

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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

This bill adopts the Revised Uniform Commercial Code Article 9-Secured Transactions, which was approved by the National Conference of Commissioners on Uniform State Laws and by the American Law Institute in 1998 and by the American Bar Association, with the amendments approved by the national conference in 1999.

UCC Article 9-Secured Transactions governs transactions which involve the granting of credit secured by personal property of a debtor, allowing the creditor to take the property in the event the debtor defaults on the debt. The changes that Revised Uniform Commercial Code Article 9-Secured Transactions makes include the following : [from NCCUSL (1) the scope of Article 9 is expanded to include kinds of property such as deposit accounts, health care receivables and commercial tort claims, that were excluded in original Article 9; 2) perfection of a security interest by control is available not only for investment property, but also deposit accounts and letter of credit rights; 3) the location of the debtor rather than the location of the collateral determines where a security interest perfects; 4) a simplified and unified system of filing financing statements in one place in each state to perfect security interests replaces the original filing system which allowed certain local filing; 5) consumers obtain certain rights that were not available in original Article 9, such as specific disclosure of any deficiency rights the creditor may have; and 6) new rules for enforcement, such as a requirement that a creditor notify a secondary obligor

when repossessing goods subject to a security interest. UCC Article 9, then, becomes updated and prepared for the next century.]

[from NCCUSL [UNIFORM COMMERCIAL CODE REVISED ARTICLE 9, SECURED TRANSACTIONS (1998)

– A Summary –

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs—a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1998. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. The Scope Issue. The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before,

now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. Perfection. Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. “Control” is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor’s consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. Choice of Law. In interstate secured transactions, it is necessary to determine which state’s laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection, and a creditor’s priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. The Filing System. Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become

physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1998, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with “secondary” obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.]

In reformatting Article 9—Secured Transactions to the repeal and recreate of ch. 409, Wis. Stats. and the conforming amendments to other articles to changes to chs.

401 to 411, the following conversions were made: Uniform Commercial Code—chs. 401 to 411; article—chapter; part—subchapter; subpart title—deleted it; Section 9—101 to s. 409.101 up through Section 9—708 to s. 409.708; act—chs. 401 to 411 (except in subchapter 7, where this act—1999 Wisconsin Act ... (this act)); article 2A—ch. 411; article 1 etc up to 9—ch. 401 etc up to 409; 9—403 (b) (4) and most other subsections and paragraphs—s. 409.403 (2) (d) and many other subsections and paragraphs; Section—s.; Sections—ss.; Subsection—sub.; Subsections—subs.; Paragraph—par.; Paragraphs—pars.; Subdivision—subd.; Subdivisions—subds.; regulation (only when referring to state regulation)—rule; employee—employee; cross references (to a series) through—to; lower cased Governor, Legislature and State; changed percent to %, indorse to endorse, two etc up to ten to 2 up to 10, and “when act takes effect” to “the effective date of this act ... [revisor inserts date],”; deleted the last comma in a series of three or more; initial capped the first word in every statutory unit, including paragraphs and subdivisions and lower units; bolded subsection numbers and retyped, bolded and lower cased section titles, except for the first word; retained optional subsection titles in ch. 409; and inserted spaces in cross references between the subsection and paragraph, between the paragraph and subdivision and between the subdivision and lower unit. Inserted into the draft were all statutory units of the current statutes (other than in ch. 409) that contain cross references to ch. 409 or any statutory unit in ch. 409, to chs. 401 to 411 and to chs. 402 to 411, as well as those that refer to “secured transactions”. Also inserted into the draft, bracketed and following cross references in statutes outside the UCC, were the cross references from the cross reference table of the official act for each cross reference contained in a current statute outside of ch. 409.

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

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

1 **SECTION 1.** 30.57 (3) of the statutes is amended to read:
 2 30.57 (3) Except as provided in sub. (4), a security interest is perfected by the
 3 delivery to the department of the existing certificate of title, if any, an application for
 4 a certificate of title containing the name and address of the secured party, and the
 5 required fee. The security interest is perfected as of the time of its creation if delivery
 6 ~~to the department is completed within 10 days after its creation and without regard~~
 7 ~~to the limitations expressed in s. 409.301 (2); otherwise, as of the time of delivery.~~

****NOTE: The legislative note on page 79 states: “NCCUSL Legislative Note: This chapter contemplates that perfection of a security interest in goods covered by a

certificate of title occurs upon receipt by appropriate state officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly.” The statute below appear to me to be such a statute, and is one of only four I can find.

History: 1991 a. 39.

1 **SECTION 2.** 30.57 (5) of the statutes is amended to read:

2 30.57 (5) An unperfected security interest is subordinate to the rights of
3 persons described in s. ~~409.301~~ 409.317.

History: 1991 a. 39.

4 **SECTION 3.** 30.57 (6) of the statutes is amended to read:

5 30.57 (6) The rules of priority stated in s. ~~409.312~~ 409.322, and the other
6 sections referred to in that section, shall, to the extent appropriate, apply to
7 conflicting security interests in a boat of a type for which a certificate of title is
8 required.

History: 1991 a. 39.

9 **SECTION 4.** 30.57 (7) of the statutes is amended to read:

10 30.57 (7) The rules stated in ss. ~~409.501 to 409.507~~ 409.601 to 409.627
11 governing the rights and duties of secured parties and debtors and the requirements
12 for, and effect of, disposition of a boat by a secured party, upon default shall, to the
13 extent appropriate, govern the rights of secured parties and owners with respect to
14 security interests in boats perfected under this section and ss. 30.572 and 30.573.

History: 1991 a. 39.

15 **SECTION 5.** 30.57 (8) of the statutes is amended to read:

16 30.57 (8) If a boat is subject to a security interest when brought into this state,
17 s. ~~409.103 (1), (2) and (3)~~ state ch. 409 states the rules which determine the validity
18 and perfection of the security interest in this state.

History: 1991 a. 39.

19 **SECTION 6.** 50.05 (15) (f) of the statutes is amended to read:

1 50.05 (15) (f) The receiver shall, within 60 days after termination of the
2 receivership, file a notice of any lien created under this subsection. No action on a
3 lien created under this subsection may be brought more than 2 years after the date
4 of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit
5 court of the county in which the facility is located and entered on the judgment and
6 lien docket kept under s. 779.07. If the lien is on personal property, notice of the lien
7 shall be filed with the department of financial institutions in the same manner, form
8 and place as financing statements are filed under ch. 409. The department of
9 financial institutions shall ~~place~~ file the notice of the lien on personal property in the
10 same file as financing statements are filed under ~~ss. 409.401 and 409.402~~ ch. 409.
11 The notice shall specify the name of the person against whom the lien is claimed, the
12 name of the receiver, the dates of the petition for receivership and the termination
13 of receivership, a description of the property involved and the amount claimed. No
14 lien shall exist under this section against any person, on any property, or for any
15 amount not specified in the notice filed under this paragraph. To the extent
16 applicable, ch. 846 controls the foreclosure of liens under this subsection that attach
17 to real property.

