

1446/P8notes

MAY 15, 2000

AN ACT ...; relating to: revising the uniform commercial code-secured transactions and related statutes and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft.

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, which are discussed in more detail below: 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 that 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.

The Uniform Commercial Code has eleven substantive articles. 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.

There are two key concepts in the operation of Article 9: "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. The idea is that 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.

Article 9 is more complex than the description in the two prior paragraphs implies. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection, depending 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:

1. Scope. 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 prior 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 10 days in prior Article 9 to 20 days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the 20-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 prior Article 9. In prior 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 prior 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 prior 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. Filing System. Changes 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. 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 in which the financing statements are filed 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 additional information, see the website of the National Conference of Commissioners on Uniform State Laws at http://www.nccusl.org/uniformact_factsheets/uniformacts-fs-ucca9.htm; and http://www.nccusl.org/uniformact_summaries/uniformacts-s-uccra9st1999.htm. For the NCCUSL drafting file for the uniform act, see http://www.law.upenn.edu/bll/ulc/ulc_frame.htm. For more information, see the Legislative Reference Bureau's drafting file for this bill.

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:

SECTION 1. 30.57 (8) of the statutes is amended to read:

30.57 (8) If a boat is subject to a security interest when brought into this state, ~~s. 409.103 (1), (2) and (3)~~ state s. 409.316 states the rules which determine the validity and perfection of the security interest in this state.

***NOTE: Should a more precise or an additional cross reference be substituted for s. 409.316?

History: 1991 a. 39.

SECTION 2. 101.9213 (7) of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

101.9213 (7) If a mobile home is subject to a security interest when brought into this state, ~~s. 409.103 (1), (2) and (3)~~ s. 409.316 states the rules which apply to determine the validity and perfection of the security interest in this state.

***NOTE: Should a more precise or an additional cross reference be substituted for s. 409.316?

History: 1999 a. 9.

SECTION 3. 342.19 (4) of the statutes, as affected by 1999 Wisconsin Act ...

(Assembly Bill 137), is amended to read:

342.19 (4) The rules of priority stated in ~~s. 409.312 subch. III~~ of ch. 409, and the other sections therein referred to, shall, to the extent appropriate, apply to

conflicting security interests in a vehicle of a type for which a certificate of title is required. A security interest perfected under this section is a security interest perfected otherwise than by filing for purposes of ~~s. 409.312 subch. III of ch. 409.~~

****NOTE: What cross references should be substituted in this draft instead of subch. III of ch. 409? It must be narrower than subch. III of ch. 409 because of the next phrase after the first cross reference.

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

SECTION 4. 342.19 (6) of the statutes is amended to read:

342.19 (6) If a vehicle is subject to a security interest when brought into this state, ~~s. 409.103 (1), (2) and (3) state s. 409.316 states~~ the rules which apply to determine the validity and perfection of the security interest in this state.

****NOTE: Should a more precise or an additional cross reference be substituted for s. 409.316?

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

SECTION 5. Chapter 409 of the statutes, as affected by 1999 Wisconsin Acts 9, 32 and (Assembly Bill 137), is repealed and recreated to read:

UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS

409.311 Perfection of security interests in property subject to certain statutes, regulations and treaties. (1) SECURITY INTEREST SUBJECT TO OTHER LAW. Except as otherwise provided in sub. (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) A statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt s. 409.310 (1).

(b) The following vehicle title statutes: ss. 342.19 and 342.20.

****NOTE: Sections 342.284 and 342.285 are removed from this paragraph because they were repealed by 1999 AR 137. If the bill is vetoed, they need to be added back.

(bm) The following boat title statutes: ss. 30.57, 30.572 and 30.573.

(c) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(d) Sections 182.025 and 190.11 and other statutes providing for central filing.

(e) A master lease entered into by the state under s. 16.76 (4).

(f) The mobile home security interest provisions under subch. V of ch. 101.

