

1 value is in fact used for the production of the production-money crops, the security  
2 interests rank according to priority in time of filing under s. 409.322 (1).

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

\*\*\*\*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.?

6 **409.324 Priority of purchase-money security interests.** (1) GENERAL  
7 RULE: PURCHASE-MONEY PRIORITY. Except as otherwise provided in sub. (7), a perfected  
8 purchase-money security interest in goods other than inventory or livestock has  
9 priority over a conflicting security interest in the same goods, and, except as  
10 otherwise provided in s. 409.327, a perfected security interest in its identifiable  
11 proceeds also has priority, if the purchase-money security interest is perfected when  
12 the debtor receives possession of the collateral or within 20 days thereafter.

13 (2) INVENTORY PURCHASE-MONEY PRIORITY. Subject to sub. (3) and except as  
14 otherwise provided in sub. (7), a perfected purchase-money security interest in  
15 inventory has priority over a conflicting security interest in the same inventory, has  
16 priority over a conflicting security interest in chattel paper or an instrument  
17 constituting proceeds of the inventory and in proceeds of the chattel paper, if so  
18 provided in s. 409.330, and, except as otherwise provided in s. 409.327, also has  
19 priority in identifiable cash proceeds of the inventory to the extent the identifiable  
20 cash proceeds are received on or before the delivery of the inventory to a buyer, if:

1 (a) The purchase-money security interest is perfected when the debtor receives  
2 possession of the inventory;

3 (b) The purchase-money secured party sends an authenticated notification to  
4 the holder of the conflicting security interest;

5 (c) The holder of the conflicting security interest receives the notification within  
6 5 years before the debtor receives possession of the inventory; and

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

7 (d) The notification states that the person sending the notification has or  
8 expects to acquire a purchase-money security interest in inventory of the debtor and  
9 describes the inventory.

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

13 (a) If the purchase-money security interest is perfected by filing, before the  
14 date of the filing; or

15 (b) If the purchase-money security interest is temporarily perfected without  
16 filing or possession under s. 409.312 (6), before the beginning of the 20-day period  
17 thereunder.

18 (4) LIVESTOCK PURCHASE-MONEY PRIORITY. Subject to sub. (5) and except as  
19 otherwise provided in sub. (7), a perfected purchase-money security interest in  
20 livestock that are farm products has priority over a conflicting security interest in  
21 the same livestock, and, except as otherwise provided in s. 409.327, a perfected  
22 security interest in their identifiable proceeds and identifiable products in their  
23 unmanufactured states also has priority, if:

1           (a) The purchase-money security interest is perfected when the debtor receives  
2 possession of the livestock;

3           (b) The purchase-money secured party sends an authenticated notification to  
4 the holder of the conflicting security interest;

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

7           (d) The notification states that the person sending the notification has or  
8 expects to acquire a purchase-money security interest in livestock of the debtor and  
9 describes the livestock.

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

13           (a) If the purchase-money security interest is perfected by filing, before the  
14 date of the filing; or

15           (b) If the purchase-money security interest is temporarily perfected without  
16 filing or possession under s. 409.312 (6), before the beginning of the 20-day period  
17 thereunder.

18           **(6) SOFTWARE PURCHASE-MONEY PRIORITY.** Except as otherwise provided in sub.  
19 (7), a perfected purchase-money security interest in software has priority over a  
20 conflicting security interest in the same collateral, and, except as otherwise provided  
21 in s. 409.327, a perfected security interest in its identifiable proceeds also has  
22 priority, to the extent that the purchase-money security interest in the goods in  
23 which the software was acquired for use has priority in the goods and proceeds of the  
24 goods under this section.

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

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

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

[new omitted see 9-103 and 9-324] 409.114 – ANNOT.

