

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: revising the uniform commercial code-secured
2 transactions.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

This bill adopts the Revised Uniform Commercial Code Article 9-Secured Transactions, which was approved by the National Conference of Commissioners on Uniform State Laws in 1998.

In reformatting Article 9-Secured Transactions to the repeal and recreate of ch. 409, Wis. Stats. and the conforming amendments to other articles to changes to chs. 401 to 411, the following conversions were made: Uniform Commercial Code-chs. 401 to 411; article-chapter; part-subchapter; subpart title-deleted it; Section 9-101 to s. 409.101 up through Section 9-708 to s. 409.708; act-chs. 401 to 411; article 2A-ch. 411; article 1 etc up to 9-ch. 401 etc up to 409; 9-403 (b) (4) and most other subsections and paragraphs-s.409.403 (2) (d) and many other subsections and paragraphs; Section-s.; Sections-ss.; Subsection-sub.; Subsections-subs.; Paragraph-par.; Paragraphs-pars.; Subdivision-subd.; Subdivisions-subs.; regulation (only when referring to state regulation)-rule; employee-employe; cross references (to a series) through-to; lower cased Governor, Legislature and State; changed percent to %, indorse to endorse, two etc up to ten to 2 up to 10, and "when act takes effect" to "the effective date of this act [revisor inserts date],"; deleted the last comma in a series of three or more; initial capped the first word in every statutory unit, including paragraphs and subdivisions and lower units; bolded subsection numbers and retyped, bolded and lower cased section titles, except for the

first word; retained optional subsection titles in ch. 409; and inserted spaces in cross references between the subsection and paragraph, between the paragraph and subdivision and between the subdivision and lower unit. Inserted into the draft were all statutory units of the current statutes (other than in ch. 409) that contain cross references to ch. 409 or any statutory unit in ch. 409, to chs. 401 to 411 and to chs. 402 to 411, as well as those that refer to “secured transactions”. Also inserted into the draft, bracketed and following cross references in statutes outside the UCC, were the cross references from the cross reference table of the official act for each cross reference contained in a current statute outside of ch. 409.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 30.53 (4) (c) of the statutes is amended to read:

2 30.53 (4) (c) A security interest in a boat created by a manufacturer or dealer
3 who holds the boat for sale, which shall be governed by the applicable provisions of
4 ch. 409.

5 **History:** 1987 a. 397.

6 **SECTION 2.** 30.57 (2) (c) of the statutes is amended to read:

7 30.57 (2) (c) A security interest governed by ch. 409 that is created by a
8 manufacturer or dealer who holds the boat for sale.

9 **History:** 1991 a. 39.

10 **SECTION 3.** 30.57 (3) of the statutes is amended to read:

11 30.57 (3) Except as provided in sub. (4), a security interest is perfected by the
12 delivery to the department of the existing certificate of title, if any, an application for
13 a certificate of title containing the name and address of the secured party, and the
14 required fee. The security interest is perfected as of the time of its creation if delivery
15 to the department is completed within 10 days after its creation and without regard
to the limitations expressed in s. 409.301 (2) [9–317]; otherwise, as of the time of
delivery.

History: 1991 a. 39.

1 **SECTION 4.** 30.57 (4) of the statutes is amended to read:

2 30.57 (4) If a secured party whose name and address is contained on the
3 certificate of title for a boat acquires a new or additional security interest in the boat,
4 the new or additional security interest is perfected at the time of its attachment
5 under s. 409.203 [9-201 9-203].

6 History: 1991 a. 39.

6 **SECTION 5.** 30.57 (5) of the statutes is amended to read:

7 30.57 (5) An unperfected security interest is subordinate to the rights of
8 persons described in s. 409.301 [9-317 9-102 9-323].

9 History: 1991 a. 39.

9 **SECTION 6.** 30.57 (6) of the statutes is amended to read:

10 30.57 (6) The rules of priority stated in s. 409.312 [9-322 9-323 9-324 appendix
11 II], and the other sections referred to in that section, shall, to the extent appropriate,
12 apply to conflicting security interests in a boat of a type for which a certificate of title
13 is required.

****NOTE: Current s. 409.312 (2), Wis. stats., is the only UCC provision that refers to both crops and to secure. It reads: 409.312 (2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.” The conversion table lists 9-312 (2) as omitted and as the source for Appendix II. Should this draft include Appendix II or current s. 409.312 (2), Wis. stats.?

14 History: 1991 a. 39.

14 **SECTION 7.** 30.57 (7) of the statutes is amended to read:

15 30.57 (7) The rules stated in ss. ~~409.501 to 409.507~~ 409.601 to 409.627
16 governing the rights and duties of secured parties and debtors and the requirements
17 for, and effect of, disposition of a boat by a secured party, upon default shall, to the

1 extent appropriate, govern the rights of secured parties and owners with respect to
2 security interests in boats perfected under this section and ss. 30.572 and 30.573.

History: 1991 a. 39.

3 SECTION 8. 30.57 (8) of the statutes is amended to read:

4 30.57 (8) If a boat is subject to a security interest when brought into this state,
5 s. 409.103 (1), (2) and (3) [9-301 but par. (c) of each subsection omitted, 9-303, 9-307,
6 9-316, and 9-337] state the rules which determine the validity and perfection of the
7 security interest in this state.

History: 1991 a. 39.

8 SECTION 9. 50.05 (7) (g) of the statutes is amended to read:

9 50.05 (7) (g) Except as specified in sub. (9), shall honor all leases, mortgages
10 and secured transactions governing the building in which the facility is located and
11 all goods and fixtures in the building of which the receiver has taken possession, but
12 only to the extent of payments which, in the case of a rental agreement, are for the
13 use of the property during the period of the receivership, or which, in the case of a
14 purchase agreement, come due during the period of the receivership.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

15 SECTION 10. 50.05 (9) (a) (intro.) of the statutes is amended to read:

16 50.05 (9) (a) (intro.) A receiver may not be required to honor any lease,
17 mortgage, secured transaction or other wholly or partially executory contract
18 entered into by the owners or operators of the facility if:

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

19 SECTION 11. 50.05 (9) (a) 1. of the statutes is amended to read:

20 50.05 (9) (a) 1. The person seeking payment under the lease, mortgage, secured
21 transaction or other wholly or partially executory contract was an operator or
22 controlling person of the facility or was an affiliate of an operator or controlling

1 person at the time the lease, mortgage, secured transaction or other wholly or
2 partially executory contract was made; or

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

3 **SECTION 12.** 50.05 (9) (a) 2. of the statutes is amended to read:

4 50.05 (9) (a) 2. The rental, price or rate of interest required to be paid under
5 the lease, mortgage, secured transaction or other wholly or partially executory
6 contract was in excess of a reasonable rental, price or rate of interest at the time the
7 contract was entered into.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

8 **SECTION 13.** 50.05 (9) (a) 3. of the statutes is amended to read:

9 50.05 (9) (a) 3. Payment under the lease, mortgage, secured transaction or
10 other wholly or partially executory contract has been modified by the parties'
11 subsequent oral or written agreement or constructive waiver.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

12 **SECTION 14.** 50.05 (15) (f) of the statutes is amended to read:

13 50.05 (15) (f) The receiver shall, within 60 days after termination of the
14 receivership, file a notice of any lien created under this subsection. No action on a
15 lien created under this subsection may be brought more than 2 years after the date
16 of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit
17 court of the county in which the facility is located and entered on the judgment and
18 lien docket kept under s. 779.07. If the lien is on personal property, the lien shall be
19 filed with the department of financial institutions. The department of financial
20 institutions shall place the lien on personal property in the same file as financing
21 statements are filed under ss. 409.401 and 409.402 [9-501 9-502 9-503 9-504 9-506
22 9-507 9-512 9-521]. The notice shall specify the name of the person against whom
23 the lien is claimed, the name of the receiver, the dates of the petition for receivership

1 and the termination of receivership, a description of the property involved and the
2 amount claimed. No lien shall exist under this section against any person, on any
3 property, or for any amount not specified in the notice filed under this paragraph.
4 To the extent applicable, ch. 846 controls the foreclosure of liens under this
5 subsection that attach to real property.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35.

6 **SECTION 15.** 51.42 (3) (d) 6. f. of the statutes is amended to read:

7 51.42 (3) (d) 6. f. Shall honor all leases, mortgages and secured transactions
8 governing a building in which the county department of community programs or
9 related program is located and all goods and fixtures in the building of which the
10 receiver has taken possession, but only to the extent of payments which, in the case
11 of a rental agreement, are for the use of the property during the period of the
12 receivership or which, in the case of a purchase agreement, come due during the
13 period of the receivership.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268.

14 **SECTION 16.** 51.42 (3) (d) 12. f. of the statutes is amended to read:

15 51.42 (3) (d) 12. f. The receiver shall, within 60 days after termination of the
16 receivership, file a notice of any lien created under this subdivision. No action on a
17 lien created under this subdivision may be brought more than 2 years after the date
18 of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit
19 court for the county in which the county department of community programs or
20 related program is located and entered on the judgment and lien docket kept under
21 s. 779.07. If the lien is on personal property, the lien shall be filed with the
22 department of financial institutions. The department of financial institutions shall
23 place the lien on personal property in the same file as financing statements are filed

1 under ss. 409.401 and 409.402 [9-501 9-502 9-503 9-504 9-506 9-507 9-512 9-521].
2 The notice shall specify the name of the county department of community programs
3 or related program against which the lien is claimed, the name of the receiver, the
4 dates of the petition for receivership and the termination of receivership, a
5 description of the property involved and the amount claimed. No lien may exist
6 under this subdivision against any person, on any property or for any amount not
7 specified in the notice filed under this subd. 12. f. To the extent applicable, ch. 846
8 controls the foreclosure of liens under this subdivision that attach to real property.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (u), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268.

9 **SECTION 17. 59.43 (1) (L)** of the statutes is amended to read:
10 **59.43 (1) (L)** File all documents pertaining to security interests in personal
11 property, crops or fixtures that are required or authorized by law to be filed with the
12 register. Except as otherwise prescribed by the department of financial institutions
13 under ss. 409.403 to 409.406 [9-512 9-513 9-514 9-515 9-516 (a) 9-519 9-522
14 9-525], these documents shall be executed on white or light colored sheets of paper,
15 8 or 8.5 inches wide and 5, 7, 10.5 or 14 inches long. Whenever there is offered for
16 filing any document that varies more than one-eighth of an inch from the approved
17 size, or that is not on a standard form prescribed by the department of financial
18 institutions, then in addition to the regular filing fee an additional filing fee shall be
19 charged by the register of deeds, as prescribed by sub. (2). No assignment, release
20 or other instrument shall be offered for filing that is executed or endorsed on any
21 other document, but each shall be a separate and distinct document, except those
22 assignments or notices that are printed or written on and immediately following the
23 original agreement or financing statement, offered for filing at the same time, shall

1 be considered as one document. All of these documents shall be legibly written, and
2 shall have the names of the debtor and secured party plainly printed or typed on the
3 document and shall provide a space for filing data of the register of deeds on the
4 outside of the document.