(2) COMPLIANCE WITH OTHER LAW. Compliance with the requirements of a statute, regulation or treaty described in sub. (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in sub. (4) and ss. 409.313 and 409.316 (4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in sub. (4) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) DURATION AND RENEWAL OF PERFECTION. Except as otherwise provided in sub. (4) and s. 409.316 (4) and (5), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in sub. (1) are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this chapter.

(4) INAPPLICABILITY TO CERTAIN INVENTORY. During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

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

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

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

***NOTE: Alternative B is included in this draft. Alternative A does not have in paragraph (b) "the date [and time] that the initial financing statement was filed [or recorded] and".

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

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

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

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

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

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

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

***NOTE: We need the help of the department of financial institutions regarding which alternative to choose.

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

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

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

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

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

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

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

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

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

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

4. In the case of a record filed [or recorded] in the filing office described in s. 409.501 (1) (a), the record does not provide a sufficient description of the real property to which it relates;

***NOTE: Should the bracketed material be included?

(d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

1. Provide a mailing address for the debtor;
2. Indicate whether the debtor is an individual or an organization; or
3. If the financing statement indicates that the debtor is an organization, provide:
 - a. A type of organization for the debtor;
 - b. A jurisdiction of organization for the debtor; or
 - c. An organizational identification number for the debtor or indicate that the debtor has none;

(f) In the case of an assignment reflected in an initial financing statement under s. 409.514 (1) or an amendment filed under s. 409.514 (2), the record does not provide a name and mailing address for the assignee; or

(g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by s. 409.515 (4).

(3) RULES APPLICABLE TO SUB. (2). For purposes of sub. (2):

(a) A record does not provide information if the filing office is unable to read or decipher the information; and

(b) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by s. 409.512, 409.514 or 409.518, is an initial financing statement.

(4) REFUSAL TO ACCEPT RECORD; RECORD EFFECTIVE AS FILED RECORD. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in sub. (2), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

409.518 Claim concerning inaccurate or wrongfully filed record. (1)
CORRECTION STATEMENT. A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) SUFFICIENCY OF CORRECTION STATEMENT. A correction statement must:

(a) Identify the record to which it relates by:

1. The file number assigned to the initial financing statement to which the record relates; and

2. If the correction statement relates to a record filed [or recorded] in a filing office described in s. 409.501 (1) (a), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in s. 409.502 (2);

(b) Indicate that it is a correction statement; and

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

***NOTE: Alternative B for sub. (2) is included in this draft. Should the bracketed material be included?

(3) RECORD NOT AFFECTED BY CORRECTION STATEMENT. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

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

409.519 Numbering, maintaining and indexing records; communicating information provided in records. (1) FILING OFFICE DUTIES.

For each record filed in a filing office, the filing office shall:

(a) Assign a unique number to the filed record;

(b) Create a record that bears the number assigned to the filed record and the date and time of filing;

(c) Maintain the filed record for public inspection; and

(d) Index the filed record in accordance with subs. (3), (4) and (5).

(2) FILE NUMBER. A file number assigned after January 1, 2002, must include a digit that:

(a) Is mathematically derived from or related to the other digits of the file number; and

(b) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(3) INDEXING: GENERAL. Except as otherwise provided in subs. (4) and (5), the filing office shall:

(a) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(b) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(4) INDEXING: REAL-PROPERTY-RELATED FINANCING STATEMENT. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, [it must be filed for record and] the filing office shall index it:

(a) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(b) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by

description, as if the financing statement were a record of a mortgage of the real property described.

(5) INDEXING: REAL-PROPERTY-RELATED ASSIGNMENT. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under s. 409.514 (1) or an amendment filed under s. 409.514 (2):

(a) Under the name of the assignor as grantor; and

(b) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(6) RETRIEVAL AND ASSOCIATION CAPABILITY. The filing office shall maintain a capability:

(a) To retrieve a record by the name of the debtor and:

1. If the filing office is described in s. 409.501 (1) (a), by the file number assigned to the initial financing statement to which the record relates and the date [and time] that the record was filed [or recorded]; or

2. If the filing office is described in s. 409.501 (1) (b), by the file number assigned to the initial financing statement to which the record relates; and

(b) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

***NOTE: Alternative B for sub. (6) is included in this draft.

(7) REMOVAL OF DEBTOR'S NAME. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under s. 409.515 with respect to all secured parties of record.