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

18 **SECTION 7. 51.42 (3) (d) 12. f. of the statutes is amended to read:**

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

1 s. 779.07. If the lien is on personal property, notice of the lien shall be filed with the
2 department of financial institutions in the same manner, form and place as financing
3 statements are filed under ch. 409. The department of financial institutions shall
4 place file the notice of the lien on personal property in the same file as financing
5 statements are filed under ~~ss. 409.401 and 409.402~~ ch. 409. The notice shall specify
6 the name of the county department of community programs or related program
7 against which the lien is claimed, the name of the receiver, the dates of the petition
8 for receivership and the termination of receivership, a description of the property
9 involved and the amount claimed. No lien may exist under this subdivision against
10 any person, on any property or for any amount not specified in the notice filed under
11 this subd. 12. f. To the extent applicable, ch. 846 controls the foreclosure of liens
12 under this subdivision that attach to real property.

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

13 **SECTION 8. 59.43 (1) (L) of the statutes is amended to read:**

14 59.43 (1) (L) File all documents pertaining to security interests in personal
15 property, crops or fixtures that are required or authorized by law to be filed with the
16 register. Except as otherwise prescribed by the department of financial institutions
17 under ~~ss. 409.403 to 409.406~~ ch. 409, these documents shall be executed on white or
18 light colored sheets of paper, 8 or 8.5 inches wide and 5, 7, 10.5 or 14 inches long.
19 Whenever there is offered for filing any document that varies more than one-eighth
20 of an inch from the approved size, or that is not on a standard form prescribed by the
21 department of financial institutions, then in addition to the regular filing fee an
22 additional filing fee shall be charged by the register of deeds, as prescribed by sub.
23 (2). No assignment, release or other instrument shall be offered for filing that is

1 executed or endorsed on any other document, but each shall be a separate and
2 distinct document, except those assignments or notices that are printed or written
3 on and immediately following the original agreement or financing statement, offered
4 for filing at the same time, shall be considered as one document. All of these
5 documents shall be legibly written, and shall have the names of the debtor and party
6 plainly printed or typed on the document and shall provide a space for filing data of
7 the register of deeds on the outside of the document.

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

8 **SECTION 9.** 59.43 (2) (d) of the statutes is amended to read:

9 59.43 (2) (d) For performing functions under s. ~~409.407 (1) and (2) (a) and (b)~~
10 409.523, the register shall charge the fees stated in s. ~~409.407 (2) (a) or (b)~~ 409.525.
11 A financing statement and an assignment or notice of assignment of the security
12 interest, offered for filing at the same time, shall be considered as only one document
13 for the purpose of this paragraph. Whenever there is offered for filing any document
14 that is not on a standard form prescribed by the department of financial institutions
15 or that varies more than 0.125 inch from the approved size as prescribed by sub. (1),
16 the appropriate fee specified in ~~ss. 409.403 to 409.406~~ s. 409.525 or an additional
17 filing fee of one-half the regular fee, whichever is applicable, shall be charged by the
18 register.

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

19 **SECTION 10.** 100.201 (2) (d) of the statutes is amended to read:

20 100.201 (2) (d) Make or underwrite loans to a retailer or become bound in any
21 manner for the financial obligation of any retailer except that a wholesaler may lend
22 money to a retailer for the purchase of equipment for the storage, transportation and
23 display of selected dairy products, provided the loan is for not more than 90% of the

1 purchase price, bears at least a 5% annual interest rate, is payable in equal monthly
2 instalments over a period of not more than 48 months, and is by a security interest
3 created by a security agreement specifying all payments by the retailer and duly filed
4 by the wholesaler within 10 days after the making or underwriting of said loan, as
5 provided in ~~ss. 409.401 and 409.402~~ ch. 409.

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

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

7 100.201 (2) (e) 1. The wholesaler, under a bill of sale or security agreement
8 describing the property sold and specifying the price and terms of sale duly filed by
9 the wholesaler under ~~ss. 409.401 and 409.402~~ ch. 409 within 10 days after delivery
10 of the equipment described therein, may sell equipment for the storage,
11 transportation and display of selected dairy products to the retailer but the selling
12 price shall be not less than the cost to the wholesaler, less 10% per year depreciation,
13 plus transportation and installation costs, plus at least 6%, but in no event shall it
14 be less than \$100 per unit. In filing bills of sale under this section, the filing officer
15 shall follow the procedure under ~~s. 409.403~~ ch. 409 insofar as applicable. If the
16 wholesaler makes the sale under a security agreement, the terms of sale shall be no
17 more favorable to the retailer than those under sub. (2) (d). Failure by any
18 wholesaler to enforce the wholesaler's security interest under this paragraph or sub.
19 (2) (d) if a retailer is in default for more than 90 days shall constitute prima facie
20 evidence of a violation of this section. No wholesaler shall renegotiate a security
21 agreement which is in default.

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

22 **SECTION 12.** 101.9213 (2) of the statutes, as created by 1999 Wisconsin Act 9,
23 is amended to read:

1 101.9213 (2) Except as provided in sub. (3), a security interest is perfected by
2 the delivery to the department of the existing certificate of title, if any, an application
3 for a certificate of title containing the name and address of the secured party, and the
4 required fee. The security interest is perfected as of the time of its creation if such
5 ~~delivery is completed within 10 days after the time that the security interest is~~
6 ~~created, and without regard to the limitations expressed in s. 409.301 (2). If the~~
7 ~~delivery is not completed within 10 days after the time that the security interest is~~
8 ~~created, the security interest is perfected as of the time of such delivery.~~

****NOTE: The legislative note on page 79 states: "NCCUSL Legislative Note: This chapter contemplates that perfection of a security interest in goods covered by a certificate of title occurs upon receipt by appropriate state officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly." The statute below appear to me to be such a statutes, and is one of only four I can find.

History: 1999 a. 9.

9 **SECTION 13.** 101.9213 (4) of the statutes, as created by 1999 Wisconsin Act 9,
10 is amended to read:

11 101.9213 (4) An unperfected security interest is subordinate to the rights of
12 persons described in s. ~~409.301~~ 409.317.

History: 1999 a. 9.

13 **SECTION 14.** 101.9213 (5) of the statutes, as created by 1999 Wisconsin Act 9,
14 is amended to read:

15 101.9213 (5) The rules of priority stated in s. ~~409.312~~ 409.322, and the other
16 sections therein referred to, shall, to the extent appropriate, apply to conflicting
17 security interests in a mobile home of a type for which a certificate of title is required,
18 or in a previously certificated mobile home, as defined in s. 101.9222 (1). A security

1 interest perfected under this section or under s. 101.9222 (4) or (5) is a security
2 interest perfected otherwise than by filing for purposes of s. ~~409.312~~ 409.322.

3 History: 1999 a. 9.

3 **SECTION 15.** 101.9213 (6) of the statutes, as created by 1999 Wisconsin Act 9,
4 is amended to read:

5 101.9213 (6) The rules stated in ss. ~~409.501 to 409.507~~ 409.601 to 409.627
6 governing the rights and duties of secured parties and debtors and the requirements
7 for, and effect of, disposition of a mobile home by a secured party, upon default shall,
8 to the extent appropriate, govern the rights of secured parties and owners with
9 respect to security interests in mobile homes perfected under ss. 101.9202 to
10 101.9218.

