words
8 of similar import, instead of the terms “secured party” and “debtor”.

9 (2) EFFECT OF FINANCING STATEMENT UNDER SUB. (1). This subchapter applies to
10 the filing of a financing statement under sub. (1) and, as appropriate, to compliance
11 that is equivalent to filing a financing statement under ***s. 409.311 (2), but the
12 filing or compliance is not of itself a factor in determining whether the collateral
13 secures an obligation. If it is determined for another reason that the collateral
14 secures an obligation, a security interest held by the consignor, lessor, bailor, licensor,
15 owner or buyer which attaches to the collateral is perfected by the filing or
16 compliance

17 **409.506 Effect of errors or omissions.** (1) MINOR ERRORS AND OMISSIONS. A
18 financing statement substantially satisfying the requirements of this subchapter is
19 effective, even if it has minor errors or omissions, unless the errors or omissions make
20 the financing statement seriously misleading.

21 (2) FINANCING STATEMENT SERIOUSLY MISLEADING. Except as otherwise provided
22 in sub. (3), a financing statement that fails sufficiently to provide the name of the
23 debtor in accordance with ***s. 409.503 (1) is seriously misleading.

24 (3) FINANCING STATEMENT NOT SERIOUSLY MISLEADING. If a search of the records
25 of the filing office under the debtor’s correct name, using the filing office’s standard

1 search logic, if any, would disclose a financing statement that fails sufficiently to
2 provide the name of the debtor in accordance with ***s. 409.503 (1), the name
3 provided does not make the financing statement seriously misleading.

4 (4) DEBTOR'S CORRECT NAME. For purposes of ***s. 409.508 (2), the “debtor’s
5 correct name” in sub. (3) means the correct name of the new debtor.

***NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads:
“409.402(9) A financing statement signed by one spouse is signed by the debtor under this
section if that spouse acting alone has the right under s. 766.51 to manage and control
the collateral, unless a marital property agreement or court decree which is binding on
the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.”. The
conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504,
9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

6 **409.507 Effect of certain events on effectiveness of financing**
7 **statement. (1) DISPOSITION.** A filed financing statement remains effective with
8 respect to collateral that is sold, exchanged, leased, licensed or otherwise disposed
9 of and in which a security interest or agricultural lien continues, even if the secured
10 party knows of or consents to the disposition.

11 (2) INFORMATION BECOMING SERIOUSLY MISLEADING. Except as otherwise provided
12 in sub. (3) and ***s. 409.508, a financing statement is not rendered ineffective if,
13 after the financing statement is filed, the information provided in the financing
14 statement becomes seriously misleading under ***s. 409.506.

15 (3) CHANGE IN DEBTOR'S NAME. If a debtor so changes its name that a filed
16 financing statement becomes seriously misleading under ***s. 409.506:

17 (a) The financing statement is effective to perfect a security interest in
18 collateral acquired by the debtor before, or within 4 months after, the change; and

19 (b) The financing statement is not effective to perfect a security interest in
20 collateral acquired by the debtor more than 4 months after the change, unless an

1 amendment to the financing statement which renders the financing statement not
2 seriously misleading is filed within 4 months after the change.

3 **409.508 Effectiveness of financing statement if new debtor becomes**
4 **bound by security agreement. (1) FINANCING STATEMENT NAMING ORIGINAL DEBTOR.**

5 Except as otherwise provided in this section, a filed financing statement naming an
6 original debtor is effective to perfect a security interest in collateral in which a new
7 debtor has or acquires rights to the extent that the financing statement would have
8 been effective had the original debtor acquired rights in the collateral.

9 **(2) FINANCING STATEMENT BECOMING SERIOUSLY MISLEADING.** If the difference
10 between the name of the original debtor and that of the new debtor causes a filed
11 financing statement that is effective under sub. (1) to be seriously misleading under
12 ***s. 409.506:

13 (a) The financing statement is effective to perfect a security interest in
14 collateral acquired by the new debtor before, and within 4 months after, the new
15 debtor becomes bound under ***s. 409.203 (4); and

16 (b) The financing statement is not effective to perfect a security interest in
17 collateral acquired by the new debtor more than 4 months after the new debtor
18 becomes bound under ***s. 409.203 (4) unless an initial financing statement
19 providing the name of the new debtor is filed before the expiration of that time.