History: 1995 a. 201 ss. 326, 327, 335, 338 to 353, 355, 361, 367, 369, 375, 377 to 380, 382 to 384; 1995 a. 225 ss. 159, 160, 162; 1995 a. 227; 1997 a. 27, 35, 79, 140, 252, 282, 303, 304.

5 **SECTION 18.** 59.43 (2) (d) of the statutes is amended to read:

6 59.43 (2) (d) For performing functions under s. 409.407 (1) and (2) (a) and (b)
7 [9-523] , the register shall charge the fees stated in s. 409.407 (2) (a) or (b) [9-523]
8 . A financing statement and an assignment or notice of assignment of the security
9 interest, offered for filing at the same time, shall be considered as only one document
10 for the purpose of this paragraph. Whenever there is offered for filing any document
11 that is not on a standard form prescribed by the department of financial institutions
12 or that varies more than 0.125 inch from the approved size as prescribed by sub. (1),
13 the appropriate fee specified in ss. 409.403 to 409.406 [9-512 9-513 9-514 9-515
14 9-516 (a) 9-519 9-522 9-525] or an additional filing fee of one-half the regular fee,
15 whichever is applicable, shall be charged by the register.

History: 1995 a. 201 ss. 326, 327, 335, 338 to 353, 355, 361, 367, 369, 375, 377 to 380, 382 to 384; 1995 a. 225 ss. 159, 160, 162; 1995 a. 227; 1997 a. 27, 35, 79, 140, 252, 282, 303, 304.

16 **SECTION 19.** 99.05 (1) of the statutes is amended to read:

17 99.05 (1) RECEIPTS. Public warehouse keepers, at the time goods are received
18 for storage, shall issue warehouse or storage receipts identifying goods placed in
19 storage and inform storers of all terms and conditions of storage and may, for this
20 purpose, use standard forms which are accepted in the warehousing industry and
21 comply with the requirements of chs. 401 to 411 and this subchapter.

History: 1983 a. 500; 1991 a. 148, 304, 315.

22 **SECTION 20.** 100.201 (2) (d) of the statutes is amended to read:

1 100.201 (2) (d) Make or underwrite loans to a retailer or become bound in any
2 manner for the financial obligation of any retailer except that a wholesaler may lend
3 money to a retailer for the purchase of equipment for the storage, transportation and
4 display of selected dairy products, provided the loan is for not more than 90% of the
5 purchase price, bears at least a 5% annual interest rate, is payable in equal monthly
6 instalments over a period of not more than 48 months, and is secured by a security
7 interest created by a security agreement specifying all payments by the retailer and
8 duly filed by the wholesaler within 10 days after the making or underwriting of said
9 loan, as provided in ss. 409.401 and 409.402 [9-501 9-502 9-503 9-504 9-506 9-507
10 9-512 9-521].

History: 1971 c. 238; Sup. Ct. Order 67 W (2d) 585, 774 (1975); 1975 c. 39, 199, 401; 1979 c. 32 s. 92 (13); 1979 c. 209 s. 4; 1983 a. 62; 1983 a. 180 ss. 133 to 135, 329 (20), (31); 1987 a. 399; 1993 a. 112, 492; 1995 a. 27, 225.

11 **SECTION 21.** 100.201 (2) (e) 1. of the statutes is amended to read:

12 100.201 (2) (e) 1. The wholesaler, under a bill of sale or security agreement
13 describing the property sold and specifying the price and terms of sale duly filed by
14 the wholesaler under ss. 409.401 and 409.402 [9-501 9-502 9-503 9-504 9-506
15 9 507 9 512 9-521] within 10 days after delivery of the equipment described
16 therein, may sell equipment for the storage, transportation and display of selected
17 dairy products to the retailer but the selling price shall be not less than the cost to
18 the wholesaler, less 10% per year depreciation, plus transportation and installation
19 costs, plus at least 6%, but in no event shall it be less than \$100 per unit. In filing
20 bills of sale under this section, the filing officer shall follow the procedure under s.
21 409.403 [9 515 9 516 (a) 9-519 9-522 9-525] insofar as applicable. If the wholesaler
22 makes the sale under a security agreement, the terms of sale shall be no more
23 favorable to the retailer than those under sub. (2) (d). Failure by any wholesaler to
24 enforce the wholesaler's security interest under this paragraph or sub. (2) (d) if a

1 retailer is in default for more than 90 days shall constitute prima facie evidence of
 2 a violation of this section. No wholesaler shall renegotiate a security agreement
 3 which is in default.

History: 1971 c. 238; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1975 c. 39, 199, 401; 1979 c. 32 s. 92 (13); 1979 c. 209 s. 4; 1983 a. 62; 1983 a. 189 ss. 133 to 135, 329 (20), (31); 1987 a. 399; 1993 a. 112, 492; 1995 a. 27, 225.

4 **SECTION 22.** 109.09 (2) (b) 2. of the statutes is amended to read:

5 109.09 (2) (b) 2. A lien under par. (a) upon personal property takes effect when
 6 the department of workforce development or employe files a notice of the lien with
 7 the department of financial institutions, pays the fee specified in s. 409.403 (5) (b)
 8 [9-525] to the department of financial institutions and serves a copy of the notice on
 9 the employer by personal service in the same manner as a summons is served under
 10 s. 801.11 or by certified mail with a return receipt requested. The department of
 11 financial institutions shall place the notice of the lien in the same file as financing
 12 statements are filed under ss. 409.401 and 409.402 [9-501 9-502 9-503 9-504 9-506
 13 9-507 9-512 9-521] .

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237.

14 **SECTION 23.** 127.18 of the statutes is amended to read:

15 **127.18 Conflict with chs. 401 to 411.** In the event of any conflict between
 16 this chapter and chs. 401 to 411, this chapter shall control.

History: 1979 c. 335; 1981 c. 390; 1985 a. 29 s. 1887; Stats. 1985 s. 127.18; 1991 a. 148, 304, 315.

17 **SECTION 24.** 129.04 of the statutes is amended to read:

18 **129.04 Trust property, art dealer’s creditors.** No property which is trust
 19 property under s. 129.02 or 129.03 is subject to the claims, liens or security interests
 20 of the creditors of the art dealer, notwithstanding chs. 401 to 411.

History: 1979 c. 01, 1991 a. 148, 304, 315.

21 **SECTION 25.** 138.09 (7) (i) 2. of the statutes is amended to read:

1 138.09 (7) (i) 2. An amount sufficient to cover the fee for filing the termination
2 statement required by s. ~~409.404~~ 409.513 on loans secured by merchandise other
3 than a motor vehicle or a boat; and

History: 1971 c. 60, 125, 239, 307; 1973 c. 2, 243; 1975 c. 407; 1977 c. 29 s. 1654 (7) (b); 1977 c. 444; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45 ss. 11 to 16, 51; 1983 a. 36, 192, 385; 1985 a. 127; 1987 a. 27; 1989 a. 31; 1991 a. 39, 221; 1993 a. 112, 184, 368, 482, 490; 1995 a. 27, 225, 272; 1997 a. 27, 191, 237.

4 **SECTION 26.** 138.12 (13) of the statutes is amended to read:

5 138.12 (13) NO FILING NECESSARY. No filing of the premium finance agreement
6 or recording of a premium finance transaction shall be necessary to perfect the
7 validity of such agreement as a secured transaction as against creditors, subsequent
8 purchasers, pledgees, encumbrancers, successors or assigns.

History: 1971 c. 40 s. 93; 1971 c. 125 s. 478; 1971 c. 239; Stats. 1971 s. 138.12; 1975 c. 371 s. 50; 1975 c. 372; 1977 c. 444 ss. 4 to 6, 11; 1981 c. 45; 1983 a. 189; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 336; 1991 a. 39, 221; 1993 a. 112, 482; 1995 a. 27; 1997 a. 191, 237.

9 **SECTION 27.** 241.03 (3) of the statutes is amended to read:

10 241.03 (3) Such cropper contract is not subject to ch. 409 unless the contract
11 expressly creates a security interest.

History: 1991 a. 316; 1993 a. 301; 1997 a. 254.

12 **SECTION 28.** 242.08 (5) (b) of the statutes is amended to read:

13 242.08 (5) (b) Enforcement of a security interest in compliance with ch. 409.

History: 1987 a. 192.

14 **SECTION 29.** 292.21 (1) (d) of the statutes is amended to read:

15 292.21 (1) (d) *Personal property and fixtures.* A lender that enforces a security
16 interest in personal property or fixtures at a particular location, filed under ch. 409,
17 and that does not acquire title to, or possession or control of, the real property at that
18 location, except for purposes of protecting and removing personal property or
19 fixtures, is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under
20 this chapter for a discharge of a hazardous substance on that real property if all of
21 the following conditions are satisfied:

1 1. Not more than 30 days after entry onto the real property where the personal
2 property or fixtures are located, the lender notifies the department and the borrower
3 of any decision not to accept specific personal property or fixtures.

4 2. Not more than 30 days after entry onto the real property where the personal
5 property or fixtures are located, the lender provides the department with a written
6 general description of the personal property or fixtures, the location of the personal
7 property or fixtures on the real property and the location of the real property by street
8 address.

9 3. The lender, within its ability to do so, permits reasonable access to the
10 personal property or fixtures to the department or the borrower or others acting on
11 the borrower's behalf.

12 4. The lender does not engage in the operation of a business at the location of
13 the personal property or fixtures, completion of work in progress or other actions
14 associated with conducting the conclusion of the borrower's business except for
15 actions that are undertaken to protect the property and are approved by the
16 department in writing.

17 History: 1995 a. 227 s. 708, 709, 993; 1997 a. 27.

17 **SECTION 30.** 340.01 (56m) of the statutes is amended to read:

18 340.01 (56m) "Secured party" means a secured party as defined in s. 409.105

19 (1) (L) 409.102 (1) (rs).