(8) TIMELINESS OF FILING OFFICE PERFORMANCE. The filing office shall perform the acts required by subs. (1) to (5) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the record in question.

[(9) INAPPLICABILITY TO REAL-PROPERTY-RELATED FILING OFFICE. [Subsection] [Subsections] [(2)] [and] [(8)] [does] [do] not apply to a filing office described in s. 409.501 (1) (a).]

NCCUSL Legislative Notes:

1. States whose filing offices currently assign file numbers that include a verification number, commonly known as a "check digit," or can implement this requirement before the effective date of this chapter should omit the bracketed language in sub. (2).

2. In states in which writings will not appear in the real property records and indices unless actually recorded the bracketed language in sub. (4) should be used.

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

4. A state that elects not to require real-estate filing offices to comply with either or both of subs. (2) and (8) may adopt an applicable variation of sub. (9) and add "Except as otherwise provided in sub. (9)," to the appropriate subsection or subsections.

***NOTE: Which bracketed material should be included in this draft?

409.520 Acceptance and refusal to accept record. (1) MANDATORY REFUSAL TO ACCEPT RECORD. A filing office shall refuse to accept a record for filing for a reason set forth in s. 409.516 (2) and may refuse to accept a record for filing only for a reason set forth in s. 409.516 (2).

(2) COMMUNICATION CONCERNING REFUSAL. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and

in the manner prescribed by filing-office rule but, [in the case of a filing office described in s. 409.501 (1) (b),] in no event more than 2 business days after the filing office receives the record.

***NOTE: NCCUSL Legislative Note: A state that elects not to require real-property filing offices to comply with sub. (2) should include the bracketed language.

***NOTE: Should the the bracketed material be deleted?

(3) WHEN FILED FINANCING STATEMENT EFFECTIVE. A filed financing statement satisfying s. 409.502 (1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under sub. (1). However, s. 409.338 applies to a filed financing statement providing information described in s. 409.516 (2) (e) which is incorrect at the time the financing statement is filed.

(4) SEPARATE APPLICATION TO MULTIPLE DEBTORS. If a record communicated to a filing office provides information that relates to more than one debtor, this subchapter applies as to each debtor separately.

409.522 Maintenance and destruction of records.

(1) POST-LAPSE MAINTENANCE AND RETRIEVAL OF INFORMATION. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under s. 409.515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(a) If the record was filed [or recorded] in the filing office described in s. 409.501 (1) (a), by using the file number assigned to the initial financing statement to which the record relates and the date [and time] that the record was filed [or recorded];

or

(b) If the record was filed in the filing office described in s. 409.501 (1) (b), by using the file number assigned to the initial financing statement to which the record relates.

****NOTE: Should this draft include the bracketed material? Alternative B is included in this draft.

(2) DESTRUCTION OF WRITTEN RECORDS. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with sub. (1).

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

409.523 Information from filing office; sale or license of records. (1)

ACKNOWLEDGMENT OF FILING WRITTEN RECORD. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to s. 409.519 (1) (a) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (a) Note upon the copy the number assigned to the record pursuant to s. 409.519 (1) (a) and the date and time of the filing of the record; and
- (b) Send the copy to the person.

(2) ACKNOWLEDGMENT OF FILING OTHER RECORD. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

- (a) The information in the record;

- (b) The number assigned to the record pursuant to s. 409.519 (1) (a); and
- (c) The date and time of the filing of the record.

(3) COMMUNICATION OF REQUESTED INFORMATION. The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(a) Whether there is on file on a date and time specified by the filing office, but not a date earlier than 3 business days before the filing office receives the request, any financing statement that:

1. Designates a particular debtor [or, if the request so states, designates a particular debtor at the address specified in the request];

***NOTE: Should the bracketed material be deleted?

2. Has not lapsed under s. 409.515 with respect to all secured parties of record; and

3. If the request so states, has lapsed under s. 409.515 and a record of which is maintained by the filing office under s. 409.522 (1);

- (b) The date and time of filing of each financing statement; and
- (c) The information provided in each financing statement.