20 **(3) WHEN SECTION NOT APPLICABLE.** This section does not apply to collateral as
21 to which a filed financing statement remains effective against the new debtor under
22 ***s. 409.507 (1).

23 **409.509 Persons entitled to file a record. (1) PERSON ENTITLED TO FILE**
24 **RECORD.** A person may file an initial financing statement, amendment that adds

1 collateral covered by a financing statement, or amendment that adds a debtor to a
2 financing statement only if:

3 (a) The debtor authorizes the filing in an authenticated record; or

4 (b) The person holds an agricultural lien that has become effective at the time
5 of filing and the financing statement covers only collateral in which the person holds
6 an agricultural lien.

***NOTE: Current s. 409.402 (4), Wis. stats., includes as its second sentence a nonuniform amendment: 409.402(4) 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." Should that sentence be include in this draft?

7 (2) SECURITY AGREEMENT AS AUTHORIZATION. By authenticating or becoming
8 bound as debtor by a security agreement, a debtor or new debtor authorizes the filing
9 of an initial financing statement, and an amendment, covering:

10 (a) The collateral described in the security agreement; and

11 (b) Property that becomes collateral under ***s. 409.315 (1) (b), whether or not
12 the security agreement expressly covers proceeds.

****NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: "409.402(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise." The conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

13 (3) ACQUISITION OF COLLATERAL AS AUTHORIZATION. By acquiring collateral in
14 which a security interest or agricultural lien continues under ****s. 409.315 (1) (a),
15 a debtor authorizes the filing of an initial financing statement, and an amendment,
16 covering the collateral and property that becomes collateral under ***s. 409.315 (1)
17 (b).

1 (4) PERSON ENTITLED TO FILE CERTAIN AMENDMENTS. A person may file an
2 amendment other than an amendment that adds collateral covered by a financing
3 statement or an amendment that adds a debtor to a financing statement only if:

4 (a) The secured party of record authorizes the filing; or

5 (b) The amendment is a termination statement for a financing statement as to
6 which the secured party of record has failed to file or send a termination statement
7 as required by ***s. 409.513 (1) or (3), the debtor authorizes the filing, and the
8 termination statement indicates that the debtor authorized it to be filed.

9 (5) MULTIPLE SECURED PARTIES OF RECORD. If there is more than one secured
10 party of record for a financing statement, each secured party of record may authorize
11 the filing of an amendment under sub. (4).

12 **409.510 Effectiveness of filed record.** (1) FILED RECORD EFFECTIVE IF
13 AUTHORIZED. A filed record is effective only to the extent that it was filed by a person
14 that may file it under ***s. 409.509.

15 (2) AUTHORIZATION BY ONE SECURED PARTY OF RECORD. A record authorized by one
16 secured party of record does not affect the financing statement with respect to
17 another secured party of record.

18 (3) CONTINUATION STATEMENT NOT TIMELY FILED. A continuation statement that
19 is not filed within the 6-month period prescribed by ***s. 409.515 (4) is ineffective.

20 **409.511 Secured party of record.** (1) SECURED PARTY OF RECORD. A secured
21 party of record with respect to a financing statement is a person whose name is
22 provided as the name of the secured party or a representative of the secured party
23 in an initial financing statement that has been filed. If an initial financing statement
24 is filed under ***s. 409.514 (1), the assignee named in the initial financing statement
25 is the secured party of record with respect to the financing statement.

1 (2) AMENDMENT NAMING SECURED PARTY OF RECORD. If an amendment of a
2 financing statement which provides the name of a person as a secured party or a
3 representative of a secured party is filed, the person named in the amendment is a
4 secured party of record. If an amendment is filed under ***s. 409.514 (2), the
5 assignee named in the amendment is a secured party of record.