Legislative Council Note, 1973: Sub. (1) (c) was amended by the Special Committee to delete the words “within 5 years” which appear after “notification” in the official text. Under s. 409.403 (2), as amended by this proposal, the effectiveness of a filed financing statement lapses at the end of 5 years unless a continuation statement is filed prior to lapse. For this reason the official text requires that a new notice be made under this section and s. 409.312 (3) (c) every 5 years even though holders of conflicting security interests received notice when the financing statement was originally filed and will have constructive notice upon the filing of a continuation statement. The Special Committee felt this requirement of new notice every 5 years to be both unreasonable and unnecessary. (Bill 177-S)

7           **409.325 Priority of security interests in transferred collateral.** (1)

8           **SUBORDINATION OF SECURITY INTEREST IN TRANSFERRED COLLATERAL.** Except as  
9 otherwise provided in sub. (2), a security interest created by a debtor is subordinate  
10 to a security interest in the same collateral created by another person if:

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

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

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

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

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

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

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

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

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

15          **409.327 Priority of security interests in deposit account.** The following  
16          rules govern priority among conflicting security interests in the same deposit  
17          account:

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

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

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

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

7           **409.328 Priority of security interests in investment property.** The  
8 following rules govern priority among conflicting security interests in the same  
9 investment property:

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

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

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

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

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

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

23           3. If the secured party obtained control through another person under s.  
24 408.106 (d) (3), the time on which priority would be based under this subsection if  
25 the other person were the secured party; or

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

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

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

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

15 (6) Conflicting security interests created by a broker, securities intermediary  
16 or commodity intermediary which are perfected without control under s. 409.106  
17 rank equally.

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

20 **409.329 Priority of security interests in letter-of-credit right.** The  
21 following rules govern priority among conflicting security interests in the same  
22 letter-of-credit right:

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

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

3           **409.330 Priority of purchaser of chattel paper or instrument.** (1)  
4 PURCHASER'S PRIORITY: SECURITY INTEREST CLAIMED MERELY AS PROCEEDS. A purchaser  
5 of chattel paper has priority over a security interest in the chattel paper which is  
6 claimed merely as proceeds of inventory subject to a security interest if:

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

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

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

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

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

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



1           (4) INSTRUMENT PURCHASER'S PRIORITY. Except as otherwise provided in s.  
2 409.331 (1), a purchaser of an instrument has priority over a security interest in the  
3 instrument perfected by a method other than possession if the purchaser gives value  
4 and takes possession of the instrument in good faith and without knowledge that the  
5 purchase violates the rights of the secured party.

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

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

14           **409.331 Priority of rights of purchasers of instruments, documents and**  
15 **securities under other chapters; priority of interests in financial assets and**  
16 **security entitlements under ch. 408.** (1) RIGHTS UNDER CHS. 403, 407 AND 408 NOT  
17 LIMITED. This chapter does not limit the rights of a holder in due course of a negotiable  
18 instrument, a holder to which a negotiable document of title has been duly negotiated  
19 or a protected purchaser of a security. These holders or purchasers take priority over  
20 an earlier security interest, even if perfected, to the extent provided in chs. 403, 407  
21 and 408.

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

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

4           **409.332 Transfer of money; transfer of funds from deposit account.** (1)  
5           **TRANSFEE OF MONEY.** A transferee of money takes the money free of a security  
6 interest unless the transferee acts in collusion with the debtor in violating the rights  
7 of the secured party.

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

12           **409.333 Priority of certain liens arising by operation of law.** (1)  
13           **POSSESSORY LIEN.** In this section, “possessory lien” means an interest, other than a  
14 security interest or an agricultural lien:

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

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

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

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

23           **409.334 Priority of security interests in fixtures and crops.** (1) **SECURITY**  
24 **INTEREST IN FIXTURES UNDER THIS CHAPTER.** A security interest under this chapter may  
25 be created in goods that are fixtures or may continue in goods that become fixtures.

1 A security interest does not exist under this chapter in ordinary building materials  
2 incorporated into an improvement on land.

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

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

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

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

[new 9-334] 409.313 – ANNOT.