(4) MEDIUM FOR COMMUNICATING INFORMATION. In complying with its duty under sub. (3), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(5) TIMELINESS OF FILING OFFICE PERFORMANCE. The filing office shall perform the acts required by subs. (1) to (4) at the time and in the manner prescribed by

filing-office rule, but not later than 2 business days after the filing office receives the request.

(6) PUBLIC AVAILABILITY OF RECORDS. At least weekly, the [filing office][department of financial institutions] shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this subchapter, in every medium from time to time available to the [filing office][department of financial institutions].

***NOTE: Which of the bracketed alternatives should be deleted from this draft?

***NOTE: NCCUSL Legislative Notes:

1. States whose filing office does not offer the additional service of responding to search requests limited to a particular address should omit the bracketed language in sub. (3) (a) 1.

2. A state that elects not to require real-estate filing offices to comply with either or both of subs. (5) and (6) should specify in the appropriate subsection(s) only the filing office described in s. 409.501 (1) (b).

409.527 Duty to report. The department of financial institutions shall include in its report under s. 15.04 (1) (d) a report on the operation of the filing office. The report must contain a statement of the extent to which:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this subchapter and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

***NOTE: Wisconsin has added to this subject matter. Should it be included in this draft?

409.410 Statewide lien system.

409.410 (1)

(1) The department and the office of each register of deeds in this state shall establish and maintain at least one computer terminal allowing the direct entry into permanent

computer storage and the direct retrieval from permanent computer storage of information under sub. (2).

409.410 (2)

(2) Beginning 30 days after notification by the department, each filing officer shall enter all information contained in all financing statements, amendments, termination statements, continuation statements, statements of assignment and statements of release submitted for filing, indexing or marking under ss. 409.401 to 409.408, including the date and time of filing these statements or amendments, into permanent computer storage by means of a computer terminal established and maintained under sub. (1).

409.410 (3)

(3) The department shall establish and maintain computer and any other services necessary to support the uniform commercial code statewide lien system under this section but may not maintain a central filing system, as defined in 7 USC 1631 (c) (2), for farm products, as defined in 7 USC 1631 (c) (5)."

****NOTE: If retained, the section might need to be updated and the following would need to be deleted from sub. (3): "but may not maintain a central filing system, as defined in 7 USC 1631 (c) (2), for farm products, as defined in 7 USC 1631 (c) (5)."

****NOTE: The UCC 9 Enactment guide states:

Special Transitional Provision for Maintaining and Searching Local Filing Office Records. After Revised Article 9's effective date, a jurisdiction that has dual filing or other local filing under former Article 9 will need to provide for the continued maintenance of, and access to, financing statements and related records that were filed in the jurisdiction's local filing offices before Revised Article 9's effective date. The following is an example of such a provision. Like the provision dealing with revenue loss, this provision should be drafted as a special, noncodified transitional provision of the enacting bill rather than as a nonuniform addition to the transition provisions in Part 7 of Revised Article 9. But, unlike the provision dealing with revenue loss, this provision, or one like it, is necessary in every dual filing jurisdiction and in every other jurisdiction that has local filing unrelated to real property under its former Article 9.

409.709 Special transitional provision for maintaining and searching local filing office records. (1) DEFINITIONS. In this section:

(a) "Former-Ch. 409 records":

1. Means:

a. Financing statements and other records that have been filed in a local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of June 30, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and

b. The index as of June 30, 2001.

2. Does not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.

(b) "Local-filing office" means a filing office, other than the department of financial institutions, that is designated as the proper place to file a financing statement under s. 409.401(1), 1999 stats., with respect to a record that covers a type of collateral as to which the filing office is designated in that subsection as the proper place to file.

(2) PROHIBITION OF FILING AFTER JUNE 30, 2001. A local-filing office shall not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001.