6 (3) AMENDMENT DELETING SECURED PARTY OF RECORD. A person remains a secured
7 party of record until the filing of an amendment of the financing statement which
8 deletes the person.

9 **409.512 Amendment of financing statement.**

10 [Alternative A]

11 (1) AMENDMENT OF INFORMATION IN FINANCING STATEMENT. Subject to ***s.
12 409.509, a person may add or delete collateral covered by, continue or terminate the
13 effectiveness of, or, subject to sub. (5), otherwise amend the information provided in,
14 a financing statement by filing an amendment that:

15 (a) Identifies, by its file number, the initial financing statement to which the
16 amendment relates; and

17 (b) If the amendment relates to an initial financing statement filed [or recorded]
18 in a filing office described in ***s. 409.501 (1) (a), provides the information specified
19 in ***s. 409.502 (2).

20 [Alternative B]

21 (1) AMENDMENT OF INFORMATION IN FINANCING STATEMENT. Subject to ***s.
22 409.509, a person may add or delete collateral covered by, continue or terminate the
23 effectiveness of, or, subject to sub. (5), otherwise amend the information provided in,
24 a financing statement by filing an amendment that:

1 (a) Identifies, by its file number, the initial financing statement to which the
2 amendment relates; and

3 (b) If the amendment relates to an initial financing statement filed [or recorded]
4 in a filing office described in ***s. 409.501 (1) (a), provides the date [and time] that
5 the initial financing statement was filed [or recorded] and the information specified
6 in ***s. 409.502 (2).

7 [End of Alternatives]

8 (2) PERIOD OF EFFECTIVENESS NOT AFFECTED. Except as otherwise provided in
9 ***s. 409.515, the filing of an amendment does not extend the period of effectiveness
10 of the financing statement.

11 (3) EFFECTIVENESS OF AMENDMENT ADDING COLLATERAL. A financing statement
12 that is amended by an amendment that adds collateral is effective as to the added
13 collateral only from the date of the filing of the amendment.

14 (4) EFFECTIVENESS OF AMENDMENT ADDING DEBTOR. A financing statement that
15 is amended by an amendment that adds a debtor is effective as to the added debtor
16 only from the date of the filing of the amendment.

17 (5) CERTAIN AMENDMENTS INEFFECTIVE. An amendment is ineffective to the
18 extent it:

19 (a) Purports to delete all debtors and fails to provide the name of a debtor to be
20 covered by the financing statement; or

21 (b) Purports to delete all secured parties of record and fails to provide the name
22 of a new secured party of record.

23 Legislative Note: States whose real-estate filing offices require additional
24 information in amendments and cannot search their records by both the name of the

1 debtor and the file number should enact Alternative B to ss. 409.512 (1), 409.518 (2),
2 409.519 (6) and 409.522 (1).

****NOTE: Current s. 409.402 (4), Wis. stats., includes as its second sentence a nonuniform amendment: 409.402(4) 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." Should that sentence be include in this draft?

****NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: "409.402(9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise." The conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

****NOTE: Current s. 409.406, Wis. stats., is nonuniform in that the last sentence was substituted for the uniform act last sentence. The section reads: "409.406 Release of collateral; duties of filing officer; fees. A secured party of record may by his or her 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, the officer 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 fee for filing and noting such a statement of release is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of release filed with the office of the register of deeds." The conversion list gives 9-406 as the source for new 9-512. Should the nonuniform change be included in this draft?

3 **409.513 Termination statement.** (1) CONSUMER GOODS. A secured party shall
4 cause the secured party of record for a financing statement to file a termination
5 statement for the financing statement if the financing statement covers consumer
6 goods and:
7 (a) There is no obligation secured by the collateral covered by the financing
8 statement and no commitment to make an advance, incur an obligation or otherwise
9 give valuc; or

1 (b) The debtor did not authorize the filing of the initial financing statement.