Legislative Council Note, 1973: Sub. (9) is not contained in the official text. It was  
added by the Special Committee to make it clear that vehicles perfected by filing under  
the motor vehicle title statutes, including mobile homes, are not subject to fixture filing  
regardless of how they may be attached to the land; therefore, the rules of priority set out  
in this section do not apply. (Bill 177-S)

13 (a) The security interest is a purchase-money security interest;

14 (b) The interest of the encumbrancer or owner arises before the goods become  
15 fixtures; and

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

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

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

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

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

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

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

9 1. Factory or office machines;

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

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

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

16 (d) The security interest is:

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*NOTE: Subsection (10) needs to be deleted and inconsistent provisions amended.  
What statutes need to be amended?

\*\*\*NOTE: Current s. 409.313 (9), Wis. stats., is a nonuniform provision of the UCC that reads: "409.313 (9) The priority provisions of this section do not apply to security interests in vehicles for which certificates of title are required under ch. 342 and which are subject to s. 409.302 (3) (b)." Does it need to be continued in this draft either in this section or new s. 409.337?

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

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

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

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

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

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

1 in value of the whole or the other goods caused by the absence of the accession  
2 removed or by any necessity for replacing it. A person entitled to reimbursement  
3 may refuse permission to remove until the secured party gives adequate assurance  
4 for the performance of the obligation to reimburse.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**409.341 Bank’s rights and duties with respect to deposit account.**

Except as otherwise provided in s. 409.340 (3), and unless the bank otherwise agrees in an authenticated record, a bank’s rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) The creation, attachment or perfection of a security interest in the deposit account;

(2) The bank’s knowledge of the security interest; or

(3) The bank’s receipt of instructions from the secured party.

**409.342 Bank’s right to refuse to enter into or disclose existence of control agreement.** This chapter does not require a bank to enter into an agreement of the kind described in s. 409.104 (1) (b), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

**SUBCHAPTER IV**

**RIGHTS OF THIRD PARTIES**

**409.401 Alienability of debtor’s rights.** (1) OTHER LAW GOVERNS ALIENABILITY; EXCEPTIONS. Except as otherwise provided in sub. (2) and ss. 409.406, 409.407, 409.408 and 409.409, whether a debtor’s rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.

(2) AGREEMENT DOES NOT PREVENT TRANSFER. An agreement between the debtor and secured party which prohibits a transfer of the debtor’s rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

**409.402 Secured party not obligated on contract of debtor or in tort.**  
The existence of a security interest, agricultural lien or authority given to a debtor

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

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

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

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

9 (a) For value;

10 (b) In good faith;

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

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

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

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

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

25 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**\*\*\*NOTE:** Subsection (10) needs to be deleted and inconsistent provisions amended.  
          What statutes need to be amended?

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

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

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

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

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

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

1           **(3) SECURITY INTEREST NOT MATERIAL IMPAIRMENT.** The creation, attachment,  
2 perfection or enforcement of a security interest in the lessor's interest under the lease  
3 contract or the lessor's residual interest in the goods is not a transfer that materially  
4 impairs the lessee's prospect of obtaining return performance or materially changes  
5 the duty of or materially increases the burden or risk imposed on the lessee within  
6 the purview of s. 411.303 (4) unless, and then only to the extent that, enforcement  
7 actually results in a delegation of material performance of the lessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 [List here any statutes and rules containing provisions inconsistent with this  
19 section.]

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

\*\*\*\*NOTE: Subsection (5) needs to be deleted and inconsistent provisions amended.  
What statutes need to be amended?

22 **409.409 Restrictions on assignment of letter-of-credit rights**  
23 **ineffective. (1) TERM OR LAW RESTRICTING ASSIGNMENT GENERALLY INEFFECTIVE. A**

1 term in a letter of credit or a rule of law, statute, rule, custom or practice applicable  
2 to the letter of credit which prohibits, restricts or requires the consent of an  
3 applicant, issuer or nominated person to a beneficiary's assignment of or creation of  
4 a security interest in a letter-of-credit right is ineffective to the extent that the term  
5 or rule of law, statute, rule, custom or practice:

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

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

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

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

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

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

24 SUBCHAPTER V

25 FILING

1           **409.501 Filing office.** (1) FILING OFFICES. Except as otherwise provided in  
2 sub. (2), if the local law of this state governs perfection of a security interest or  
3 agricultural lien, the office in which to file a financing statement to perfect the  
4 security interest or agricultural lien is:

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

7           1. The collateral is as-extracted collateral or timber to be cut; or

8           2. The financing statement is filed as a fixture filing and the collateral is goods  
9 that are or are to become fixtures; or

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

\*\*\*\*NOTE: This draft inserts “department of financial institutions” and takes the  
brackets off “or any office duly authorized by department”. Should “or any office duly  
authorized by department” be deleted from this draft?