20 History: 1971 c. 100 s. 23; 1971 c. 201, 211, 233, 277, 307; 1973 c. 86, 157, 182, 185, 272, 333, 335; 1973 c. 336 s. 79; 1975 c. 25, 120, 121, 136, 192, 199,
320, 326; 1975 c. 429 ss. 2m, 2r, 3, 4, 8, 9; 1977 c. 5; 1977 c. 29 ss. 1405 to 1410, 1654 (3); 1977 c. 30 s. 5; 1977 c. 43, 55, 57, 116, 193, 272, 288, 418; 1979
c. 36, 221; 1979 c. 333 s. 5; 1979 c. 345; 1981 c. 20, 159, 329; 1983 a. 27, 78, 124, 130, 175; 1983 a. 189 ss. 249, 329 (17m), (24); 1983 a. 223, 227, 243, 270,
457, 459; 1983 a. 512 s. 8; 1983 a. 538; 1985 a. 29, 65; 1985 a. 146 s. 8; 1985 a. 165, 187, 287; 1987 a. 259, 270, 349, 399; 1989 a. 31; 1989 a. 75 s. 1; 1989
a. 102; 1989 a. 105 ss. 13 to 30, 37, 41, 42; 1989 a. 134, 170; 1991 a. 39, 239, 269, 277, 316; 1993 a. 15, 16, 63, 159, 198, 213, 246, 260, 399, 436, 490; 1995
a. 27 s. 9145 (1); 1995 a. 36, 77, 113, 138, 225, 436, 448; 1997 a. 27, 164, 252, 277.

20 **SECTION 31.** 340.01 (56n) of the statutes is amended to read:

21 340.01 (56n) "Security agreement" means a security agreement as defined in

22 s. 409.105 (1) (m) 409.102 (1) (s).

23 History: 1971 c. 100 s. 23; 1971 c. 201, 211, 233, 277, 307; 1973 c. 86, 157, 182, 185, 272, 333, 335; 1973 c. 336 s. 79; 1975 c. 25, 120, 121, 136, 192, 199,
320, 326; 1975 c. 429 ss. 2m, 2r, 3, 4, 8, 9; 1977 c. 5; 1977 c. 29 ss. 1405 to 1410, 1654 (3); 1977 c. 30 s. 5; 1977 c. 43, 55, 57, 116, 193, 272, 288, 418; 1979

c. 36, 221; 1979 c. 333 s. 5; 1979 c. 345; 1981 c. 20, 159, 329; 1983 a. 27, 78, 124, 130, 175; 1983 a. 189 ss. 249, 329 (17m), (24); 1983 a. 223, 227, 243, 270, 457, 459; 1983 a. 512 s. 8; 1983 a. 538; 1985 a. 29, 65; 1985 a. 146 s. 8; 1985 a. 165, 187, 287; 1987 a. 259, 270, 349, 399; 1989 a. 31; 1989 a. 75 s. 1; 1989 a. 102; 1989 a. 105 ss. 13 to 30, 37, 41, 42; 1989 a. 134, 170; 1991 a. 39, 239, 269, 277, 316; 1993 a. 15, 16, 63, 159, 198, 213, 246, 260, 399, 436, 490; 1995 a. 27 s. 9145 (1); 1995 a. 36, 77, 113, 138, 225, 436, 448; 1997 a. 27, 164, 252, 277.

1 **SECTION 32.** 342.02 (3) of the statutes is amended to read:

2 342.02 (3) A security interest in a vehicle created by a manufacturer or dealer
3 who holds the vehicle for sale, which shall be governed by the applicable provisions
4 of ch. 409.

5 **SECTION 33.** 342.03 of the statutes is amended to read:

6 **342.03 Motor vehicle, trailer or semitrailer leases.** Notwithstanding s.
7 401.201 (37) or ch. 409, a transaction involving a motor vehicle, trailer or semitrailer
8 does not create a conditional sale or a security interest merely because it includes a
9 provision that permits or requires the rental price to be adjusted under the
10 agreement by reference to the amount realized upon the sale or other disposition of
11 the motor vehicle, trailer or semitrailer.

History: 1991 a. 148.

12 **SECTION 34.** 342.19 (2) of the statutes is amended to read:

13 342.19 (2) Except as provided in sub. (2m), a security interest is perfected by
14 the delivery to the department of the existing certificate of title, if any, an application
15 for a certificate of title containing the name and address of the secured party, and the
16 required fee. It is perfected as of the time of its creation if such delivery is completed
17 within 10 days thereafter, and without regard to the limitations expressed in s.
18 ~~409.301 (2)~~ 409.317 (5); otherwise, as of the time of such delivery.

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

19 **SECTION 35.** 342.19 (2m) of the statutes is amended to read:

20 342.19 (2m) If a secured party whose name and address is contained on the
21 certificate of title for a vehicle acquires a new or additional security interest in the
22 vehicle, such security interest is perfected at the time of its attachment under s.
23 409.203 [9 203 and for sub. (4)–9–201].

****NOTE: It appears that the cross reference does not need to be changed so this subsection does not need to be amended.

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

1 **SECTION 36.** 342.19 (3) of the statutes is amended to read:

2 342.19 (3) An unperfected security interest is subordinate to the rights of
3 persons described in s. ~~409.301~~ ss. 409.317 and 409.323.

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

4 **SECTION 37.** 342.19 (4) of the statutes is amended to read:

5 342.19 (4) The rules of priority stated in s. 409.312 [9-322 9-323 9-324 and
6 appendix II], and the other sections therein referred to, shall, to the extent
7 appropriate, apply to conflicting security interests in a vehicle of a type for which a
8 certificate of title is required, or in a “previously certificated vehicle” as defined in
9 s. 342.281. A security interest perfected under this section or under ss. 342.284 and
10 342.285 is a security interest perfected otherwise than by filing for purposes of s.
11 409.312 [9-322 9-323 9-324 and appendix II].

****NOTE: Current s. 409.312 (2), Wis. stats., is the only UCC provision that refers to both crops and to securc. It reads: 409.312 (2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.” The conversion table lists 9-312 (2) as omitted and as the source for Appendix II. Should this draft include Appendix II or current s. 409.312 (2), Wis. stats.?

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

12 **SECTION 38.** 342.19 (5) of the statutes is amended to read:

13 342.19 (5) The rules stated in ss. ~~409.501 to 409.507~~ 409.601 to 409.627
14 governing the rights and duties of secured parties and debtors and the requirements
15 for, and effect of, disposition of a vehicle by a secured party, upon default shall, to the
16 extent appropriate, govern the rights of secured parties and owners with respect to
17 security interests in vehicles perfected under this chapter.

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

1 **SECTION 39.** 342.19 (6) of the statutes is amended to read:

2 342.19 (6) If a vehicle is subject to a security interest when brought into this
3 state, s. 409.103 (1), (2) and (3) [9–301 but par. (c) of each subsection omitted, 9–303,
4 9–307, 9–316, and 9–337] state the rules which apply to determine the validity and
5 perfection of the security interest in this state.

History: 1973 c. 336 s. 79; 1975 c. 286, 422; 1977 c. 29 s. 1654 (7) (a).

6 **SECTION 40.** 344.185 (3) (intro.) of the statutes is amended to read:

7 344.185 (3) (intro.) Notwithstanding ss. ~~409.501 to 409.507~~ 409.601 to 409.627
8 and ch. 425:

History: 1981 c. 363.

9 **SECTION 41.** 401.101 of the statutes is amended to read:

10 **401.101 Short title.** Chapters 401 to 411 shall be known and may be cited as
11 uniform commercial code.

History: 1979 c. 177; 1991 a. 148, 304, 315.

12 **SECTION 42.** 401.102 (1) of the statutes is amended to read:

13 401.102 (1) Chapters 401 to 411 shall be liberally construed and applied to
14 promote its underlying purposes and policies.

History: 1979 c. 89; 1991 a. 148, 304, 315.

15 **SECTION 43.** 401.102 (2) (intro.) of the statutes is amended to read:

16 401.102 (2) (intro.) Underlying purposes and policies of chs. 401 to 411 are:

History: 1979 c. 89; 1991 a. 148, 304, 315.

17 **SECTION 44.** 401.102 (3) of the statutes is amended to read:

18 401.102 (3) The effect of chs. 401 to 411 may be varied by agreement, except
19 as otherwise provided in chs. 401 to 411 and except that the obligations of good faith,
20 diligence, reasonableness and care prescribed by chs. 401 to 411 may not be
21 disclaimed by agreement but the parties may by agreement determine the standards

1 by which the performance of such obligations is to be measured if such standards are
2 not manifestly unreasonable.

3 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

3 **SECTION 45.** 401.102 (4) of the statutes is amended to read:

4 401.102 (4) The presence in certain provisions of chs. 401 to 411 of the words
5 “unless otherwise agreed” or words of similar import does not imply that the effect
6 of other provisions may not be varied by agreement under sub. (3).

7 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

7 **SECTION 46.** 401.102 (5) (intro.) of the statutes is amended to read:

8 401.102 (5) (intro.) In chs. 401 to 411 unless the context otherwise requires:

9 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

9 **SECTION 47.** 401.103 of the statutes is amended to read:

10 **401.103 Supplementary general principles of law applicable.** Unless
11 displaced by the particular provisions of chs. 401 to 411 the principles of law and
12 equity, including the law merchant and the law relative to capacity to contract,
13 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,
14 bankruptcy, or other validating or invalidating cause shall supplement its
15 provisions.

16 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

16 **SECTION 48.** 401.104 of the statutes is amended to read:

17 **401.104 Construction against implicit repeal.** Chapters 401 to 411 being
18 a general act intended as a unified coverage of its subject matter, no part of it shall
19 be deemed to be impliedly repealed by subsequent legislation if such construction can
20 reasonably be avoided.

21 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

21 **SECTION 49.** 401.105 (intro.) of the statutes is amended to read:

22 **401.105 (intro.) Territorial application of chs. 401 to 411; parties’ power**
23 **to choose applicable law.**

1 **SECTION 50.** 401.105 (1) (intro.) of the statutes is amended to read:

2 401.105 (1) (intro.) Except as provided in this section, when a transaction bears
3 a reasonable relation to this state and also to another state or nation the parties may
4 agree that the law either of this state or of such other state or nation shall govern
5 their rights and duties. Failing such agreement chs. 401 to 411 apply to transactions
6 bearing an appropriate relation to this state.

7 **History:** 1973 c. 215; 1979 c. 89; 1991 a. 148, 304, 315; 1997 a. 297.