11 History: 1999 a. 9.

11 **SECTION 16.** 101.9213 (7) of the statutes, as created by 1999 Wisconsin Act 9,
12 is amended to read:

13 101.9213 (7) If a mobile home is subject to a security interest when brought into
14 this state, ~~s. 409.103 (1), (2) and (3)~~ ch. 409 states the rules which apply to determine
15 the validity and perfection of the security interest in this state.

16 History: 1999 a. 9.

16 **SECTION 17.** 101.9222 (5) (b) of the statutes, as created by 1999 Wisconsin Act
17 9, is amended to read:

18 **101.9222 (5) (b)** If a security interest in a previously certificated mobile home
19 was created, but was unperfected, under any other applicable law of this state on
20 July 1, 2000, it may be perfected under par. (a), ~~but such perfection dates only from~~
21 ~~the date of the department's receipt of the certificate.~~

****NOTE: The legislative note on page 79 states: "NCCUSL Legislative Note: This chapter contemplates that perfection of a security interest in goods covered by a certificate of title occurs upon receipt by appropriate state officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes

provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly.” The statute below appear to me to be such a statute, and is one of only four I can find.

NOTE: NOTE: This section is created eff. 7-1-00 by 1999 Wis. Act 9. NOTE:

History: 1999 a. 9.

1 **SECTION 18.** 109.09 (2) (b) 2. of the statutes is amended to read:
2 109.09 (2) (b) 2. A lien under par. (a) upon personal property takes effect when
3 the department of workforce development or employe files a notice of the lien with
4 ~~the department of financial institutions in the same manner, form and place as~~
5 ~~financing statements are filed under ch. 409, pays the same fee specified in s. 409.403~~
6 ~~(5) (b) to the department of financial institutions ch. 409 for filing financing~~
7 ~~statements~~ and serves a copy of the notice on the employer by personal service in the
8 same manner as a summons is served under s. 801.11 or by certified mail with a
9 return receipt requested. The department of financial institutions shall place the
10 notice of the lien in the same file as financing statements are filed under ~~ss. 409.401~~
11 and ~~409.402~~ ch. 409.

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

12 **SECTION 19.** 138.09 (7) (i) 2. of the statutes is amended to read:
13 138.09 (7) (i) 2. An amount sufficient to cover the fee for filing the termination
14 statement required by s. ~~409.404~~ 409.513 on loans secured by merchandise other
15 than a motor vehicle or a boat; and

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

16 **SECTION 20.** 340.01 (56m) of the statutes is amended to read:
17 340.01 (56m) “Secured party” means a secured party as defined in s. 409.105
18 ~~(1) (L)~~ 409.102 (1) (rs).

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

19 **SECTION 21.** 340.01 (56n) of the statutes is amended to read:

1 **340.01 (56n)** “Security agreement” means a security agreement as defined in
 2 s. ~~409.105 (1) (m)~~ **409.102 (1) (s)**.

History: 1971 c. 100 s. 23; 1971 c. 201, 211, 233, 277, 307; 1973 c. 86, 157, 182, 185, 272, 333, 335; 1973 c. 336 s. 79; 1975 c. 25, 120, 121, 136, 192, 199, 320, 326; 1975 c. 429 ss. 2m, 2r, 3, 4, 8, 9; 1977 c. 5; 1977 c. 29 ss. 1405 to 1410, 1654 (3); 1977 c. 30 s. 5; 1977 c. 43, 55, 57, 116, 193, 272, 288, 418; 1979 c. 36, 221; 1979 c. 333 s. 5; 1979 c. 345; 1981 c. 20, 159, 329; 1983 a. 27, 78, 124, 130, 175; 1983 a. 199 ss. 249, 329 (17m), (34); 1983 a. 323, 327, 343, 370, 457, 459; 1983 a. 512 s. 8; 1983 a. 538; 1985 a. 29, 65; 1985 a. 146 s. 8; 1985 a. 165, 187, 287; 1987 a. 259, 270, 349, 399; 1989 a. 31; 1989 a. 75 s. 1; 1989 a. 102; 1989 a. 105 ss. 13 to 30, 37, 41, 42; 1989 a. 134, 170; 1991 a. 39, 239, 269, 277, 316; 1993 a. 15, 16, 63, 159, 198, 213, 246, 260, 399, 436, 490; 1995 a. 27 s. 9145 (1); 1995 a. 36, 77, 113, 138, 225, 436, 448; 1997 a. 27, 164, 252, 277.

3 **SECTION 22.** **342.19 (2)** of the statutes is amended to read:

4 **342.19 (2)** Except as provided in sub. (2m), a security interest is perfected by
 5 the delivery to the department of the existing certificate of title, if any, an application
 6 for a certificate of title containing the name and address of the secured party, and the
 7 required fee. It is perfected as of the time of its creation ~~if such delivery is completed~~
 8 ~~within 10 days thereafter, and without regard to the limitations expressed in s.~~
 9 ~~409.301 (2); otherwise, as of the time of such delivery.~~

 ****Note: The legislative note on page 79 states: “NCCUSL Legislative Note: This chapter contemplates that perfection of a security interest in goods covered by a certificate of title occurs upon receipt by appropriate state officials of a properly tendered application for a certificate of title on which the security interest is to be indicated, without a relation back to an earlier time. States whose certificate-of-title statutes provide for perfection at a different time or contain a relation-back provision should amend the statutes accordingly.”. The statute below appear to me to be such a statute, and is one of only four I can find.

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

10 **SECTION 23.** **342.19 (3)** of the statutes is amended to read:

11 **342.19 (3)** An unperfected security interest is subordinate to the rights of
 12 persons described in s. ~~409.301~~ **ss. 409.317 and 409.323**.

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

13 **SECTION 24.** **342.19 (4)** of the statutes, as affected by 1999 Wisconsin Act ...

14 (Assembly Bill 137), is amended to read:

15 **342.19 (4)** The rules of priority stated in s. ~~409.312~~ **ch. 409**, and the other
 16 sections therein referred to, shall, to the extent appropriate, apply to conflicting
 17 security interests in a vehicle of a type for which a certificate of title is required. A

1 security interest perfected under this section is a security interest perfected
2 otherwise than by filing for purposes of ~~s. 409.312~~ ch. 409.

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

3 **SECTION 25.** 342.19 (5) of the statutes is amended to read:

4 342.19 (5) The rules stated in ss. ~~409.501 to 409.507~~ 409.601 to 409.627
5 governing the rights and duties of secured parties and debtors and the requirements
6 for, and effect of, disposition of a vehicle by a secured party, upon default shall, to the
7 extent appropriate, govern the rights of secured parties and owners with respect to
8 security interests in vehicles perfected under this chapter.

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

9 **SECTION 26.** 342.19 (6) of the statutes is amended to read:

10 342.19 (6) If a vehicle is subject to a security interest when brought into this
11 state, ~~s. 409.103 (1), (2) and (3)~~ ch. 409 states the rules which apply to determine
12 the validity and perfection of the security interest in this state.