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

\*\*\*\*NOTE: This draft inserts “department of financial institutions” in the brackets.

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

1 (a) Provides the name of the debtor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*NOTE: Current s. 409.402 (1) (b), Wis. stats., has two nonuniform provisions. The second sentence is added “409.402 (1) (b) (2nd sentence) In each county, the register of deeds shall enter evidence of financing statements covering fixtures on all indices kept by the register of deeds regarding the transfer of real estate.”. The last sentence is changed to “An accurate reproduction of the security agreement or the financing statement, certified to be a true copy by the secured party, public officer or notary public, or a carbon copy bearing signatures appearing by carbon impression, may be filed.”. The conversion table gives 9-402 (1) as one of the sources for new 9-502, the others being 9-402 (5) and (6). Should these nonuniform provisions be included in this draft?

\*\*\*\*NOTE: Current s. 409.402 (5), Wis. stats., is a nonuniform provision. It omits all bracketed language] [for record] [sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the laws of this state. [and the last sentence (If a debtor does not have an interest of record in the real estate, the financing statement must show the name of the record owner.) and substitutes legal description for description. “409.402 (5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or a financing statement filed as a fixture filing (s. 409.313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a legal description of the real estate.”. The conversion table gives 9-402 (5) as a source for new 9-502. Should any of the nonuniform changes be included in this draft?

\*\*\*\*NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads: “409.402 (9) A financing statement signed by one spouse is signed by the debtor under this section if that spouse acting alone has the right under s. 766.51 to manage and control the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.”. The



conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

[new 9-504 9-502] 409.402 – ANNOT.

Legislative Council Note, 1973: The present requirement in sub. (1) (b) that a financing statement covering crops growing or to be grown must contain the legal description and name of the record owner of the real estate concerned is not a part of the official text of the code. This special Wisconsin requirement was rejected by the Special Committee because financing statements covering growing crops and crops to be grown are to be filed with the register of deeds in the county where the land is located [s. 409.401 (1) (a)] but not in the real estate records. Accidental filing in the real estate records may cause problems. In addition, the name of the record owner is misleading if the crops are being grown by a debtor who is a tenant farmer. The Special Committee decided not to adopt the additional language of the official text relating to use of reproductions of the security agreement or financing statement for filing purposes. The Committee transferred the language presently contained in the last sentence of s. 409.403 (1) to the last sentence of par. (b).

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

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

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

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

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

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

16           (d) In other cases:

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

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

\*\*\*\*NOTE: Current s. 409.402 (7). Wis. stats., is a nonuniform provision. Limited liability company is added after partnership. ULA states that the last sentence is deleted, but it appears in the current text. It reads: "409.402 (7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, limited liability company or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the debtor's name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer." Should the nonuniform provisions be included in this draft?

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

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

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

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

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

13           **(4) REPRESENTATIVE CAPACITY.** Failure to indicate the representative capacity  
14 of a secured party or representative of a secured party does not affect the sufficiency  
15 of a financing statement.

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

3           **409.504 Indication of collateral.** A financing statement sufficiently  
4 indicates the collateral that it covers only if the financing statement provides:

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

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

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

[new 9-504 9-502] 409.402 – ANNOT.