7 **SECTION 51.** 401.105 (2) (intro.) of the statutes is amended to read:

8 401.105 (2) (intro.) Where one of the following provisions of chs. 401 to 411
9 specifies the applicable law, that provision governs and a contrary agreement is
10 effective only to the extent permitted by the law (including the conflict of laws rules)
11 so specified:

12 **History:** 1973 c. 215; 1979 c. 89; 1991 a. 148, 304, 315; 1997 a. 297.

12 **SECTION 52.** 401.105 (2) (e) of the statutes is repealed and recreated to read:

13 401.105 (2) (e) Sections 409.301 to 409.307 [9-317 9-102 9-323 9-309 9-310
14 9-311 9-308 9-312 9-306 9-313 9-315 9-320] on law governing perfection, the effect
15 of perfection or nonperfection and the priority of security interests.

16 **SECTION 53.** 401.105 (2) (g) of the statutes is amended to read:

17 401.105 (2) (g) Sections 411.105 and 411.106 on applicability of ch. 411.

18 **History:** 1973 c. 215; 1979 c. 89; 1991 a. 148, 304, 315; 1997 a. 297.

18 **SECTION 54.** 401.106 (1) of the statutes is amended to read:

19 401.106 (1) The remedies provided by chs. 401 to 411 shall be liberally
20 administered to the end that the aggrieved party may be put in as good a position as
21 if the other party had fully performed but neither consequential or special nor penal
22 damages may be had except as specifically provided in chs. 401 to 411 or by other rule
23 of law.

History: 1979 c. 89; 1991 a. 148, 304, 315.

1 **SECTION 55.** 401.106 (2) of the statutes is amended to read:

2 401.106 (2) Any right or obligation declared by chs. 401 to 411 is enforceable
3 by action unless the provision declaring it specifies a different and limited effect.

4 History: 1979 c. 89; 1991 a. 148, 304, 315.

4 **SECTION 56.** 401.108 of the statutes is amended to read:

5 **401.108 Severability.** If any provision or clause of chs. 401 to 409 or
6 application thereof to any person or circumstances is held invalid, such invalidity
7 shall not affect other provisions or applications of chs. 401 to 409 which can be given
8 effect without the invalid provision or application, and to this end the provisions of
9 chs. 401 to 409 are declared to be severable.

10 History: 1979 c. 89.

10 **SECTION 57.** 401.109 of the statutes is amended to read:

11 **401.109 Section captions.** Section captions are parts of chs. 401 to 411,
12 notwithstanding s. 990.001 (6).

13 History: 1979 c. 89; 1993 a. 213.

13 **SECTION 58.** 401.201 (3) of the statutes is amended to read:

14 401.201 (3) “Agreement” means the bargain of the parties in fact as found in
15 their language or by implication from other circumstances including course of
16 dealing or usage of trade or course of performance as provided in chs. 401 to 411 (ss.
17 401.205 and 402.208). Whether an agreement has legal consequences is determined
18 by chs. 401 to 411, if applicable; otherwise by the law of contracts (s. 401.103).
19 (Compare “Contract”.)

20 History: 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

20 **SECTION 59.** 401.201 (9) of the statutes is amended to read:

21 401.201 (9) “Buyer in ordinary course of business” means a person ~~who~~ that
22 buys goods in good faith and, without knowledge that the sale to him is in violation
23 of violates the ownership rights or security interest of a third party another person

1 in the goods buys, and in the ordinary course from a person, other than a pawnbroker,
 2 in the business of selling goods of that kind ~~but does not include a pawnbroker.~~ All
 3 ~~persons who sell minerals or the like (including oil and gas) at wellhead or minehead~~
 4 ~~shall be deemed to be persons.~~ A person buys goods in the ordinary course if the sale
 5 to the person comports with the usual or customary practices in the kind of business
 6 in which the seller is engaged or with the seller's own usual or customary practices.
 7 A person that sells oil, gas or other minerals at the wellhead or minehead is a person
 8 in the business of selling goods of that kind. "Buying" A buyer in ordinary course of
 9 business may be buy for cash or, by exchange of other property or on secured or
 10 unsecured credit, and includes receiving may acquire goods or documents of title
 11 under a pre-existing contract for sale but does not include a transfer in bulk or as
 12 security for or in total or partial satisfaction of a money debt. Only a buyer that takes
 13 possession of the goods or has a right to recover the goods from the seller under ch.
 14 402 may be a buyer in ordinary course of business. A person that acquires goods in
 15 a transfer in bulk or as security for or in total or partial satisfaction of a money debt
 16 is not a buyer in ordinary course of business.

History: 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

17 **SECTION 60.** 401.201 (11) of the statutes is amended to read:

18 401.201 (11) "Contract" means the total legal obligation which results from the
 19 parties' agreement as affected by chs. 401 to 411 and any other applicable rules of
 20 law. (Compare "Agreement".)

History: 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

21 **SECTION 61.** 401.201 (17) of the statutes is amended to read:

22 401.201 (17) "Fungible" with respect to goods or securities means goods or
 23 securities of which any unit is, by nature or usage of trade, the equivalent of any other
 24 like unit. Goods which are not fungible shall be deemed fungible for chs. 401 to 411

1 to the extent that under a particular agreement or document unlike units are treated
2 as equivalents.

3 **History:** 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

3 **SECTION 62.** 401.201 (23m) of the statutes is amended to read:

4 401.201 (23m) A person “knows” or has “knowledge” of a fact when the person
5 has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import
6 refers to knowledge rather than to reason to know. The time and circumstances
7 under which a notice or notification may cease to be effective are not determined by
8 chs. 401 to 411.

9 **History:** 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

9 **SECTION 63.** 401.201 (29) of the statutes is amended to read:

10 401.201 (29) “Party”, as distinct from “3rd party”, means a person who has
11 engaged in a transaction or made an agreement within chs. 401 to 411.

12 **History:** 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

12 **SECTION 64.** 401.201 (32) of the statutes is amended to read:

13 401.201 (32) “Purchase” includes taking by sale, discount, negotiation,
14 mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary
15 transaction creating an interest in property.

16 **SECTION 65.** 401.201 (37) (a) of the statutes is amended to read:

17 401.201 (37) (a) “Security interest” means an interest in personal property or
18 fixtures which secures payment or performance of an obligation. ~~The retention or~~
19 ~~reservation of title by a seller of goods notwithstanding shipment or delivery to the~~
20 ~~buyer (s. 402.401) is limited in effect to a reservation of a “security interest”. The term~~
21 also includes any interest of a consignor and a buyer of accounts or, chattel paper,
22 which a payment intangible, or a promissory note in a transaction that is subject to
23 ch. 409. The special property interest of a buyer of goods on identification of those
24 goods to a contract for sale under s. 402.401 is not a “security interest”, but a buyer

1 may also acquire a “security interest” by complying with ch. 409. Unless a
2 ~~consignment is intended as security, reservation of title thereunder is not a “security~~
3 ~~interest”, but a consignment in any event is subject to the provisions on consignment~~
4 ~~sales (s. 402.326). Except as otherwise provided in s. 402.505, the right of a seller~~
5 ~~or lessor of goods under ch. 402 or 411 to retain or acquire possession of the goods is~~
6 ~~not a “security interest”, but a seller or lessor may also acquire a “security interest”~~
7 ~~by complying with ch. 409. The retention or reservation of title by a seller of goods~~
8 ~~notwithstanding shipment or delivery to the buyer under s. 402.401 is limited in~~
9 ~~effect to a reservation of a “security interest”.~~

10 **History:** 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316; 1995 a. 449.

11 **SECTION 66.** 401.203 of the statutes is amended to read:

12 **401.203 Obligation of good faith.** Every contract or duty within chs. 401 to
13 411 imposes an obligation of good faith in its performance or enforcement.

14 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

15 **SECTION 67.** 401.204 (1) of the statutes is amended to read:

16 **401.204 (1)** Whenever chs. 401 to 411 require any action to be taken within a
17 reasonable time, any time which is not manifestly unreasonable may be fixed by
18 agreement.

19 **History:** 1979 c. 89; 1991 a. 148, 304, 315.

20 **SECTION 68.** 401.206 (2) of the statutes is amended to read:

21 **401.206 (2)** Subsection (1) does not apply to contracts for the sale of goods (s.
22 402.201) nor of securities (s. 408.113) nor to security agreements (s. 409.203) [203
23 and for sub. (4)– 201].

History: 1991 a. 316; 1997 a. 297.

SECTION 69. 402.103 (3) (d) of the statutes is amended to read:

402.103 (3) (d) “Consumer goods” — s. 409.109 409.102.

History: 1983 a. 189 s. 329 (24); 1995 a. 449.

SECTION 70. 402.207 (3) of the statutes is amended to read:

1 402.207 (3) Conduct by both parties which recognizes the existence of a
2 contract is sufficient to establish a contract for sale although the writings of the
3 parties do not otherwise establish a contract. In such case the terms of the particular
4 contract consist of those terms on which the writings of the parties agree, together
5 with any supplementary terms incorporated under any other provisions of chs. 401
6 to 411.

History: 1979 c. 89; 1991 a. 148, 304, 315.

7 **SECTION 71.** 402.210 (2m) of the statutes is created to read:

8 402.210 (2m) The creation, attachment, perfection or enforcement of a security
9 interest in the seller's interest under a contract is not a transfer that materially
10 changes the duty of or increases materially the burden or risk imposed on the buyer
11 or impairs materially the buyer's chance of obtaining return performance within the
12 purview of sub. (2) unless, and then only to the extent that, enforcement actually
13 results in a delegation of material performance of the seller. Even in that event, the
14 creation, attachment, perfection and enforcement of the security interest remain
15 effective, but:

16 (a) The seller is liable to the buyer for damages caused by the delegation to the
17 extent that the damages could not reasonably be prevented by the buyer; and

18 (b) A court having jurisdiction may grant other appropriate relief, including
19 cancellation of the contract for sale or an injunction against enforcement of the
20 security interest or consummation of the enforcement.

21 **SECTION 72.** 402.326 (2) of the statutes is amended to read:

1 402.326 (2) ~~Except as provided in sub. (3), goods~~ Goods held on approval are
2 not subject to the claims of the buyer's creditors until acceptance; goods held on sale
3 or return are subject to such claims while in the buyer's possession.

4 **History:** 1991 a. 316; 1997 a. 279.

4 **SECTION 73.** 402.326 (3) of the statutes is repealed.