2 (2) TIME FOR COMPLIANCE WITH SUB. (1). To comply with sub. (1), a secured party
3 shall cause the secured party of record to file the termination statement:

4 (a) Within one month after there is no obligation secured by the collateral
5 covered by the financing statement and no commitment to make an advance, incur
6 an obligation or otherwise give value; or

7 (b) If earlier, within 20 days after the secured party receives an authenticated
8 demand from a debtor.

9 (3) OTHER COLLATERAL. In cases not governed by sub. (1), within 20 days after
10 a secured party receives an authenticated demand from a debtor, the secured party
11 shall cause the secured party of record for a financing statement to send to the debtor
12 a termination statement for the financing statement or file the termination
13 statement in the filing office if:

14 (a) Except in the case of a financing statement covering accounts or chattel
15 paper that has been sold or goods that are the subject of a consignment, there is no
16 obligation secured by the collateral covered by the financing statement and no
17 commitment to make an advance, incur an obligation or otherwise give value;

18 (b) The financing statement covers accounts or chattel paper that has been sold
19 but as to which the account debtor or other person obligated has discharged its
20 obligation;

21 (c) The financing statement covers goods that were the subject of a consignment
22 to the debtor but are not in the debtor's possession; or

23 (d) The debtor did not authorize the filing of the initial financing statement.

24 (4) EFFECT OF FILING TERMINATION STATEMENT. Except as otherwise provided in
25 ***s. 409.510, upon the filing of a termination statement with the filing office, the

1 financing statement to which the termination statement relates ceases to be
2 effective.

****NOTE: Current s. 409.404, Wis. stats., is a nonuniform section throughout it. The conversion table lists that section as the source for new 9-513. Should any of the nonuniform changes be included in this draft? The section reads: "409.404 Termination statement.

409.404(1)

(1)

409.404(1)(a)

(a) Requirement for filing termination statement with the office of the register of deeds. 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 the secured party 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 on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party 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 be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

409.404(1)(b)

(b) Requirement for filing termination statement with the department of financial institutions. Except as provided in par. (c), if a financing statement is filed with the department, 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 the department a termination statement to the effect that the secured party 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 be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

409.404(1)(c)

(c) (intro.) Exceptions to requirement for filing termination statement with the department of financial institutions. No termination statement needs to be filed with the department pursuant to par. (b) if:

409.404(1)(c)1.

1. The effectiveness of the financing statement or continuation statement has lapsed prior to the time when a termination statement is required to be filed under par. (b).

409.404(1)(c)2.

2. The financing statement states that a continuing business relationship exists between the debtor and the secured party.

409.404(1)(c)3.

3. The financing statement was filed prior to January 1, 1978.

409.404(1)(d)

(d) Failure to file a termination statement. If the affected secured party fails to file 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 the secured party is liable to the debtor for \$500, and in addition is liable for any loss caused to the debtor by such failure and for reasonable attorney fees and court costs incurred by the debtor due to such failure.

409.404(2)

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

409.404(3)

(3)

409.404(3)(a)

(a) Fees for filing a termination statement with the office of the register of deeds. There is no fee for a termination statement that is filed with the office of the register of deeds and there is no fee for indexing any name in connection with the termination process.

409.404(3)(b)

(b) Fees for filing a termination statement with the department of financial institutions. There is no fee for a termination statement which is filed with the department and there is no fee for indexing any name in connection with the termination process.

409.404 – ANNOT.

History: 1971 c. 125 s. 524; 1973 c. 215; 1977 c. 29, 247; 1985 a. 29; 1989 a. 123; 1991 a. 39, 269; 1995 a. 27; 1997 a. 27.

409.404 – ANNOT.

Legislative Council Note, 1973: Sub. (1) presently provides that a termination statement must be filed in all cases. This is not a part of the official text. The Special Committee decided to delete the mandatory requirement, except in the case of termination statements relating to security interests in consumer goods. It should be noted that the Wisconsin Consumer Act, ch. 239, laws of 1971, has additional requirements with respect to consumer credit transactions. (Bill 177-S)".