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

13 **SECTION 27.** 344.185 (3) (intro.) of the statutes is amended to read:

14 344.185 (3) (intro.) Notwithstanding ss. ~~409.501 to 409.507~~ 409.601 to 409.627
15 and ch. 425:

16 **History:** 1981 c. 363.

16 **SECTION 28.** 401.105 (2) (intro.) of the statutes is amended to read:

17 401.105 (2) (intro.) Where one of the following provisions of chs. 401 to 411
18 specifies the applicable law, that provision governs and a contrary agreement is
19 effective only to the extent permitted by the law (including the conflict of laws rules)
20 so specified:

****NOTE: What cross references should be substituted in s. 401.105 (2) (e)
(following) in this draft?

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

21 **SECTION 29.** 401.105 (2) (e) of the statutes is repealed and recreated to read:

1 401.105 (2) (e) Sections 409.301 to 409.307 [9-317 9-102 9-323 9-309 9-310
2 9-311 9-308 9-312 9-306 9-313 9-315 9-320] on law governing perfection, the
3 effect of perfection or nonperfection and the priority of security interests.

 ***NOTE: What cross references should be substituted in this paragraph? Should
it be to ss. 409.317 to 409.320 and 409.323? (S. 409.301 has been changed to 409.317 and
has been changed to 409.317 and 409.323; and 409.307 has been changed to 409.320 in
this draft.

4 **SECTION 30.** 401.201 (9) of the statutes is amended to read:

5 401.201 (9) "Buyer in ordinary course of business" means a person ~~who~~ that
6 buys goods in good faith and, without knowledge that the sale to him is in violation
7 of violates the ownership rights or security interest of a third party another person
8 in the goods buys, and in the ordinary course from a person, other than a pawnbroker,
9 in the business of selling goods of that kind but does not include a pawnbroker. All
10 persons who sell minerals or the like (including oil and gas) at wellhead or minehead
11 shall be deemed to be persons. A person buys goods in the ordinary course if the sale
12 to the person comports with the usual or customary practices in the kind of business
13 in which the seller is engaged or with the seller's own usual or customary practices.
14 A person that sells oil, gas or other minerals at the wellhead or minehead is a person
15 in the business of selling goods of that kind. "Buying" A buyer in ordinary course of
16 business may be buy for cash or, by exchange of other property or on secured or
17 unsecured credit, and includes receiving may acquire goods or documents of title
18 under a pre-existing contract for sale but does not include a transfer in bulk or as
19 security for or in total or partial satisfaction of a money debt. Only a buyer that takes
20 possession of the goods or has a right to recover the goods from the seller under ch.
21 402 may be a buyer in ordinary course of business. A person that acquires goods in

1 a transfer in bulk or as security for or in total or partial satisfaction of a money debt
2 is not a buyer in ordinary course of business.

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

3 **SECTION 31.** 401.201 (32) of the statutes is amended to read:

4 401.201 (32) “Purchase” includes taking by sale, discount, negotiation,
5 mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary
6 transaction creating an interest in property.

7 **SECTION 32.** 401.201 (37) (a) of the statutes is amended to read:

8 401.201 (37) (a) “Security interest” means an interest in personal property or
9 fixtures which secures payment or performance of an obligation. ~~The retention or~~
10 ~~reservation of title by a seller of goods notwithstanding shipment or delivery to the~~
11 ~~buyer (s. 402.401) is limited in effect to a reservation of a “security interest”. The term~~
12 also includes any interest of a consignor and a buyer of accounts or, chattel paper,
13 which a payment intangible, or a promissory note in a transaction that is subject to
14 ch. 409. The special property interest of a buyer of goods on identification of those
15 goods to a contract for sale under s. 402.401 is not a “security interest”, but a buyer
16 may also acquire a “security interest” by complying with ch. 409. Unless a
17 consignment is intended as security, reservation of title thereunder is not a “security
18 interest”, but a consignment in any event is subject to the provisions on consignment
19 sales (s. 402.326). Except as otherwise provided in s. 402.505, the right of a seller
20 or lessor of goods under ch. 402 or 411 to retain or acquire possession of the goods is
21 not a “security interest”, but a seller or lessor may also acquire a “security interest”
22 by complying with ch. 409. The retention or reservation of title by a seller of goods

1 notwithstanding shipment or delivery to the buyer under s. 402.401 is limited in
2 effect to a reservation of a “security interest”.

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

3 **SECTION 33.** 402.103 (3) (d) of the statutes is amended to read:

4 402.103 (3) (d) “Consumer goods” — s. ~~409.109~~ 409.102.

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

5 **SECTION 34.** 402.210 (2m) of the statutes is created to read:

6 402.210 (2m) The creation, attachment, perfection or enforcement of a security
7 interest in the seller’s interest under a contract is not a transfer that materially
8 changes the duty of or increases materially the burden or risk imposed on the buyer
9 or impairs materially the buyer’s chance of obtaining return performance within the
10 purview of sub. (2) unless, and then only to the extent that, enforcement actually
11 results in a delegation of material performance of the seller. Even in that event, the
12 creation, attachment, perfection and enforcement of the security interest remain
13 effective, but:

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

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

19 **SECTION 35.** 402.326 (2) of the statutes is amended to read:

20 402.326 (2) ~~Except as provided in sub. (3), goods~~ Goods held on approval are
21 not subject to the claims of the buyer’s creditors until acceptance; goods held on sale
22 or return are subject to such claims while in the buyer’s possession.

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

23 **SECTION 36.** 402.326 (3) of the statutes is repealed.

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

1 **SECTION 37.** 402.502 (title) and (1) of the statutes are amended to read:

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

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

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

11 **SECTION 38.** 402.502 (1m) of the statutes is created to read:

12 **402.502 (1m)** The buyer's right to recover the goods under sub. (1) (a) vests
13 upon acquisition of a special property, even if the seller had not then repudiated or
14 failed to deliver.

15 **SECTION 39.** 402.716 (3) of the statutes is amended to read:

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

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

SECTION 40. 405.118 of the statutes is created to read:

1 **405.118 Security interest of issuer or nominated person.** (1) An issuer
2 or nominated person has a security interest in a document presented under a letter
3 of credit to the extent that the issuer or nominated person honors or gives value for
4 the presentation.

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

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

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

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

18 **SECTION 41.** 406.102 (1) of the statutes is amended to read:

19 406.102 (1) A “bulk transfer” is any transfer in bulk and not in the ordinary
20 course of the transferor’s business of a major part in value of the inventory (~~s.~~
21 ~~409.109~~) as defined in s. 409.102 of an enterprise subject to this chapter.

22 History: 1981 c. 79.

SECTION 42. 406.102 (2) of the statutes is amended to read:

1 406.102 (2) A transfer of a substantial part of the equipment (~~s. 409.109~~) as
2 defined in s. 409.102 of such an enterprise is a bulk transfer if it is made in connection
3 with a bulk transfer of inventory, but not otherwise.