5 **History:** 1991 a. 316; 1997 a. 279.

5 **SECTION 74.** 402.401 (1) of the statutes is amended to read:

6 402.401 (1) Title to goods cannot pass under a contract for sale prior to their
7 identification to the contract (s. 402.501), and unless otherwise explicitly agreed the
8 buyer acquires by their identification a special property as limited by chs. 401 to 411.
9 Any retention or reservation by the seller of the title (property) in goods shipped or
10 delivered to the buyer is limited in effect to a reservation of a security interest.
11 Subject to these provisions and to ch. 409, title to goods passes from the seller to the
12 buyer in any manner and on any conditions explicitly agreed on by the parties.

13 **History:** 1979 c. 89; 1991 a. 148, 304, 315, 316.

13 **SECTION 75.** 402.402 (3) (a) of the statutes is amended to read:

14 402.402 (3) (a) Under the provisions of ch. 409; or

15 **History:** 1991 a. 316.

15 **SECTION 76.** 402.403 (4) of the statutes is amended to read:

16 402.403 (4) The rights of other purchasers of goods and of lien creditors are
17 governed by chs. 406, 407 and 409.

18 **History:** 1991 a. 316.

18 **SECTION 77.** 402.502 (title) and (1) of the statutes are amended to read:

19 **402.502 (title) Buyer's right to goods on seller's repudiation, failure to**
20 **deliver or insolvency.** (1) Subject to sub. (2) and (3) and even though the goods
21 have not been shipped a buyer who has paid a part or all of the price of goods in which
22 the buyer has a special property under s. 402.501 may on making and keeping good
23 a tender of any unpaid portion of their price recover them from the seller if:

1 (a) In the case of goods bought for personal, family or household purposes, the
2 seller repudiates or fails to deliver as required by the contract; or

3 (b) In all cases, the seller becomes insolvent within 10 days after receipt of the
4 first instalment on their price.

5 **SECTION 78.** 402.502 (1m) of the statutes is created to read:

6 **402.502 (1m)** The buyer’s right to recover the goods under sub. (1) (a) vests
7 upon acquisition of a special property, even if the seller had not then repudiated or
8 failed to deliver.

9 **SECTION 79.** 402.716 (3) of the statutes is amended to read:

10 **402.716 (3)** The buyer has a right of replevin for goods identified to the contract
11 if after reasonable effort the buyer is unable to effect cover for such goods or the
12 circumstances reasonably indicate that such effort will be unavailing or if the goods
13 have been shipped under reservation and satisfaction of the security interest in them
14 has been made or tendered. In the case of goods bought for personal, family or
15 household purposes, the buyer’s right of replevin vests upon acquisition of a special
16 property, even if the seller had not then repudiated or failed to deliver.

History: 1991 a. 316.

17 **SECTION 80.** 402.719 (2) of the statutes is amended to read:

18 **402.719 (2)** Where circumstances cause an exclusive or limited remedy to fail
19 of its essential purpose, remedy may be had as provided in chs. 401 to 411.

History: 1979 c. 89; 1991 a. 148, 304, 315.

20 **SECTION 81.** 402.725 (4) of the statutes is amended to read:

21 **402.725 (4)** This section does not alter the law on tolling of the statute of
22 limitations nor does it apply to causes of action which have accrued before chs. 401
23 to 409 or before ch. 410 or 411 became effective.

History: 1979 c. 89; 1991 a. 148, 304, 315.

24 **SECTION 82.** 403.102 (2) of the statutes is amended to read:

1 403.102 (2) If there is a conflict between this chapter and ch. 404 or 409, chs.
2 404 and 409 govern.

3 **History:** 1995 a. 449.

3 **SECTION 83.** 403.605 (7) (c) of the statutes is amended to read:

4 403.605 (7) (c) Failure to perform a duty to preserve the value of collateral
5 owed, under ch. 409 or other law, to a debtor or surety or other person secondarily
6 liable.

7 **History:** 1995 a. 449.

7 **SECTION 84.** 404.109 (1) of the statutes is amended to read:

8 404.109 (1) Unless otherwise instructed, a collecting bank in a good faith effort
9 to secure payment of a specific item drawn on a payer other than a bank, and with
10 or without the approval of any person involved, may waive, modify or extend time
11 limits imposed or permitted by chs. 401 to 411 for a period not exceeding 2 additional
12 banking days without discharge of drawers or endorsers or liability to its transferor
13 or a prior party.

14 **History:** 1979 c. 89; 1991 a. 148, 304, 315; 1995 a. 449 s. 31; Stats. 1995 s. 404.109.

14 **SECTION 85.** 404.109 (2) of the statutes is amended to read:

15 404.109 (2) Delay by a collecting bank or payer bank beyond time limits
16 prescribed or permitted by chs. 401 to 411 or by instructions is excused if the delay
17 is caused by interruption of communication or computer facilities, suspension of
18 payments by another bank, war, emergency conditions, failure of equipment or other
19 circumstances beyond the control of the bank and the bank exercises such diligence
20 as the circumstances require.

21 **History:** 1979 c. 89; 1991 a. 148, 304, 315; 1995 a. 449 s. 31; Stats. 1995 s. 404.109.

21 **SECTION 86.** 404.210 (3) (intro.) of the statutes is amended to read:

22 404.210 (3) (intro.) Receipt by a collecting bank of a final settlement for an item
23 is a realization on its security interest in the item, accompanying documents and

1 proceeds. So long as the bank does not receive final settlement for the item or give
2 up possession of the item or accompanying documents for purposes other than
3 collection, the security interest continues to that extent and is subject to ch. 409, but
4 all of the following apply:

History: 1973 c. 336 s. 79; 1995 a. 449 s. 47; Stats. 1995 s. 404.210.

5 **SECTION 87.** 405.102 (3) of the statutes is amended to read:

6 405.102 (3) This chapter deals with some but not all of the rules and concepts
7 of letters of credit as such rules or concepts have developed prior to chs. 401 to 411
8 or may hereafter develop. The fact that this chapter states a rule does not by itself
9 require, imply or negate application of the same or a converse rule to a situation not
10 provided for or to a person not specified by this chapter.

History: 1979 c. 89; 1991 a. 148, 304, 315.

11 **SECTION 88.** 405.116 (2) (intro.) of the statutes is amended to read:

12 405.116 (2) (intro.) Even though the credit specifically states that it is
13 nontransferable or nonassignable, the beneficiary may assign the beneficiary's right
14 to proceeds before performance of the conditions of the credit. Such an assignment
15 is an assignment of an account under ch. 409 and is governed by that chapter except
16 that:

History: 1973 c. 215; 1991 a. 316.

17 **SECTION 89.** 405.116 (2) (a) of the statutes is amended to read:

18 405.116 (2) (a) The assignment is ineffective until the letter of credit or advice
19 of credit is delivered to the assignee which delivery constitutes perfection of the
20 security interest under ch. 409; and

History: 1973 c. 215; 1991 a. 316.

21 **SECTION 90.** 405.118 of the statutes is created to read:

22 **405.118 Security interest of issuer or nominated person.** (1) An issuer
23 or nominated person has a security interest in a document presented under a letter

1 of credit to the extent that the issuer or nominated person honors or gives value for
2 the presentation.

3 (2) So long as and to the extent that an issuer or nominated person has not been
4 reimbursed or has not otherwise recovered the value given with respect to a security
5 interest in a document under sub. (1), the security interest continues and is subject
6 to ch. 409, but:

7 (a) A security agreement is not necessary to make the security interest
8 enforceable under s. 409.203 (2) (c);

9 (b) If the document is presented in a medium other than a written or other
10 tangible medium, the security interest is perfected; and

11 (c) If the document is presented in a written or other tangible medium and is
12 not a certificated security, chattel paper, a document of title, an instrument or a letter
13 of credit, the security interest is perfected and has priority over a conflicting security
14 interest in the document so long as the debtor does not have possession of the
15 document.

16 **SECTION 91.** 406.102 (1) of the statutes is amended to read:

17 406.102 (1) A “bulk transfer” is any transfer in bulk and not in the ordinary
18 course of the transferor’s business of a major part in value of the inventory (~~s.~~
19 ~~409.109~~) as defined in s. 409.102 of an enterprise subject to this chapter.

20 *History:* 1981 c. 79.

20 **SECTION 92.** 406.102 (2) of the statutes is amended to read:

21 406.102 (2) A transfer of a substantial part of the equipment (~~s. 409.109~~) as
22 defined in s. 409.102 of such an enterprise is a bulk transfer if it is made in connection
23 with a bulk transfer of inventory, but not otherwise.

24 *History:* 1981 c. 79.

24 **SECTION 93.** 407.202 (3) of the statutes is amended to read:

1 407.202 (3) A warehouse keeper may insert in his or her receipt any other terms
2 which are not contrary to chs. 401 to 411 and do not impair his or her obligation of
3 delivery (s. 407.403) or his or her duty of care (s. 407.204). Any contrary provisions
4 are ineffective.

History: 1979 c. 89; 1983 a. 500 s. 43; 1991 a. 148, 304, 315, 316.

5 **SECTION 94.** 407.209 (2) of the statutes is amended to read:

6 407.209 (2) The warehouse keeper may also reserve a security interest against
7 the bailor for a maximum amount specified on the receipt for charges other than
8 those specified in sub. (1), such as for money advanced and interest. Such a security
9 interest is governed by ch. 409.

History: 1983 a. 500 s. 43; 1991 a. 316.

10 **SECTION 95.** 407.503 (1) (a) of the statutes is amended to read:

11 407.503 (1) (a) Delivered or entrusted them or any document of title covering
12 them to the bailor or the bailor's nominee with actual or apparent authority to ship,
13 store or sell or with power to obtain delivery under s. 407.403 or with power of
14 disposition under ss. 402.403 or ~~409.307~~ 409.320 or other statute or rule of law; nor

History: 1991 a. 316.

15 **SECTION 96.** 408.103 (6) of the statutes is amended to read:

16 408.103 (6) A commodity contract, as defined in s. ~~409.115 (1) (b)~~ 409.102 (1)
17 (dm), is not a security or a financial asset.

History: 1997 a. 297.

18 **SECTION 97.** 408.105 (5) of the statutes is amended to read:

19 408.105 (5) Filing of a financing statement under ch. 409 is not notice of an
20 adverse claim to a financial asset.

History: 1997 a. 297.