1 **409.514 Assignment of powers of secured party of record. (1)**

2 ASSIGNMENT REFLECTED ON INITIAL FINANCING STATEMENT. Except as otherwise
3 provided in sub. (3), an initial financing statement may reflect an assignment of all
4 of the secured party's power to authorize an amendment to the financing statement

1 by providing the name and mailing address of the assignee as the name and address
2 of the secured party.

3 (2) ASSIGNMENT OF FILED FINANCING STATEMENT. Except as otherwise provided
4 in sub. (3), a secured party of record may assign of record all or part of its power to
5 authorize an amendment to a financing statement by filing in the filing office an
6 amendment of the financing statement which:

7 (a) Identifies, by its file number, the initial financing statement to which it
8 relates;

9 (b) Provides the name of the assignor; and

10 (c) Provides the name and mailing address of the assignee.

11 (3) ASSIGNMENT OF RECORD OF MORTGAGE. An assignment of record of a security
12 interest in a fixture covered by a record of a mortgage which is effective as a financing
13 statement filed as a fixture filing under ***s. 409.502 (3) may be made only by an
14 assignment of record of the mortgage in the manner provided by law of this state
15 other than chs. 401 to 411.

****NOTE: Current s. 409.405 (1), Wis. stats., has nonuniform changes to it and
current s. 409.405 (1m), Wis. stats. is nonuniform in that it is entirely an addition. They
read: "409.405(1)

(1) An original 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. 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 fee for filing, indexing and stamping a copy furnished by the secured party to show
the date and place of filing for an original financing statement so indicating an
assignment is \$8 if the statement is on the standard form prescribed by the department
and is \$16 if the statement is not on the standard form or if additional pages are attached
to the standard form. The fee for filing an original financing statement indicating an
assignment and subject to s. 409.402 (5) is \$10 if the statement is on the standard form
and is \$20 if the statement is not on the standard form or if additional pages are attached
to the standard form. A register of deeds shall forward \$3 to the department for each
original financing statement indicating an assignment of a security interest that is filed
with the office of the register of deeds.

409.405(1m)

(1m) There is no fee for processing the termination statement.”.

The conversion table lists 9-405 as a source for new 9- 514 and 9-519 and the reverse list lists 9-403 (4) and (7) and 9-405 (2) as sources for new 9-519. Should any of the nonuniform provisions be included in this draft?

1 **409.515 Duration and effectiveness of financing statement; effect of**
2 **lapsed financing statement. (1) FIVE-YEAR EFFECTIVENESS.** Except as otherwise
3 provided in subs. (2), (5), (6) and (7), a filed financing statement is effective for a
4 period of 5 years after the date of filing.

5 **(2) PUBLIC-FINANCE OR MANUFACTURED-HOME TRANSACTION.** Except as otherwise
6 provided in subs. (5), (6) and (7), an initial financing statement filed in connection
7 with a public-finance transaction or manufactured-home transaction is effective for
8 a period of 30 years after the date of filing if it indicates that it is filed in connection
9 with a public-finance transaction or manufactured-home transaction.

10 **(3) LAPSE AND CONTINUATION OF FINANCING STATEMENT.** The effectiveness of a filed
11 financing statement lapses on the expiration of the period of its effectiveness unless
12 before the lapse a continuation statement is filed pursuant to sub. (4). Upon lapse,
13 a financing statement ceases to be effective and any security interest or agricultural
14 lien that was perfected by the financing statement becomes unperfected, unless the
15 security interest is perfected otherwise. If the security interest or agricultural lien
16 becomes unperfected upon lapse, it is deemed never to have been perfected as against
17 a purchaser of the collateral for value.

18 **(4) WHEN CONTINUATION STATEMENT MAY BE FILED.** A continuation statement may
19 be filed only within 6 months before the expiration of the 5-year period specified in
20 sub. (1) or the 30-year period specified in sub. (2), whichever is applicable.

21 **(5) EFFECT OF FILING CONTINUATION STATEMENT.** Except as otherwise provided in
22 ***s. 409.510, upon timely filing of a continuation statement, the effectiveness of the
23 initial financing statement continues for a period of 5 years commencing on the day