(3) MAINTENANCE OF RECORDS. Until July 1, 2008, each local-filing office must maintain all former-ch. 409 records in accordance with ch. 409, 1999 stats. A former-ch. 409 record that is not reflected on the index maintained at June 30, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(4) INFORMATION REQUESTS. Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former-ch. 409 records relating to a debtor [and issue certificates], in accordance with ch. 409, 1999 stats. The fees charged for responding to requests for information relating to a debtor [and issuing certificates] with respect to former-ch. 409 records must be the fees in effect under ch. 409, 1999 stats. on June 30, 2001, unless a different fee is later set by the local-filing office. However, the different fee must not exceed \$__ for responding to a request for information relating to a debtor [or \$__ for issuing a certificate].

(5) DESTRUCTION OF RECORDS. After June 30, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this state, all former-ch. 409 records, including the related index.

(6) EXCLUSION. This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(a) The collateral is timber to be cut or as-extracted collateral; or

(b) The record is or relates to a financing statement filed as a fixture filing and the collateral is goods that are or are to become fixtures.

***NOTE: The UCC 9 Enactment guide states:

Part III - Non-Codified Special Transitional Provisions to be Considered

Special Transitional Provisions Generally. Revised Article 9 contains in Part 7 its own effective date and transition provisions. A special transitional provision may be advisable if the place of recording for non-UCC liens is being changed. For

example, if a non-UCC lien is currently required to be recorded in a local filing office in a dual filing jurisdiction but, upon the effectiveness of Revised Article 9, the lien will be required to be recorded in a central filing office, a special transitional provision to protect existing non-UCC liens recorded in the local filing office may be necessary. The following is a sample special transitional provision for the legislature to consider when Revised Article 9 is combined with other non-UCC statutory amendments in a single legislative bill:

This Act takes effect on July 1, 2001, and applies to any transaction or lien as provided in the transition provisions of Part 7 of [cite section of legislation containing Revised Article 9] of this Act. A lien, other than a security interest, that is perfected on July 1, 2001, by compliance with a statute of this State which referred to the provisions of former Article 9 of [the Uniform Commercial Code] for the perfection of the lien shall continue to be perfected and to be entitled to priority upon the same terms as those set forth in the transition provisions of Part 7 of [cite section of legislation containing Revised Article 9], as if the lien were a security interest.

Special Transitional Provisions Dealing with Concerns About Loss of Revenue on Local Filings. We discussed in Part I of this paper the concern that local filing offices may lose revenue to the extent that, under Revised Article 9, filings are no longer made in a local filing office. As mentioned, generally the jurisdictions affected are those that have enacted either the Second Alternative Subsection (1) or the Third Alternative Subsection (1) of Section 9-401 of former Article 9 or some other alternative other than the First Alternative Subsection (1) of Section 9-401.

By far the best approach is for the jurisdiction to adopt the uniform Official Text. A substantial effort should be made to obtain the support for that approach. Only as a last resort, if absolutely necessary to prevent the legislation from being

blocked completely, should any of the following alternatives be explored. Nevertheless, we discuss here alternatives in order to provide assistance to those jurisdictions it is necessary to consider other alternatives to ensure prompt enactment of Revised Article 9.

One method of dealing with the revenue loss issue is to provide, for a limited time period (e.g., five years), that a specified portion (in dollars or as a percentage) of the central filing office's filing revenues derived from financing statements communicated to that office in writing (i.e., paper filings but not electronic filings) be distributed to the local filing offices (perhaps on a diminishing basis over the five years) in proportion to the filing volumes experienced by the local filing offices for the lost types of filings during, for example, calendar year 1998. In order that this revenue-sharing not come completely at the expense of the central filing office, this provision could be accompanied by an increase in the filing fee charged by the central filing office for the same five-year period. The following is an illustration of a provision providing for the revenue distribution approach to the local filing revenue loss issue assuming, in this illustration, that the specific dollar amount of the filing fee charged by the central filing office has been doubled, for the five-year period commencing on the effective date of Revised Article 9, from the amount of the filing fee charged under former Article 9:

The [Secretary of State or other office identified in Section 9-501(a)(2)] shall distribute to the [filing offices] of the counties of this State an amount equal to the fees collected by the [Secretary of State or other office identified in Section 9-501(a)(2)] for filing and indexing financing statements communicated to the office of the [Secretary of State or other office identified in Section 9-501(a)(2)] in writing under subsection (a) of Section 9-525 of [Revised Article 9] (i) for the period of July

1, 2001, to June 30, 2002, multiplied by 50%, (ii) for the period of July 1, 2002, to June 30, 2003, multiplied by 40%, (iii) for the period of July 1, 2003, to June 30, 2004, multiplied by 30%, (iv) for the period of July 1, 2004, to June 30, 2005, multiplied by 20%, and (v) for the period of July 1, 2005, to June 30, 2006, multiplied by 10%. The [Secretary of State or other office identified in Section 9–501(a)(2)] shall make such distributions on the basis that the [filing office] of each county shall receive a share of the aggregate amount so distributed equal, as nearly as may be, to the percentage that the fees collected by the [filing office] of the county under Part 4 of [former Article 9] for the calendar year 1998 bore to the total of the fees collected by the [filing offices] of all counties under Part 4 of [former Article 9] for the calendar year 1998. The percentage allocations among the [filing offices] of the counties shall be based upon the fee collection information for calendar year 1998 for each county provided to the [Secretary of State or other office identified in Section 9–501(a)(2)] on or prior to April 30, 2001, by the association of county [filing officers] of this State. Such amounts may be distributed by the [Secretary of State or other office identified in Section 9–501(a)(2)] from time to time as the [Secretary of State or other office identified in Section 9–501(a)(2)] may so determine, but no less frequently than annually and commencing no later than September 30, 2002.

Such a provision should be drafted as a special, noncodified transitional provision of the enacting bill rather than as a nonuniform addition to the transition provisions in Part 7 of Revised Article 9.

Limiting the base for local filing office sharing of central filing office revenue to the fees collected by the central filing office for financing statements communicated to the central filing office in writing rather than electronically is particularly appropriate in cases where the local filing offices are not currently

accepting filings electronically, and will be spared the expense of becoming capable of doing so, but where the central filing office does or plans to accept financing statements electronically. Since over time the volume of filings communicated to the central filing office in writing would then be likely to decrease as the volume of electronic filings increases, the share of the central filing office revenues allocable to the local filing offices would decrease until an agreed "sunset" date when all sharing of central filing office filing revenues with local filing offices would cease.

Another, but much less preferred, method for dealing with the revenue loss issue might involve the statewide filing office designating local filing offices (or those that wish to be so designated) to be branches of the statewide office for the purpose of receiving filings and forwarding them into the central database presumably maintained by the central filing office. This method would inevitably increase costs to users, entail administrative inefficiencies and hinder national uniformity.

Moreover, to pursue this method for dealing with the revenue loss issue, several matters would need to be addressed by the legislature. First, the filing fees generally would need to be adjusted so that, if a branch office were to charge a filing fee for a filing that could also, as an alternative, be made in the central filing office, the revenue retained by the branch office would still be meaningful. Second, the branch office computer system would need to be integrated with the central filing office computer system so that filings may be received by the branch office and entered into the central filing office data base promptly and seamlessly. Third, it would be necessary to consider whether the approach could be accomplished by administrative rule without a nonuniform amendment to Part 5 of Revised Article 9. In all events negotiating the details of this arrangement would require time, requires special expertise and might itself delay enactment of Revised Article 9.

Given these matters to be addressed, we doubt that this method is practical, except possibly for the few jurisdictions that already have such a system in place under former Article 9. We do not recommend the creation of such a system if it does not already exist in the jurisdiction.

Accordingly, we come back to the revenue-sharing method, as set forth above, for addressing the revenue loss issue. Should that method be insufficient or not acceptable, it is suggested that the task force co-chairs be contacted for assistance.