21 **SECTION 98.** 408.106 (4) (a) and (b) of the statutes are amended to read:

22 408.106 (4) (a) The purchaser becomes the entitlement holder; ~~or~~

1 (b) The securities intermediary has agreed that it will comply with entitlement
2 orders originated by the purchaser without further consent by the entitlement
3 holder; or

4 **SECTION 99.** 408.106 (4) (c) of the statutes is created to read:

5 408.106 (4) (c) Another person has control of the security entitlement on behalf
6 of the purchaser or, having previously acquired control of the security entitlement,
7 acknowledges that it has control on behalf of the purchaser.

8 **SECTION 100.** 408.106 (6) of the statutes is amended to read:

9 408.106 (6) A purchaser who has satisfied the requirements of sub. (3) ~~(b)~~ or
10 (4) ~~(b)~~ has control even if the registered owner in the case of sub. (3) ~~(b)~~ or the
11 entitlement holder in the case of sub. (4) ~~(b)~~ retains the right to make substitutions
12 for the uncertificated security or security entitlement, to originate instructions or
13 entitlement orders to the issuer or securities intermediary or otherwise to deal with
14 the uncertificated security or security entitlement.

History: 1997 a. 297.

15 **SECTION 101.** 408.110 (5) (a) of the statutes is amended to read:

16 408.110 (5) (a) If an agreement between the securities intermediary and its
17 entitlement holder specifies that it is governed by the law of a particular jurisdiction
18 governing the securities account expressly provides that a particular jurisdiction is
19 the securities intermediary's jurisdiction for purposes of this subchapter, this
20 chapter or chs. 401 to 411, that jurisdiction is the securities intermediary's
21 jurisdiction.

22 **SECTION 102.** 408.110 (5) (am) of the statutes is created to read:

23 408.110 (5) (am) If par. (a) does not apply and an agreement between the
24 securities intermediary and its entitlement holder governing the securities account

1 expressly provides that the agreement is governed by the law of a particular
2 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

3 **SECTION 103.** 408.110 (5) (b) to (d) of the statutes are amended to read:

4 408.110 (5) (b) If neither par. (a) nor par. (am) applies and an agreement
5 between the securities intermediary and its entitlement holder ~~does not specify the~~
6 governing law as provided in par. (a), but governing the securities account expressly
7 specifies provides that the securities account is maintained at an office in a
8 particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

9 (c) ~~If an agreement between the securities intermediary and its entitlement~~
10 ~~holder does not specify a jurisdiction as provided in par. (a) or (b), none of pars. (a)~~
11 ~~to (b) applies, the securities intermediary's jurisdiction is the jurisdiction in which~~
12 ~~is located the office identified in an account statement as the office serving the~~
13 ~~entitlement holder's account~~ is located.

14 (d) ~~If an agreement between the securities intermediary and its entitlement~~
15 ~~holder does not specify a jurisdiction as provided in par. (a) or (b) and an account~~
16 ~~statement does not identify an office serving the entitlement holder's account as~~
17 ~~provided in par. (c)~~ none of pars. (a) to (c) applies, the securities intermediary's
18 jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the
19 securities intermediary is located is located.

20 History: 1997 a. 297.

SECTION 104. 408.111 of the statutes is amended to read:

21 **408.111 Clearing corporation rules.** A rule adopted by a clearing
22 corporation governing rights and obligations among the clearing corporation and its

1 participants in the clearing corporation is effective even if the rule conflicts with chs.
2 401 to 411 and affects another party who does not consent to the rule.

3 **History:** 1997 a. 297.

3 **SECTION 105.** 408.301 (1) (c) of the statutes is amended to read:

4 408.301 (1) (c) A securities intermediary acting on behalf of the purchaser
5 acquires possession of the security certificate, only if the certificate is in registered
6 form and ~~has been is:~~

7 1. Registered in the name of the purchaser;

8 2. Payable to the order of the purchaser; or

9 3. specially Specially endorsed to the purchaser by an effective endorsement
10 and has not been endorsed to the securities intermediary or in blank.

11 **History:** 1997 a. 297.

11 **SECTION 106.** 408.302 (1) of the statutes is amended to read:

12 408.302 (1) Except as otherwise provided in subs. (2) and (3), ~~upon delivery a~~
13 ~~purchaser~~ of a certificated or uncertificated security ~~to a purchaser, the purchaser~~
14 acquires all rights in the security that the transferor had or had power to transfer.

15 **History:** 1997 a. 297.

15 **SECTION 107.** 408.510 (1) and (3) of the statutes are amended to read:

16 408.510 (1) ~~An~~ In a case not covered by the priority rules in ch. 409 or the rules
17 stated in sub. (3), an action based on an adverse claim to a financial asset or security
18 entitlement, whether framed in conversion, replevin, constructive trust, equitable
19 lien or other theory, may not be asserted against a person who purchases a security
20 entitlement, or an interest therein, from an entitlement holder if the purchaser gives
21 value, does not have notice of the adverse claim and obtains control.

22 (3) In a case not covered by the priority rules in ch. 409, a purchaser for value
23 of a security entitlement, or an interest therein, who obtains control has priority over
24 a purchaser of a security entitlement, or an interest therein, who does not obtain

1 control. Purchasers Except as otherwise provided in sub. (4), purchasers who have
2 control rank ~~equally, except that a~~ according to priority in time of:

3 (a) The purchaser’s becoming the person for whom the securities account, in
4 which the security entitlement is carried, is maintained, if the purchaser obtained
5 control under s. 408.106 (d) (1);

6 (b) The securities intermediary’s agreement to comply with the purchaser’s
7 entitlement orders with respect to security entitlements carried or to be carried in
8 the securities account in which the security entitlement is carried, if the purchaser
9 obtained control under s. 408.106 (d) (2); or

10 (c) If the purchaser obtained control through another person under s. 408.106

11 (d) (3), the time on which priority would be based under this subsection if the other
12 person were the secured party.

13 (4) A securities intermediary as purchaser has priority over a conflicting
14 purchaser who has control unless otherwise agreed by the securities intermediary.

History: 1997 a. 297.

15 **SECTION 108.** Chapter 409 of the statutes is repealed and recreated to read:

16 **UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS**

17 **SUBCHAPTER I**

18 **GENERAL PROVISIONS**

19 **409.101 Short title.** This chapter may be cited as uniform commercial
20 code-secured transactions.

21 **409.102 Definitions and index of definitions. (1) CHAPTER 409 DEFINITIONS.**

22 In this chapter:

23 (a) “Accession” means goods that are physically united with other goods in such
24 a manner that the identity of the original goods is not lost.

1 (ag) “Account”, except as used in “account for”, means a right to payment of a
2 monetary obligation, whether or not earned by performance; for property that has
3 been or is to be sold, leased, licensed, assigned or otherwise disposed of; for services
4 rendered or to be rendered; for a policy of insurance issued or to be issued; for a
5 secondary obligation incurred or to be incurred; for energy provided or to be provided;
6 for the use or hire of a vessel under a charter or other contract; arising out of the use
7 of a credit or charge card or information contained on or for use with the card; or as
8 winnings in a lottery or other game of chance operated or sponsored by a state,
9 governmental unit of a state or person licensed or authorized to operate the game by
10 a state or governmental unit of a state. The term includes health-care-insurance
11 receivables. The term does not include rights to payment evidenced by chattel paper
12 or an instrument; commercial tort claims; deposit accounts; investment property;
13 letter-of-credit rights or letters of credit; or rights to payment for money or funds
14 advanced or sold, other than rights arising out of the use of a credit or charge card
15 or information contained on or for use with the card.

16 (am) “Account debtor” means a person obligated on an account, chattel paper,
17 or general intangible. The term does not include persons obligated to pay a
18 negotiable instrument, even if the instrument constitutes part of chattel paper.

19 (as) “Accounting”, except as used in “accounting for”, means a record:

- 20 1. Authenticated by a secured party;
- 21 2. Indicating the aggregate unpaid secured obligations as of a date not more
22 than 35 days earlier or 35 days later than the date of the record; and
- 23 3. Identifying the components of the obligations in reasonable detail.

24 (b) “Agricultural lien” means an interest, other than a security interest, in farm
25 products:

SECTION 108

- 1 1. Which secures payment or performance of an obligation for:
 - 2 a. Goods or services furnished in connection with a debtor’s farming operation;
 - 3 or
 - 4 b. Rent on real property leased by a debtor in connection with its farming
 - 5 operation;
- 6 2. Which is created by statute in favor of a person that:
 - 7 a. In the ordinary course of its business furnished goods or services to a debtor
 - 8 in connection with a debtor’s farming operation; or
 - 9 b. Leased real property to a debtor in connection with the debtor’s farming
 - 10 operation; and
- 11 3. Whose effectiveness does not depend on the person’s possession of the
- 12 personal property.

13 (bg) “As–extracted collateral” means:

- 14 1. Oil, gas or other minerals that are subject to a security interest that is created
- 15 by a debtor having an interest in the minerals before extraction and which attaches
- 16 to the minerals as extracted; or
- 17 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas or
- 18 other minerals in which the debtor had an interest before extraction.

19 (bm) “Authenticate” means:

- 20 1. To sign; or
- 21 2. To execute or otherwise adopt a symbol, or encrypt or similarly process a
- 22 record in whole or in part, with the present intent of the authenticating person to
- 23 identify the person and adopt or accept a record.

1 (bs) “Bank” means an organization that is engaged in the business of banking.
2 The term includes savings banks, savings and loan associations, credit unions and
3 trust companies.

4 (c) “Cash proceeds” means proceeds that are money, checks, deposit accounts
5 or the like.

6 (cg) “Certificate of title” means a certificate of title with respect to which a
7 statute provides for the security interest in question to be indicated on the certificate
8 as a condition or result of the security interest’s obtaining priority over the rights of
9 a lien creditor with respect to the collateral.

10 (cm) “Chattel paper” means a record or records that evidence both a monetary
11 obligation and a security interest in specific goods, a security interest in specific
12 goods and software used in the goods or a lease of specific goods. The term does not
13 include charters or other contracts involving the use or hire of a vessel. If a
14 transaction is evidenced both by a security agreement or lease and by an instrument
15 or series of instruments, the group of records taken together constitutes chattel
16 paper.

17 (cs) “Collateral” means the property subject to a security interest or
18 agricultural lien. The term includes:

- 19 1. Proceeds to which a security interest attaches;
20 2. Accounts, chattel paper, payment intangibles and promissory notes that have
21 been sold; and
22 3. Goods that are the subject of a consignment.