4 History: 1981 c. 79.

4 **SECTION 43.** 407.503 (1) (a) of the statutes is amended to read:

5 407.503 (1) (a) Delivered or entrusted them or any document of title covering
6 them to the bailor or the bailor's nominee with actual or apparent authority to ship,
7 store or sell or with power to obtain delivery under s. 407.403 or with power of
8 disposition under ss. 402.403 or ~~409.307~~ 409.320 or other statute or rule of law; nor

9 History: 1991 a. 316.

9 **SECTION 44.** 408.103 (6) of the statutes is amended to read:

10 408.103 (6) A commodity contract, as defined in s. ~~409.115 (1) (b)~~ 409.102 (1)
11 (dm), is not a security or a financial asset.

12 History: 1997 a. 297.

12 **SECTION 45.** 408.106 (4) (a) and (b) of the statutes are amended to read:

13 408.106 (4) (a) The purchaser becomes the entitlement holder; ~~or~~
14 (b) The securities intermediary has agreed that it will comply with entitlement
15 orders originated by the purchaser without further consent by the entitlement
16 holder; or

17 **SECTION 46.** 408.106 (4) (c) of the statutes is created to read:

18 408.106 (4) (c) Another person has control of the security entitlement on behalf
19 of the purchaser or, having previously acquired control of the security entitlement,
20 acknowledges that it has control on behalf of the purchaser.

21 **SECTION 47.** 408.106 (6) of the statutes is amended to read:

22 408.106 (6) A purchaser who has satisfied the requirements of sub. (3) ~~(b)~~ or
23 (4) ~~(b)~~ has control even if the registered owner in the case of sub. (3) ~~(b)~~ or the
24 entitlement holder in the case of sub. (4) ~~(b)~~ retains the right to make substitutions

1 for the uncertificated security or security entitlement, to originate instructions or
2 entitlement orders to the issuer or securities intermediary or otherwise to deal with
3 the uncertificated security or security entitlement.

History: 1997 a. 297.

4 **SECTION 48.** 408.110 (5) (a) of the statutes is amended to read:

5 408.110 (5) (a) If an agreement between the securities intermediary and its
6 entitlement holder ~~specifies that it is governed by the law of a particular jurisdiction~~
7 governing the securities account expressly provides that a particular jurisdiction is
8 the securities intermediary's jurisdiction for purposes of this subchapter, this
9 chapter or chs. 401 to 411, that jurisdiction is the securities intermediary's
10 jurisdiction.

11 **SECTION 49.** 408.110 (5) (am) of the statutes is created to read:

12 408.110 (5) (am) If par. (a) does not apply and an agreement between the
13 securities intermediary and its entitlement holder governing the securities account
14 expressly provides that the agreement is governed by the law of a particular
15 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

16 **SECTION 50.** 408.110 (5) (b) to (d) of the statutes are amended to read:

17 408.110 (5) (b) If neither par. (a) nor par. (am) applies and an agreement
18 between the securities intermediary and its entitlement holder does not specify the
19 governing law as provided in par. (a), but governing the securities account expressly
20 specifies provides that the securities account is maintained at an office in a
21 particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

22 (c) ~~If an agreement between the securities intermediary and its entitlement~~
23 ~~holder does not specify a jurisdiction as provided in par. (a) or (b), none of pars. (a)~~
24 ~~to (b) applies, the securities intermediary's jurisdiction is the jurisdiction in which~~

1 ~~is located~~ the office identified in an account statement as the office serving the
2 entitlement holder's account is located.

3 (d) If an ~~agreement between the securities intermediary and its entitlement~~
4 ~~holder does not specify a jurisdiction as provided in par. (a) or (b) and an account~~
5 ~~statement does not identify an office serving the entitlement holder's account as~~
6 ~~provided in par. (e) none of pars. (a) to (c) applies~~, the securities intermediary's
7 jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the
8 securities intermediary is located is located.

9 History: 1997 a. 297.

SECTION 51. 408.301 (1) (c) of the statutes is amended to read:

10 408.301 (1) (c) A securities intermediary acting on behalf of the purchaser
11 acquires possession of the security certificate, only if the certificate is in registered
12 form and has been is:

- 13 1. Registered in the name of the purchaser;
14 2. Payable to the order of the purchaser; or
15 3. specially Specially endorsed to the purchaser by an effective endorsement
16 and has not been endorsed to the securities intermediary or in blank.

17 History: 1997 a. 297.

SECTION 52. 408.302 (1) of the statutes is amended to read:

18 408.302 (1) Except as otherwise provided in subs. (2) and (3), upon delivery a
19 purchaser of a certificated or uncertificated security ~~to a purchaser, the purchaser~~
20 acquires all rights in the security that the transferor had or had power to transfer.

21 History: 1997 a. 297.

SECTION 53. 408.510 (1) and (3) of the statutes are amended to read:

22 408.510 (1) An In a case not covered by the priority rules in ch. 409 or the rules
23 stated in sub. (3), an action based on an adverse claim to a financial asset or security
24 entitlement, whether framed in conversion, replevin, constructive trust, equitable

1 lien or other theory, may not be asserted against a person who purchases a security
2 entitlement, or an interest therein, from an entitlement holder if the purchaser gives
3 value, does not have notice of the adverse claim and obtains control.

4 (3) In a case not covered by the priority rules in ch. 409, a purchaser for value
5 of a security entitlement, or an interest therein, who obtains control has priority over
6 a purchaser of a security entitlement, or an interest therein, who does not obtain
7 control. Purchasers Except as otherwise provided in sub. (4), purchasers who have
8 control rank equally, except that a according to priority in time of:

9 (a) The purchaser's becoming the person for whom the securities account, in
10 which the security entitlement is carried, is maintained, if the purchaser obtained
11 control under s. 408.106 (d) (1);

12 (b) The securities intermediary's agreement to comply with the purchaser's
13 entitlement orders with respect to security entitlements carried or to be carried in
14 the securities account in which the security entitlement is carried, if the purchaser
15 obtained control under s. 408.106 (d) (2); or

16 (c) If the purchaser obtained control through another person under s. 408.106
17 (d) (3), the time on which priority would be based under this subsection if the other
18 person were the secured party.

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

History: 1997 a. 297.

21 SECTION 54. Chapter 409 of the statutes, as affected by 1999 Wisconsin Acts
22 9, 32 and (Assembly Bill 137), is repealed and recreated to read:

23 **UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS**

24 **SUBCHAPTER I**

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GENERAL PROVISIONS

209.101 Short title. This chapter may be cited as uniform commercial code-secured transactions.

209.102 Definitions and index of definitions. (1) CHAPTER 409 DEFINITIONS.
In this chapter:

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

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

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

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

2 1. Authenticated by a secured party;

3 2. Indicating the aggregate unpaid secured obligations as of a date not more
4 than 35 days earlier or 35 days later than the date of the record; and

5 3. Identifying the components of the obligations in reasonable detail.

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

8 1. Which secures payment or performance of an obligation for:

9 a. Goods or services furnished in connection with a debtor’s farming operation;

10 or

11 b. Rent on real property leased by a debtor in connection with its farming
12 operation;

13 2. Which is created by statute in favor of a person that:

14 a. In the ordinary course of its business furnished goods or services to a debtor
15 in connection with a debtor’s farming operation; or

16 b. Leased real property to a debtor in connection with the debtor’s farming
17 operation; and

18 3. Whose effectiveness does not depend on the person’s possession of the
19 personal property.