Legislative Council Note, 1973: The present requirement in sub. (1) (b) that a  
financing statement covering crops growing or to be grown must contain the legal  
description and name of the record owner of the real estate concerned is not a part of the  
official text of the code. This special Wisconsin requirement was rejected by the Special  
Committee because financing statements covering growing crops and crops to be grown  
are to be filed with the register of deeds in the county where the land is located [s. 409.401  
(1) (a)] but not in the real estate records. Accidental filing in the real estate records may  
cause problems. In addition, the name of the record owner is misleading if the crops are  
being grown by a debtor who is a tenant farmer. The Special Committee decided not to  
adopt the additional language of the official text relating to use of reproductions of the  
security agreement or financing statement for filing purposes. The Committee  
transferred the language presently contained in the last sentence of s. 409.403 (1) to the  
last sentence of par. (b).

8           **409.505 Filing and compliance with other statutes and treaties for**  
9 **consignments, leases, other bailments and other transactions.** (1) USE OF  
10 TERMS OTHER THAN DEBTOR AND SECURED PARTY. A consignor, lessor or other bailor of  
11 goods, a licensor or a buyer of a payment intangible or promissory note may file a  
12 financing statement, or may comply with a statute or treaty described in s. 409.311  
13 (1), using the terms “consignor”, “consignee”, “lessor”, “lessor”, “bailor”, “bailee”,

1 “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of  
2 similar import, instead of the terms “secured party” and “debtor”.

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

10 **409.506 Effect of errors or omissions.** (1) MINOR ERRORS AND OMISSIONS. A  
11 financing statement substantially satisfying the requirements of this subchapter is  
12 effective, even if it has minor errors or omissions, unless the errors or omissions make  
13 the financing statement seriously misleading.

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

17 (3) FINANCING STATEMENT NOT SERIOUSLY MISLEADING. If a search of the records  
18 of the filing office under the debtor’s correct name, using the filing office’s standard  
19 search logic, if any, would disclose a financing statement that fails sufficiently to  
20 provide the name of the debtor in accordance with s. 409.503 (1), the name provided  
21 does not make the financing statement seriously misleading.

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

\*\*\*NOTE: Current s. 409.402 (9). Wis. stats., is a nonuniform addition. It reads:  
“409.402 (9) A financing statement signed by one spouse is signed by the debtor under this  
section if that spouse acting alone has the right under s. 766.51 to manage and control

the collateral, unless a marital property agreement or court decree which is binding on the secured party under s. 766.55 (4m) or 766.56 (2) (c) provides otherwise.” The conversion table lists 9-402 (1) through (8) as sources for 9-502, 9-503 (a) (4), 9-504, 9-506, 9-507, 9-512, and 9-521. Should this subsection be included in this draft?

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

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

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

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

14           (b) The financing statement is not effective to perfect a security interest in  
15 collateral acquired by the debtor more than 4 months after the change, unless an  
16 amendment to the financing statement which renders the financing statement not  
17 seriously misleading is filed within 4 months after the change.

18           **409.508 Effectiveness of financing statement if new debtor becomes**  
19 **bound by security agreement. (1) FINANCING STATEMENT NAMING ORIGINAL DEBTOR.**  
20 Except as otherwise provided in this section, a filed financing statement naming an  
21 original debtor is effective to perfect a security interest in collateral in which a new  
22 debtor has or acquires rights to the extent that the financing statement would have  
23 been effective had the original debtor acquired rights in the collateral.

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

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

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

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

15           **409.509 Persons entitled to file a record.** (1) **PERSON ENTITLED TO FILE**  
16 **RECORD.** A person may file an initial financing statement, amendment that adds  
17 collateral covered by a financing statement or amendment that adds a debtor to a  
18 financing statement only if:

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

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

\*\*\*NOTE: Current s. 409.402 (4), Wis. stats., includes as its second sentence a nonuniform amendment: 409.402 (4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. **An amendment which changes only the name or the address of either party need be signed only by the secured party.** An amendment does not extend the period of effectiveness of a financing

statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments." Should that sentence be include in this draft?

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

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

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

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

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

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

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

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

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

4           **409.510 Effectiveness of filed record. (1) FILED RECORD EFFECTIVE IF**  
5 **AUTHORIZED.** A filed record is effective only to the extent that it was filed by a person  
6 that may file it under s. 409.509.