23 (d) “Commercial tort claim” means a claim arising in tort with respect to which:

- 24 1. The claimant is an organization; or
25 2. The claimant is an individual and the claim:

1 a. Arose in the course of the claimant's business or profession; and

2 b. Does not include damages arising out of personal injury to or the death of an
3 individual.

4 (dg) "Commodity account" means an account maintained by a commodity
5 intermediary in which a commodity contract is carried for a commodity customer.

6 (dm) "Commodity contract" means a commodity futures contract, an option on
7 a commodity futures contract, a commodity option or another contract if the contract
8 or option is:

9 1. Traded on or subject to the rules of a board of trade that has been designated
10 as a contract market for such a contract pursuant to federal commodities laws; or

11 2. Traded on a foreign commodity board of trade, exchange or market, and is
12 carried on the books of a commodity intermediary for a commodity customer.

13 (ds) "Commodity customer" means a person for which a commodity
14 intermediary carries a commodity contract on its books.

15 (e) "Commodity intermediary" means a person that:

16 1. Is registered as a futures commission merchant under federal commodities
17 law; or

18 2. In the ordinary course of its business provides clearance or settlement
19 services for a board of trade that has been designated as a contract market pursuant
20 to federal commodities law.

21 (eg) "Communicate" means:

22 1. To send a written or other tangible record;

23 2. To transmit a record by any means agreed upon by the persons sending and
24 receiving the record; or

1 3. In the case of transmission of a record to or by a filing office, to transmit a
2 record by any means prescribed by filing-office rule.

3 (em) “Consignee” means a merchant to which goods are delivered in a
4 consignment.

5 (es) “Consignment” means a transaction, regardless of its form, in which a
6 person delivers goods to a merchant for the purpose of sale and:

7 1. The merchant:

8 a. Deals in goods of that kind under a name other than the name of the person
9 making delivery;

10 b. Is not an auctioneer; and

11 c. Is not generally known by its creditors to be substantially engaged in selling
12 the goods of others;

13 2. With respect to each delivery, the aggregate value of the goods is \$1,000 or
14 more at the time of delivery;

15 3. The goods are not consumer goods immediately before delivery; and

16 4. The transaction does not create a security interest that secures an obligation.

17 (f) “Consignor” means a person that delivers goods to a consignee in a
18 consignment.

19 (fg) “Consumer debtor” means a debtor in a consumer transaction.

20 (fm) “Consumer goods” means goods that are used or bought for use primarily
21 for personal, family or household purposes.

22 (fs) “Consumer-goods transaction” means a consumer transaction in which:

23 1. An individual incurs an obligation primarily for personal, family or
24 household purposes; and

25 2. A security interest in consumer goods secures the obligation.

1 (g) “Consumer obligor” means an obligor who is an individual and who incurred
2 the obligation as part of a transaction entered into primarily for personal, family or
3 household purposes.

4 (gg) “Consumer transaction” means a transaction in which an individual incurs
5 an obligation primarily for personal, family or household purposes; a security
6 interest secures the obligation; and the collateral is held or acquired primarily for
7 personal, family or household purposes. The term includes consumer-goods
8 transactions.

9 (gm) “Continuation statement” means an amendment of a financing statement
10 which:

11 1. Identifies, by its file number, the initial financing statement to which it
12 relates; and

13 2. Indicates that it is a continuation statement for, or that it is filed to continue
14 the effectiveness of, the identified financing statement.

15 (gs) “Debtor” means:

16 1. A person having an interest, other than a security interest or other lien, in
17 the collateral, whether or not the person is an obligor;

18 2. A seller of accounts, chattel paper, payment intangibles or promissory notes;

19 or

20 3. A consignee.

21 (h) “Deposit account” means a demand, time, savings, passbook or similar
22 account maintained with a bank. The term does not include investment property or
23 accounts evidenced by an instrument.

24 (hg) “Document” means a document of title or a receipt of the type described
25 in s. 407.201 (2).

1 (hm) “Electronic chattel paper” means chattel paper evidenced by a record or
2 records consisting of information stored in an electronic medium.

3 (hs) “Encumbrance” means a right, other than an ownership interest, in real
4 property. The term includes mortgages and other liens on real property.

5 (i) “Equipment” means goods other than inventory, farm products or consumer
6 goods.

7 (ig) “Farm products” means goods, other than standing timber, with respect to
8 which the debtor is engaged in a farming operation and which are:

9 1. Crops grown, growing or to be grown, including:

10 a. Crops produced on trees, vines and bushes; and

11 b. Aquatic goods produced in aquacultural operations;

12 2. Livestock, born or unborn, including aquatic goods produced in aquacultural
13 operations;

14 3. Supplies used or produced in a farming operation; or

15 4. Products of crops or livestock in their unmanufactured states.

16 (im) “Farming operation” means raising, cultivating, propagating, fattening,
17 grazing or any other farming, livestock or aquacultural operation.

18 (is) “File number” means the number assigned to an initial financing statement
19 pursuant to s. 409.519 (1).

20 (j) “Filing office” means an office designated in s. 409.501 as the place to file a
21 financing statement.

22 (jg) “Filing-office rule” means a rule adopted pursuant to s. 409.526.

23 (jm) “Financing statement” means a record or records composed of an initial
24 financing statement and any filed record relating to the initial financing statement.

1 (j)s) “Fixture filing” means the filing of a financing statement covering goods
2 that are or are to become fixtures and satisfying s. 409.502 (1) and (2). The term
3 includes the filing of a financing statement covering goods of a transmitting utility
4 which are or are to become fixtures.

5 (k) “Fixtures” means goods that have become so related to particular real
6 property that an interest in them arises under real property law.

7 (kg) “General intangible” means any personal property, including things in
8 action, other than accounts, chattel paper, commercial tort claims, deposit accounts,
9 documents, goods, instruments, investment property, letter-of-credit rights, letters
10 of credit, money and oil, gas or other minerals before extraction. The term includes
11 payment intangibles and software.

12 (km) “Good faith” means honesty in fact and the observance of reasonable
13 commercial standards of fair dealing.

14 (ks) “Goods” means all things that are movable when a security interest
15 attaches. The term includes fixtures; standing timber that is to be cut and removed
16 under a conveyance or contract for sale; the unborn young of animals; crops grown,
17 growing or to be grown, even if the crops are produced on trees, vines or bushes; and
18 manufactured homes. The term also includes a computer program embedded in
19 goods and any supporting information provided in connection with a transaction
20 relating to the program if the program is associated with the goods in such a manner
21 that it customarily is considered part of the goods, or by becoming the owner of the
22 goods, a person acquires a right to use the program in connection with the goods. The
23 term does not include a computer program embedded in goods that consist solely of
24 the medium in which the program is embedded. The term also does not include
25 accounts, chattel paper, commercial tort claims, deposit accounts, documents,

1 general intangibles, instruments, investment property, letter-of-credit rights,
2 letters of credit, money or oil, gas or other minerals before extraction.

3 (L) “Governmental unit” means a subdivision, agency, department, county,
4 parish, municipality or other unit of the government of the United States, a state or
5 a foreign country. The term includes an organization having a separate corporate
6 existence if the organization is eligible to issue debt on which interest is exempt from
7 income taxation under the laws of the United States.

8 (Lg) “Health-care-insurance receivable” means an interest in or claim under
9 a policy of insurance which is a right to payment of a monetary obligation for
10 health-care goods or services provided.

11 (Lm) “Instrument” means a negotiable instrument or any other writing that
12 evidences a right to the payment of a monetary obligation, is not itself a security
13 agreement or lease and is of a type that in ordinary course of business is transferred
14 by delivery with any necessary endorsement or assignment. The term does not
15 include investment property; letters of credit; or writings that evidence a right to
16 payment arising out of the use of a credit or charge card or information contained on
17 or for use with the card.

18 (Ls) “Inventory” means goods, other than farm products, which:

- 19 1. Are leased by a person as lessor;
- 20 2. Are held by a person for sale or lease or to be furnished under a contract of
21 service;
- 22 3. Are furnished by a person under a contract of service; or
- 23 4. Consist of raw materials, work in process or materials used or consumed in
24 a business.

1 (m) “Investment property” means a security, whether certificated or
2 uncertificated, security entitlement, securities account, commodity contract or
3 commodity account.

4 (mg) “Jurisdiction of organization”, with respect to a registered organization,
5 means the jurisdiction under whose law the organization is organized.

6 (mm) “Letter-of-credit right” means a right to payment or performance under
7 a letter of credit, whether or not the beneficiary has demanded or is at the time
8 entitled to demand payment or performance. The term does not include the right of
9 a beneficiary to demand payment or performance under a letter of credit.

10 (ms) “Lien creditor” means:

11 1. A creditor that has acquired a lien on the property involved by attachment,
12 levy or the like;

13 2. An assignee for benefit of creditors from the time of assignment;

14 3. A trustee in bankruptcy from the date of the filing of the petition; or

15 4. A receiver in equity from the time of appointment.

16 (n) “Manufactured home” means a structure, transportable in one or more
17 sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet
18 or more in length, or, when erected on site, is 320 or more square feet, and which is
19 built on a permanent chassis and designed to be used as a dwelling with or without
20 a permanent foundation when connected to the required utilities, and includes the
21 plumbing, heating, air-conditioning and electrical systems contained therein. The
22 term includes any structure that meets all of the requirements of this paragraph
23 except the size requirements and with respect to which the manufacturer voluntarily
24 files a certification required by the United States Secretary of Housing and Urban

1 Development and complies with the standards established under Title 42 of the
2 United States Code.

3 (ng) “Manufactured-home transaction” means a secured transaction:

4 1. That creates a purchase-money security interest in a manufactured home,
5 other than a manufactured home held as inventory; or

6 2. In which a manufactured home, other than a manufactured home held as
7 inventory, is the primary collateral.

8 (nm) “Mortgage” means a consensual interest in real property, including
9 fixtures, which secures payment or performance of an obligation.

10 (ns) “New debtor” means a person that becomes bound as debtor under s.
11 409.203 (4) by a security agreement previously entered into by another person.

12 (o) “New value” means money; money’s worth in property, services or new
13 credit; or release by a transferee of an interest in property previously transferred to
14 the transferee. The term does not include an obligation substituted for another
15 obligation.

16 (og) “Noncash proceeds” means proceeds other than cash proceeds.

17 (om) “Obligor” means a person that, with respect to an obligation secured by
18 a security interest in or an agricultural lien on the collateral, owes payment or other
19 performance of the obligation; has provided property other than the collateral to
20 secure payment or other performance of the obligation; or is otherwise accountable
21 in whole or in part for payment or other performance of the obligation. The term does
22 not include issuers or nominated persons under a letter of credit.