20 (bg) “As-extracted collateral” means:

21 1. Oil, gas or other minerals that are subject to a security interest that is created
22 by a debtor having an interest in the minerals before extraction and which attaches
23 to the minerals as extracted; or

24 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas or
25 other minerals in which the debtor had an interest before extraction.

1 (bm) “Authenticate” means:

2 1. To sign; or

3 2. To execute or otherwise adopt a symbol, or encrypt or similarly process a
4 record in whole or in part, with the present intent of the authenticating person to
5 identify the person and adopt or accept a record.

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

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

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

15 (cm) “Chattel paper” means a record or records that evidence both a monetary
16 obligation and a security interest in specific goods, a security interest in specific
17 goods and software used in the goods, a security interest in specific goods and license
18 of software used in the goods, a lease of specific goods, or a lease of specific goods and
19 license of software used in the goods. The term does not include charters or other
20 contracts involving the use or hire of a vessel. If a transaction is evidenced by records
21 that include an instrument or series of instruments, the group of records taken
22 together constitutes chattel paper. In this paragraph, “monetary obligation” means
23 a monetary obligation with respect to software used in the goods:

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

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

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

- 6 1. The claimant is an organization; or
- 7 2. The claimant is an individual and the claim:
 - 8 a. Arose in the course of the claimant’s business or profession; and
 - 9 b. Does not include damages arising out of personal injury to or the death of an
 - 10 individual.

11 (dg) “Commodity account” means an account maintained by a commodity

12 intermediary in which a commodity contract is carried for a commodity customer.

13 (dm) “Commodity contract” means a commodity futures contract, an option on

14 a commodity futures contract, a commodity option or another contract if the contract

15 or option is:

- 16 1. Traded on or subject to the rules of a board of trade that has been designated
- 17 as a contract market for such a contract pursuant to federal commodities laws; or
- 18 2. Traded on a foreign commodity board of trade, exchange or market, and is
- 19 carried on the books of a commodity intermediary for a commodity customer.

20 (ds) “Commodity customer” means a person for which a commodity

21 intermediary carries a commodity contract on its books.

22 (e) “Commodity intermediary” means a person that:

- 23 1. Is registered as a futures commission merchant under federal commodities
- 24 law; or

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

4 (eg) “Communicate” means:

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

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

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

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

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

14 1. The merchant:

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

17 b. Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

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

16 (gm) “Continuation statement” means an amendment of a financing statement
17 which:

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

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

22 (gs) “Debtor” means:

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

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

2 or

3 3. A consignee.

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

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

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

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

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

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

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

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

19 b. Aquatic goods produced in aquacultural operations;

20 2. Livestock, born or unborn, including aquatic goods produced in aquacultural
21 operations;

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

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

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

1 (is) "File number" means the number assigned to an initial financing statement
2 pursuant to s. 409.519 (1).

3 (j) "Filing office" means an office designated in s. 409.501 as the place to file a
4 financing statement.

5 (jg) "Filing-office rule" means a rule adopted pursuant to s. 409.526.

6 (jm) "Financing statement" means a record or records composed of an initial
7 financing statement and any filed record relating to the initial financing statement.

8 (js) "Fixture filing" means the filing of a financing statement covering goods
9 that are or are to become fixtures and satisfying s. 409.502 (1) and (2). The term
10 includes the filing of a financing statement covering goods of a transmitting utility
11 which are or are to become fixtures.

12 (k) "Fixtures" means goods that have become so related to particular real
13 property that an interest in them arises under real property law.

14 (kg) "General intangible" means any personal property, including things in
15 action, other than accounts, chattel paper, commercial tort claims, deposit accounts,
16 documents, goods, instruments, investment property, letter-of-credit rights, letters
17 of credit, money and oil, gas or other minerals before extraction. The term includes
18 payment intangibles and software.

19 (km) "Good faith" means honesty in fact and the observance of reasonable
20 commercial standards of fair dealing.

21 (ks) "Goods" means all things that are movable when a security interest
22 attaches. The term includes fixtures; standing timber that is to be cut and removed
23 under a conveyance or contract for sale; the unborn young of animals; crops grown,
24 growing or to be grown, even if the crops are produced on trees, vines or bushes; and
25 manufactured homes. The term also includes a computer program embedded in

1 goods and any supporting information provided in connection with a transaction
2 relating to the program if the program is associated with the goods in such a manner
3 that it customarily is considered part of the goods, or by becoming the owner of the
4 goods, a person acquires a right to use the program in connection with the goods. The
5 term does not include a computer program embedded in goods that consist solely of
6 the medium in which the program is embedded. The term also does not include
7 accounts, chattel paper, commercial tort claims, deposit accounts, documents,
8 general intangibles, instruments, investment property, letter-of-credit rights,
9 letters of credit, money or oil, gas or other minerals before extraction.

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

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

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

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

1 1. Are leased by a person as lessor;

2 2. Are held by a person for sale or lease or to be furnished under a contract of
3 service;

4 3. Are furnished by a person under a contract of service; or

5 4. Consist of raw materials, work in process or materials used or consumed in
6 a business.

7 (m) “Investment property” means a security, whether certificated or
8 uncertificated, security entitlement, securities account, commodity contract or
9 commodity account.

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

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

16 (ms) “Lien creditor” means:

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

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

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

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

22 (n) “Manufactured home” means a structure, transportable in one or more
23 sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet
24 or more in length, or, when erected on site, is 320 or more square feet, and which is
25 built on a permanent chassis and designed to be used as a dwelling with or without

1 a permanent foundation when connected to the required utilities, and includes the
2 plumbing, heating, air-conditioning and electrical systems contained therein. The
3 term includes any structure that meets all of the requirements of this paragraph
4 except the size requirements and with respect to which the manufacturer voluntarily
5 files a certification required by the United States Secretary of Housing and Urban
6 Development and complies with the standards established under Title 42 of the
7 United States Code.

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

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

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

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

15 (ns) “New debtor” means a person that becomes bound as debtor under s.
16 409.203 (4) by a security agreement previously entered into by another person.

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

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

22 (om) “Obligor” means a person that, with respect to an obligation secured by
23 a security interest in or an agricultural lien on the collateral, owes payment or other
24 performance of the obligation; has provided property other than the collateral to
25 secure payment or other performance of the obligation; or is otherwise accountable

1 in whole or in part for payment or other performance of the obligation. The term does
2 not include issuers or nominated persons under a letter of credit.

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

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

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

8 1. The spouse of the individual;

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

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

11 or

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

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

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

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

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

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

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

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

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

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

4 3. Rights arising out of collateral;

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

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

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

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

19 (qm) “Public finance transaction” means a secured transaction in connection
20 with which:

21 1. Debt securities are issued;

22 2. All or a portion of the securities issued have an initial stated maturity of at
23 least 20 years; and

1 3. The debtor, obligor, secured party, account debtor or other person obligated
2 on collateral, assignor or assignee of a secured obligation or assignor or assignee of
3 a security interest is a state or a governmental unit of a state.