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

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

12           **409.511 Secured party of record. (1) SECURED PARTY OF RECORD.** A secured  
13 party of record with respect to a financing statement is a person whose name is  
14 provided as the name of the secured party or a representative of the secured party  
15 in an initial financing statement that has been filed. If an initial financing statement  
16 is filed under s. 409.514 (1), the assignee named in the initial financing statement  
17 is the secured party of record with respect to the financing statement.

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

23           **(3) AMENDMENT DELETING SECURED PARTY OF RECORD.** A person remains a secured  
24 party of record until the filing of an amendment of the financing statement which  
25 deletes the person.



1           **409.512 Amendment of financing statement.**

2           [Alternative A]

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

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

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

12           [Alternative B]

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

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

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

1 [End of Alternatives]

\*\*\*\*NOTE: Which alternative should be included in this draft?

2 (2) PERIOD OF EFFECTIVENESS NOT AFFECTED. Except as otherwise provided in s.  
3 409.515, the filing of an amendment does not extend the period of effectiveness of the  
4 financing statement.

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

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

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

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

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

17 Legislative Note: States whose real-estate filing offices require additional  
18 information in amendments and cannot search their records by both the name of the  
19 debtor and the file number should enact Alternative B to ss. 409.512 (1), 409.518 (2),  
20 409.519 (6) and 409.522 (1).

\*\*\*\*NOTE: Current s. 409.402 (4), Wis. stats., includes as its second sentence a nonuniform amendment: 409.402 (4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. **An amendment which changes only the name or the address of either party need be signed only by the secured party.** An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise

requires, the term "financing statement" means the original financing statement and any amendments.". Should that sentence be include in this draft?

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

\*\*\*\*NOTE: Current s. 409.406, Wis. stats., is nonuniform in that the last sentence was substituted for the uniform act last sentence. The section reads: "409.406 Release of collateral; duties of filing officer; fees. A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer, the officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The fee for filing and noting such a statement of release is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of release filed with the office of the register of deeds.". The conversion list gives 9-406 as the source for new 9-512. Should the nonuniform change be included in this draft?

- 1           **409.513 Termination statement.** (1) CONSUMER GOODS. A secured party shall  
2 cause the secured party of record for a financing statement to file a termination  
3 statement for the financing statement if the financing statement covers consumer  
4 goods and:
- 5           (a) There is no obligation secured by the collateral covered by the financing  
6 statement and no commitment to make an advance, incur an obligation or otherwise  
7 give value; or
- 8           (b) The debtor did not authorize the filing of the initial financing statement.
- 9           (2) TIME FOR COMPLIANCE WITH SUB. (1). To comply with sub. (1), a secured party  
10 shall cause the secured party of record to file the termination statement:

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

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

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

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

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

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

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

21 (4) EFFECT OF FILING TERMINATION STATEMENT. Except as otherwise provided in  
22 s. 409.510, upon the filing of a termination statement with the filing office, the  
23 financing statement to which the termination statement relates ceases to be  
24 effective.

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

409.404 (1)

409.404 (1) (a)

(a) Requirement for filing termination statement with the office of the register of deeds. If a financing statement covering consumer goods is filed on or after July 1, 1974, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

409.404 (1) (b)

(b) Requirement for filing termination statement with the department of financial institutions. Except as provided in par. (c), if a financing statement is filed with the department, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with the department a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with s. 409.405 (2), including payment of the required fee.

409.404 (1) (c)

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

409.404 (1) (c)1.

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

409.404 (1) (c)2.

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

409.404 (1) (c)3.

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

409.404 (1) (d)

(d) Failure to file a termination statement. If the affected secured party fails to file a

termination statement as required by this subsection, or to send such a termination statement within 10 days after receipt of the debtor's written demand the secured party is liable to the debtor for \$500, and in addition is liable for any loss caused to the debtor by such failure and for reasonable attorney fees and court costs incurred by the debtor due to such failure.

## 409.404 (2)

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

## 409.404 (3)

(3)

## 409.404 (3) (a)

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

## 409.404 (3) (b)

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

## 409.404 – ANNOT.

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

[new 9-513] 409.404 – ANNOT.