23 (os) “Original debtor” means a person that, as debtor, entered into a security
24 agreement to which a new debtor has become bound under s. 409.203 (4).

1 (p) “Payment intangible” means a general intangible under which the account
2 debtor’s principal obligation is a monetary obligation.

3 (pg) “Person related to”, with respect to an individual, means:

4 1. The spouse of the individual;

5 2. A brother, brother-in-law, sister or sister-in-law of the individual;

6 3. An ancestor or lineal descendant of the individual or the individual’s spouse;

7 or

8 4. Any other relative, by blood or marriage, of the individual or the individual’s
9 spouse who shares the same home with the individual.

10 (pm) “Person related to”, with respect to an organization, means:

11 1. A person directly or indirectly controlling, controlled by or under common
12 control with the organization;

13 2. An officer or director of, or a person performing similar functions with respect
14 to, the organization;

15 3. An officer or director of, or a person performing similar functions with respect
16 to, a person described in subd. 1.;

17 4. The spouse of an individual described in subd. 1., 2. or 3.; or

18 5. An individual who is related by blood or marriage to an individual described
19 in subd. 1., 2., 3. or 4. and shares the same home with the individual.

20 (ps) “Proceeds” means the following property:

21 1. Whatever is acquired upon the sale, lease, license, exchange or other
22 disposition of collateral;

23 2. Whatever is collected on, or distributed on account of, collateral;

24 3. Rights arising out of collateral;

1 4. To the extent of the value of collateral, claims arising out of the loss,
2 nonconformity or interference with the use of, defects or infringement of rights in or
3 damage to, the collateral; or

4 5. To the extent of the value of collateral and to the extent payable to the debtor
5 or the secured party, insurance payable by reason of the loss or nonconformity of,
6 defects or infringement of rights in or damage to the collateral.

7 (q) “Promissory note” means an instrument that evidences a promise to pay a
8 monetary obligation, does not evidence an order to pay and does not contain an
9 acknowledgment by a bank that the bank has received for deposit a sum of money
10 or funds.

11 (qg) “Proposal” means a record authenticated by a secured party which
12 includes the terms on which the secured party is willing to accept collateral in full
13 or partial satisfaction of the obligation it secures pursuant to ss. 409.620, 409.621
14 and 409.622.

15 (qm) “Public-finance transaction” means a secured transaction in connection
16 with which:

- 17 1. Debt securities are issued;
- 18 2. All or a portion of the securities issued have an initial stated maturity of at
19 least 20 years; and
- 20 3. The debtor, obligor, secured party, account debtor or other person obligated
21 on collateral, assignor or assignee of a secured obligation or assignor or assignee of
22 a security interest is a state or a governmental unit of a state.

23 (qs) “Pursuant to commitment”, with respect to an advance made or other value
24 given by a secured party, means pursuant to the secured party’s obligation, whether

1 or not a subsequent event of default or other event not within the secured party's
2 control has relieved or may relieve the secured party from its obligation.

3 (r) "Record", except as used in "for record", "of record", "record or legal title", and
4 "record owner", means information that is inscribed on a tangible medium or which
5 is stored in an electronic or other medium and is retrievable in perceivable form.

****NOTE: Current s. 409.403 (3), Wis. stats., has nonuniform amendments that adds "or an optical disk or electronic copy In other cases a lapsed statement may not be destroyed until after one year after the lapse." after "photographic copy" . Current s. 409.403 (4), Wis. stats., has nonuniform amendments that adds "or an optical disk or electronic copy" after "photographic copy" . I think the use of the defined term "record" picks up these references to optical or electronic. The conversion table gives 9-403 (3) as the source for new 9-515 and 9-522; and gives 9-403 (4) as the source for new 9-519. Should any of these nonuniform provisions be included in this draft?

6 (rg) "Registered organization" means an organization organized solely under
7 the law of a single state or the United States and as to which the state or the United
8 States must maintain a public record showing the organization to have been
9 organized.

10 (rm) "Secondary obligor" means an obligor to the extent that:

- 11 1. The obligor's obligation is secondary; or
12 2. The obligor has a right of recourse with respect to an obligation secured by
13 collateral against the debtor, another obligor or property of either.

14 (rs) "Secured party" means:

- 15 1. A person in whose favor a security interest is created or provided for under
16 a security agreement, whether or not any obligation to be secured is outstanding;
17 2. A person that holds an agricultural lien;
18 3. A consignor;
19 4. A person to which accounts, chattel paper, payment intangibles or
20 promissory notes have been sold;

1 5. A trustee, indenture trustee, agent, collateral agent or other representative
2 in whose favor a security interest or agricultural lien is created or provided for; or

3 6. A person that holds a security interest arising under s. 402.401, 402.505,
4 402.711 (3), 404.210, 405.118 or 411.508 (5).

5 (s) “Security agreement” means an agreement that creates or provides for a
6 security interest.

7 (sg) “Send”, in connection with a record or notification, means:

8 1. To deposit in the mail, deliver for transmission or transmit by any other usual
9 means of communication, with postage or cost of transmission provided for,
10 addressed to any address reasonable under the circumstances; or

11 2. To cause the record or notification to be received within the time that it would
12 have been received if properly sent under subd. 1.

13 (sm) “Software” means a computer program and any supporting information
14 provided in connection with a transaction relating to the program. The term does not
15 include a computer program that is included in the ****definition of*** goods.

****NOTE: Why is “definition of” in the new article 9 text? Should it be deleted?

16 (ss) “State” means a state of the United States, the District of Columbia, Puerto
17 Rico, the United States Virgin Islands or any territory or insular possession subject
18 to the jurisdiction of the United States.

19 (t) “Supporting obligation” means a letter-of-credit right or secondary
20 obligation that supports the payment or performance of an account, chattel paper,
21 a document, a general intangible, an instrument or investment property.

22 (tg) “Tangible chattel paper” means chattel paper evidenced by a record or
23 records consisting of information that is inscribed on a tangible medium.

1 (tm) "Termination statement" means an amendment of a financing statement
2 which:

3 1. Identifies, by its file number, the initial financing statement to which it
4 relates; and

5 2. Indicates either that it is a termination statement or that the identified
6 financing statement is no longer effective.

7 (ts) "Transmitting utility" means a person primarily engaged in the business
8 of:

9 1. Operating a railroad, subway, street railway or trolley bus;

10 2. Transmitting communications electrically, electromagnetically or by light;

11 3. Transmitting goods by pipeline or sewer; or

12 4. Transmitting or producing and transmitting electricity, steam, gas or water.

13 (2) DEFINITIONS IN OTHER CHAPTERS. The following definitions in other chapters
14 apply to this chapter:

15 (a) "Applicant" s. 405.102.

16 (am) "Beneficiary" s. 405.102.

17 (b) "Broker" s. 408.102.

18 (bm) "Certificated security" s. 408.102.

19 (c) "Check" s. 403.104.

20 (cm) "Clearing corporation" s. 408.102.

21 (d) "Contract for sale" s. 402.106.

22 (dm) "Customer" s. 404.104.

23 (e) "Entitlement holder" s. 408.102.

24 (em) "Financial asset" s. 408.102.

25 (f) "Holder in due course" s. 403.302.

1	(fm) “Issuer” (with respect to a letter of credit or letter-of-credit right)	
2	s. 405.102.	
3	(g) “Issuer” (with respect to a security)	s. 408.201.
4	(gm) “Lease”	s. 411.103.
5	(h) “Lease agreement”	s. 411.103.
6	(hm) “Lease contract”	s. 411.103.
7	(i) “Leasehold interest”	s. 411.103.
8	(im) “Lessee”	s. 411.103.
9	(j) “Lessee in ordinary course of business”	s. 411.103.
10	(jm) “Lessor”	s. 411.103.
11	(k) “Lessor’s residual interest”	s. 411.103.
12	(km) “Letter of credit”	s. 405.102.
13	(L) “Merchant”	s. 402.104.
14	(Lm) “Negotiable instrument”	s. 403.104.
15	(m) “Nominated person”	s. 405.102.
16	(mm) “Note”	s. 403.104.
17	(n) “Proceeds of a letter of credit”	s. 405.114.
18	(nm) “Prove”	s. 403.103.
19	(o) “Sale”	s. 402.106.
20	(om) “Securities account”	s. 408.501.
21	(p) “Securities intermediary”	s. 408.102.
22	(pm) “Security”	s. 408.102.
23	(q) “Security certificate”	s. 408.102.
24	(qm) “Security entitlement”	s. 408.102.
25	(r) “Uncertificated security”	s. 408.102.

1 **(3)** CHAPTER 401 DEFINITIONS AND PRINCIPLES. Chapter 401 contains general
2 definitions and principles of construction and interpretation applicable throughout
3 this chapter.

4 APPENDIX II

5 MODEL PROVISIONS FOR PRODUCTION–MONEY PRIORITY

6 Legislative Note: States that enact these model provisions should add the
7 following definitions to s. 409.102 (1) following the definition of “proceeds”:

8 **(64A)** “Production–money crops” means crops that secure a production–money
9 obligation incurred with respect to the production of those crops.

10 **(64B)** “Production–money obligation” means an obligation of an obligor
11 incurred for new value given to enable the debtor to produce crops if the value is in
12 fact used for the production of the crops.

13 **(64C)** “Production of crops” includes tilling and otherwise preparing land for
14 growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering
15 crops, and protecting them from damage or disease.

 ***NOTE: Current s. 409.312 (2), Wis. stats., is the only UCC provision that refers
to both crops and to secure. It reads: 409.312 (2) A perfected security interest in crops
for new value given to enable the debtor to produce the crops during the production season
and given not more than 3 months before the crops become growing crops by planting or
otherwise takes priority over an earlier perfected security interest to the extent that such
earlier interest secures obligations due more than 6 months before the crops become
growing crops by planting or otherwise, even though the person giving new value had
knowledge of the earlier security interest.”. The conversion table lists 9–312 (2) as
omitted and as the source for Appendix II. Should this draft include Appendix II or
current s. 409.312 (2), Wis. stats.?

16 APPENDIX II

17 [MODEL SECTION [9–103A]. PRODUCTION–MONEY CROPS;
18 PRODUCTION–MONEY OBLIGATION; PRODUCTION–MONEY SECURITY
19 INTEREST; BURDEN OF ESTABLISHING. (1) A security interest in crops is a