4 (qs) “Pursuant to commitment”, with respect to an advance made or other value
5 given by a secured party, means pursuant to the secured party’s obligation, whether
6 or not a subsequent event of default or other event not within the secured party’s
7 control has relieved or may relieve the secured party from its obligation.

8 (r) “Record”, except as used in “for record”, “of record”, “record or legal title”, and
9 “record owner”, means information that is inscribed on a tangible medium or which
10 is stored in an electronic or other medium and is retrievable in perceivable form.

11 (rg) “Registered organization” means an organization organized solely under
12 the law of a single state or the United States and as to which the state or the United
13 States must maintain a public record showing the organization to have been
14 organized.

15 (rm) “Secondary obligor” means an obligor to the extent that:

- 16 1. The obligor’s obligation is secondary; or
17 2. The obligor has a right of recourse with respect to an obligation secured by
18 collateral against the debtor, another obligor or property of either.

19 (rs) “Secured party” means:

20 1. A person in whose favor a security interest is created or provided for under
21 a security agreement, whether or not any obligation to be secured is outstanding;

22 2. A person that holds an agricultural lien;

23 3. A consignor;

24 4. A person to which accounts, chattel paper, payment intangibles or
25 promissory notes have been sold;

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

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

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

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

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

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

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

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

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

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

24 (tm) “Termination statement” means an amendment of a financing statement
25 which:

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

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

4 **409.103 Purchase-money security interest; application of payments;**
5 **burden of establishing. (1) DEFINITIONS.** In this section:

6 (a) "Purchase-money collateral" means goods or software that secures a
7 purchase-money obligation incurred with respect to that collateral.

8 (b) "Purchase-money obligation" means an obligation of an obligor incurred as
9 all or part of the price of the collateral or for value given to enable the debtor to
10 acquire rights in or the use of the collateral if the value is in fact so used.

11 **(2) PURCHASE-MONEY SECURITY INTEREST IN GOODS.** A security interest in goods
12 is a purchase-money security interest:

13 (a) To the extent that the goods are purchase-money collateral with respect to
14 that security interest;

15 (b) If the security interest is in inventory that is or was purchase-money
16 collateral, also to the extent that the security interest secures a purchase-money
17 obligation incurred with respect to other inventory in which the secured party holds
18 or held a purchase-money security interest; and

19 (c) Also to the extent that the security interest secures a purchase-money
20 obligation incurred with respect to software in which the secured party holds or held
21 a purchase-money security interest.

22 **(3) PURCHASE-MONEY SECURITY INTEREST IN SOFTWARE.** A security interest in
23 software is a purchase-money security interest to the extent that the security
24 interest also secures a purchase-money obligation incurred with respect to goods in
25 which the secured party holds or held a purchase-money security interest if:

1 (a) The debtor acquired its interest in the software in an integrated transaction
2 in which it acquired an interest in the goods; and

3 (b) The debtor acquired its interest in the software for the principal purpose of
4 using the software in the goods.

5 (4) CONSIGNOR'S INVENTORY PURCHASE-MONEY SECURITY INTEREST. The security
6 interest of a consignor in goods that are the subject of a consignment is a
7 purchase-money security interest in inventory.

8 (5) APPLICATION OF PAYMENT IN NON-CONSUMER-GOODS TRANSACTION. In a
9 transaction other than a consumer-goods transaction, if the extent to which a
10 security interest is a purchase-money security interest depends on the application
11 of a payment to a particular obligation, the payment must be applied:

12 (a) In accordance with any reasonable method of application to which the
13 parties agree;

14 (b) In the absence of the parties' agreement to a reasonable method, in
15 accordance with any intention of the obligor manifested at or before the time of
16 payment; or

17 (c) In the absence of an agreement to a reasonable method and a timely
18 manifestation of the obligor's intention, in the following order:

19 1. To obligations that are not secured; and

20 2. If more than one obligation is secured, to obligations secured by
21 purchase-money security interests in the order in which those obligations were
22 incurred.

23 (6) NO LOSS OF STATUS OF PURCHASE-MONEY SECURITY INTEREST IN
24 NON-CONSUMER-GOODS TRANSACTION. In a transaction other than a consumer-goods

1 transaction, a purchase-money security interest does not lose its status as such, even
2 if:

3 (a) The purchase-money collateral also secures an obligation that is not a
4 purchase-money obligation;

5 (b) Collateral that is not purchase-money collateral also secures the
6 purchase-money obligation; or

7 (c) The purchase-money obligation has been renewed, refinanced, consolidated
8 or restructured.

9 (7) BURDEN OF PROOF IN NON-CONSUMER-GOODS TRANSACTION. In a transaction
10 other than a consumer-goods transaction, a secured party claiming a
11 purchase-money security interest has the burden of establishing the extent to which
12 the security interest is a purchase-money security interest.

13 (8) NON-CONSUMER-GOODS TRANSACTIONS; NO INFERENCE. The limitation of the
14 rules in subs. (5) to (7) to transactions other than consumer-goods transactions is
15 intended to leave to the court the determination of the proper rules in
16 consumer-goods transactions. The court may not infer from that limitation the
17 nature of the proper rule in consumer-goods transactions and may continue to apply
18 established approaches.

19 **409.104 Control of deposit account. (1) REQUIREMENTS FOR CONTROL.** A
20 secured party has control of a deposit account if:

21 (a) The secured party is the bank with which the deposit account is maintained;

22 (b) The debtor, secured party and bank have agreed in an authenticated record
23 that the bank will comply with instructions originated by the secured party directing
24 disposition of the funds in the account without further consent by the debtor; or

1 (c) The secured party becomes the bank's customer with respect to the deposit
2 account.

3 (2) DEBTOR'S RIGHT TO DIRECT DISPOSITION. A secured party that has satisfied
4 sub. (1) has control, even if the debtor retains the right to direct the disposition of
5 funds from the deposit account.

6 **409.105 Control of electronic chattel paper.** A secured party has control
7 of electronic chattel paper if the record or records comprising the chattel paper are
8 created, stored and assigned in such a manner that:

9 (1) A single authoritative copy of the record or records exists which is unique,
10 identifiable and, except as otherwise provided in subs. (4) to (6), unalterable;

11 (2) The authoritative copy identifies the secured party as the assignee of the
12 record or records;

13 (3) The authoritative copy is communicated to and maintained by the secured
14 party or its designated custodian;

15 (4) Copies or revisions that add or change an identified assignee of the
16 authoritative copy can be made only with the participation of the secured party;

17 (5) Each copy of the authoritative copy and any copy of a copy is readily
18 identifiable as a copy that is not the authoritative copy; and

19 (6) Any revision of the authoritative copy is readily identifiable as an
20 authorized or unauthorized revision.

21 **409.106 Control of investment property.** (1) CONTROL UNDER S. 408.106. A
22 person has control of a certificated security, uncertificated security or security
23 entitlement as provided in s. 408.106.

24 (2) CONTROL OF COMMODITY CONTRACT. A secured party has control of a
25 commodity contract if:

1 (a) The secured party is the commodity intermediary with which the commodity
2 contract is carried; or

3 (b) The commodity customer, secured party and commodity intermediary have
4 agreed that the commodity intermediary will apply any value distributed on account
5 of the commodity contract as directed by the secured party without further consent
6 by the commodity customer.