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

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

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

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

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

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

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

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

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

(1) An original financing statement may disclose an assignment of a security interest in  
the collateral described in the financing statement by indication in the financing  
statement of the name and address of the assignee or by an assignment itself or a copy  
thereof on the face or back of the statement. On presentation to the filing officer of such  
a financing statement the filing officer shall mark the same as provided in s. 409.403 (4).  
The fee for filing, indexing and stamping a copy furnished by the secured party to show  
the date and place of filing for an original financing statement so indicating an  
assignment is \$8 if the statement is on the standard form prescribed by the department  
and is \$16 if the statement is not on the standard form or if additional pages are attached  
to the standard form. The fee for filing an original financing statement indicating an  
assignment and subject to s. 409.402 (5) is \$10 if the statement is on the standard form  
and is \$20 if the statement is not on the standard form or if additional pages are attached  
to the standard form. A register of deeds shall forward \$3 to the department for each  
original financing statement indicating an assignment of a security interest that is filed  
with the office of the register of deeds.

409.405 (1m)

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

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

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

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

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

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

21           **(5) EFFECT OF FILING CONTINUATION STATEMENT.** Except as otherwise provided in  
22 s. 409.510, upon timely filing of a continuation statement, the effectiveness of the  
23 initial financing statement continues for a period of 5 years commencing on the day  
24 on which the financing statement would have become ineffective in the absence of  
25 the filing. Upon the expiration of the 5-year period, the financing statement lapses



1 in the same manner as provided in sub. (3), unless, before the lapse, another  
2 continuation statement is filed pursuant to sub. (4). Succeeding continuation  
3 statements may be filed in the same manner to continue the effectiveness of the  
4 initial financing statement.

5 (6) TRANSMITTING UTILITY FINANCING STATEMENT. If a debtor is a transmitting  
6 utility and a filed financing statement so indicates, the financing statement is  
7 effective until a termination statement is filed.

8 (7) RECORD OF MORTGAGE AS FINANCING STATEMENT. A record of a mortgage that  
9 is effective as a financing statement filed as a fixture filing under s. 409.502 (3)  
10 remains effective as a financing statement filed as a fixture filing until the mortgage  
11 is released or satisfied of record or its effectiveness otherwise terminates as to the  
12 real property.

\*\*\*\*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”. Section 409.403 (3) reads: A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in sub. (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in sub. (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the officer has retained a microfilm or other photographic record or an optical disk or electronic copy. In other cases a lapsed statement may not be destroyed until after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the officer physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under sub. (6) shall be retained.”.

I think the use of the defined term “record” picks up these references to optical or electronic. The definition of financing statement is based on record: (jm) “Financing

statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.” 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?

1           **409.516 What constitutes filing; effectiveness of filing.** (1) WHAT  
2           CONSTITUTES FILING. Except as otherwise provided in sub. (2), communication of a  
3           record to a filing office and tender of the filing fee or acceptance of the record by the  
4           filing office constitutes filing.

5           (2) REFUSAL TO ACCEPT RECORD; FILING DOES NOT OCCUR. Filing does not occur with  
6           respect to a record that a filing office refuses to accept because:

7           (a) The record is not communicated by a method or medium of communication  
8           authorized by the filing office;

9           (b) An amount equal to or greater than the applicable filing fee is not tendered;

10          (c) The filing office is unable to index the record because:

11          1. In the case of an initial financing statement, the record does not provide a  
12          name for the debtor;

13          2. In the case of an amendment or correction statement, the record:

14           a. Does not identify the initial financing statement as required by s. 409.512 or  
15           409.518, as applicable; or

16           b. Identifies an initial financing statement whose effectiveness has lapsed  
17           under s. 409.515;

18          3. In the case of an initial financing statement that provides the name of a  
19          debtor identified as an individual or an amendment that provides a name of a debtor  
20          identified as an individual which was not previously provided in the financing  
21          statement to which the record relates, the record does not identify the debtor’s last  
22          name; or