7 (3) EFFECT OF CONTROL OF SECURITIES ACCOUNT OR COMMODITY ACCOUNT. A secured
8 party having control of all security entitlements or commodity contracts carried in
9 a securities account or commodity account has control over the securities account or
10 commodity account.

11 **409.107 Control of letter-of-credit right.** A secured party has control of
12 a letter-of-credit right to the extent of any right to payment or performance by the
13 issuer or any nominated person if the issuer or nominated person has consented to
14 an assignment of proceeds of the letter of credit under s. 405.114 (3) or otherwise
15 applicable law or practice.

16 **409.108 Sufficiency of description.** (1) SUFFICIENCY OF DESCRIPTION. Except
17 as otherwise provided in subs. (3) to (5), a description of personal or real property is
18 sufficient, whether or not it is specific, if it reasonably identifies what is described.

19 (2) EXAMPLES OF REASONABLE IDENTIFICATION. Except as otherwise provided in
20 sub. (4), a description of collateral reasonably identifies the collateral if it identifies
21 the collateral by:

22 (a) Specific listing;

23 (b) Category;

24 (c) Except as otherwise provided in sub. (5), a type of collateral defined in chs.
25 401 to 411;

- 1 (d) Quantity;
- 2 (e) Computational or allocational formula or procedure; or
- 3 (f) Except as otherwise provided in sub. (3), any other method, if the identity of
- 4 the collateral is objectively determinable.

5 (3) SUPERGENERIC DESCRIPTION NOT SUFFICIENT. A description of collateral as “all

6 the debtor’s assets” or “all the debtor’s personal property” or using words of similar

7 import does not reasonably identify the collateral.

8 (4) INVESTMENT PROPERTY. Except as otherwise provided in sub. (5), a

9 description of a security entitlement, securities account or commodity account is

10 sufficient if it describes:

- 11 (a) The collateral by those terms or as investment property; or
- 12 (b) The underlying financial asset or commodity contract.

13 (5) WHEN DESCRIPTION BY TYPE INSUFFICIENT. A description only by type of

14 collateral defined in chs. 401 to 411 is an insufficient description of:

- 15 (a) A commercial tort claim; or
- 16 (b) In a consumer transaction, consumer goods, a security entitlement, a
- 17 securities account or a commodity account.

18 **409.109 Scope. (1) GENERAL SCOPE OF CHAPTER.** Except as otherwise provided

19 in subs. (3) and (4), this chapter applies to:

- 20 (a) A transaction, regardless of its form, that creates a security interest in
- 21 personal property or fixtures by contract;
- 22 (b) An agricultural lien;
- 23 (c) A sale of accounts, chattel paper, payment intangibles or promissory notes;
- 24 (d) A consignment;

1 (e) A security interest arising under s. 402.401, 402.505, 402.711 (3) or 411.508
2 (5), as provided in s. 409.110; and

3 (f) A security interest arising under s. 404.210 or 405.118.

4 (2) SECURITY INTEREST IN SECURED OBLIGATION. The application of this chapter
5 to a security interest in a secured obligation is not affected by the fact that the
6 obligation is itself secured by a transaction or interest to which this chapter does not
7 apply.

8 (3) EXTENT TO WHICH CHAPTER DOES NOT APPLY. This chapter does not apply to
9 the extent that:

10 (a) A statute, regulation or treaty of the United States preempts this chapter;

11 (b) Another statute of this state expressly governs the creation, perfection,
12 priority or enforcement of a security interest created by this state or a governmental
13 unit of this state;

14 (c) A statute of another state, a foreign country or a governmental unit of
15 another state or a foreign country, other than a statute generally applicable to
16 security interests, expressly governs creation, perfection, priority or enforcement of
17 a security interest created by the state, country or governmental unit; or

18 (d) The rights of a transferee beneficiary or nominated person under a letter of
19 credit are independent and superior under s. 405.114.

20 (4) INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

21 (a) A landlord's lien, other than an agricultural lien;

22 (b) A lien, other than an agricultural lien, given by statute or other rule of law
23 for services or materials, but s. 409.333 applies with respect to priority of the lien;

24 (c) An assignment of a claim for wages, salary or other compensation of an
25 employe;

1 (d) A sale of accounts, chattel paper, payment intangibles or promissory notes
2 as part of a sale of the business out of which they arose;

3 (e) An assignment of accounts, chattel paper, payment intangibles or
4 promissory notes which is for the purpose of collection only;

5 (f) An assignment of a right to payment under a contract to an assignee that is
6 also obligated to perform under the contract;

7 (g) An assignment of a single account, payment intangible or promissory note
8 to an assignee in full or partial satisfaction of a preexisting indebtedness;

9 (h) A transfer of an interest in or an assignment of a claim under a policy of
10 insurance, other than an assignment by or to a health-care provider of a
11 health-care-insurance receivable and any subsequent assignment of the right to
12 payment, but ss. 409.315 and 409.322 apply with respect to proceeds and priorities
13 in proceeds;

14 (i) An assignment of a right represented by a judgment, other than a judgment
15 taken on a right to payment that was collateral;

16 (j) A right of recoupment or set-off, but:

17 1. Section 409.340 applies with respect to the effectiveness of rights of
18 recoupment or set-off against deposit accounts; and

19 2. Section 409.404 applies with respect to defenses or claims of an account
20 debtor;

21 (k) The creation or transfer of an interest in or lien on real property, including
22 a lease or rents thereunder, except to the extent that provision is made for:

23 1. Liens on real property in ss. 409.203 and 409.308;

24 2. Fixtures in s. 409.334;

25 3. Fixture filings in ss. 409.501, 409.502, 409.512, 409.516 and 409.519; and

1 4. Security agreements covering personal and real property in s. 409.604;

2 (L) An assignment of a claim arising in tort, other than a commercial tort claim,
3 but ss. 409.315 and 409.322 apply with respect to proceeds and priorities in proceeds;
4 or

5 (m) An assignment of a deposit account in a consumer transaction, but ss.
6 409.315 and 409.322 apply with respect to proceeds and priorities in proceeds.

7 **409.110 Security interests arising under ch. 402 or 411.** A security
8 interest arising under s. 402.401, 402.505, 402.711 (3) or 411.508 (5) is subject to this
9 chapter. However, until the debtor obtains possession of the goods:

10 (1) The security interest is enforceable, even if s. 409.203 (2) (c) has not been
11 satisfied;

12 (2) Filing is not required to perfect the security interest;

13 (3) The rights of the secured party after default by the debtor are governed by
14 ch. 402 or 411; and

15 (4) The security interest has priority over a conflicting security interest created
16 by the debtor.

17 SUBCHAPTER II

18 EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF 19 SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

20 **409.201 General effectiveness of security agreement.** (1) GENERAL
21 EFFECTIVENESS. Except as otherwise provided in chs. 401 to 411, a security agreement
22 is effective according to its terms between the parties, against purchasers of the
23 collateral and against creditors.