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Into  
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1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB  
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UCC 9 Notes

APRIL 28, 2000

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

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*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.

[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:***

**SECTION 1.** 59.43 (2) (d) of the statutes is amended to read:

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

\*\*\*\*NOTE: Does this paragraph need to be repealed or amended differently? It is the only place in the statutes that refers to new s. 409.525.

**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.

**SECTION 2.** 101.9222 (5) (b) of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

**101.9222 (5) (b)** If a security interest in a previously certificated mobile home was created, but was unperfected, under any other applicable law of this state on

July 1, 2000, it may be perfected under par. (a), ~~but such perfection dates only from 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:

\*\*\*\*NOTE: The following chapter 409 sections are the new sections.

**409.323 Future advances. (1) WHEN PRIORITY BASED ON TIME OF ADVANCE.**

Except as otherwise provided in sub. (3), for purposes of determining the priority of a perfected security interest under s. 409.322 (1) (a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

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

- 1. Under s. 409.309 when it attaches; or
- 2. Temporarily under s. 409.312 (5), (6) or (7); and

(b) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under s. 409.309 or 409.312 (5), (6) or (7).

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

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

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

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

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

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

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

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

- (a) The time the secured party acquires knowledge of the lease; or
- (b) Forty-five days after the lease contract becomes enforceable.

(7) ADVANCES MADE PURSUANT TO COMMITMENT: PRIORITY OF LESSEE OF GOODS. Subsection (6) does not apply if the advance is made pursuant to a commitment



entered into without knowledge of the lease and before the expiration of the 45-day period.

**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.

**409.513 Termination statement.** (1) CONSUMER GOODS. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

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

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

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

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

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

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

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

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

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

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

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

The section reads: "409.404 Termination statement.

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

409.404 (1) (b)

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

409.404 (1) (c)

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

409.404 (1) (c)1.

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

409.404 (1) (c)2.

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

409.404 (1) (c)3.

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

409.404 (1) (d)

(d) Failure to file a termination statement. If the affected secured party fails to file a termination statement as required by this subsection, or to send such a termination statement within 10 days after receipt of the debtor's written demand the secured party

is liable to the debtor for \$500, and in addition is liable for any loss caused to the debtor by such failure and for reasonable attorney fees and court costs incurred by the debtor due to such failure.

409.404 (2)

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

409.404 (3)

(3)

409.404 (3) (a)

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

409.404 (3) (b)

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

409.404 – ANNOT.

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

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

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

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

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

(b) Provides the name of the assignor; and

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

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

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

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

409.405 (1m) There is no fee for processing the termination statement."

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

**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?

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

\*\*\*\*NOTE: The subsection is nonuniform. Section 409.403 (4) reads: "Except as provided in sub. (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof, or an optical disk or electronic copy thereof, for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.". Should this nonuniform provision be included in this draft?

\*\*\*\*NOTE: Current s. 409.403 (7) is a nonuniform subsection in that it does not include "and any owner of record shown on the financing statement" after "names of the debtor". The subsection reads: "409.403 (7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to s. 409.103 (5), or is filed as a fixture filing, the filing officer shall index it under the names of the debtor in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing 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 where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.". It also deletes the language in brackets: [ it shall be filed for record and"] before "the filing officer". Should these nonuniform deletions be given effect in this draft?

\*\*\*\*NOTE: Current s. 409.403 (8) is a nonuniform subsection that is added. It reads: "409.403 (8) A separate amendment, continuation statement, termination statement, statement of assignment or statement of release shall be filed for each original financing statement to be affected." Should this subsection be included in this draft?

\*\*\*\*NOTE: The conversion table lists 9-405 (2) as a source for new 9-519. Current s. 409.405 (2), Wis. stats., reads: (2) A secured party may assign of record all or part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. The officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to s. 409.103 (5), the officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the officer shall index the assignment of the financing statement under the

name of the assignee. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment is \$5 if the statement is on the standard form prescribed by the department and is \$10 if the statement is not on the standard form or if additional pages are attached to the standard form. A register of deeds shall forward \$3 to the department for each statement of assignment filed with the office of the register of deeds. Notwithstanding this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing under s. 409.402 (6) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than chs. 401 to 411.” Should any of the nonuniform provisions 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).

(2) The filing office exercises reasonable diligence under the circumstances.

**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)."

**409.708 Priority. (1) LAW GOVERNING PRIORITY.** 1999 Wisconsin Act ... (this act) determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this subsection ... [revisor inserts date], ch. 409, 1999 stats., determines priority.

**(2) PRIORITY IF SECURITY INTEREST BECOMES ENFORCEABLE UNDER S. 409.203.** For purposes of s. 409.322 (1), the priority of a security interest that becomes enforceable under s. 409.203 dates from the effective date of this subsection ... [revisor inserts date], if the security interest is perfected under 1999 Wisconsin Act ... (this act) by the filing of a financing statement before the effective date of this subsection ... [revisor inserts date], which would not have been effective to perfect the security interest under ch. 409, 1999 stats. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

\*\*\*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 II – Related Statutory Amendments to be Considered**

Revised Article 9 makes some changes from former Article 9 that may require other statutes in the jurisdiction, other than the Uniform Commercial Code, to be amended so as to be consistent with Revised Article 9. Moreover, because former Article 9 has been in effect in almost all Uniform Commercial Code jurisdictions for a number of years, other statutory provisions in the jurisdiction, other than the Uniform Commercial Code, may directly or indirectly refer to provisions of former Article 9. In connection with the enactment of Revised Article 9, these statutory provisions may have to be modified to refer to Revised Article 9. The following is a list of the types of statutes in the jurisdiction that the legislature may wish to consider amending to conform to Revised Article 9. Some suggestions of amendatory language are also provided.

Statutes Inconsistent with Section 9–311(b) or other Certificate of Title Provisions in Revised Article 9. Section 9–311(b) provides that compliance with the perfection requirements under a certificate-of-title statute is equivalent to perfection by filing a financing statement under Revised Article 9. The Legislative Note to Section 9–311(b) instructs the legislature to make two changes to the jurisdiction’s certificate-of-title statute, if required. The first change is to amend the certificate-of-title statute to provide that perfection occurs upon receipt by the appropriate State official of a properly tendered application for a certificate of title on which the security interest is to be indicated. Some certificate-of-title statutes currently provide that perfection does not occur until the certificate of title is actually issued. The second change is to remove any provision under which perfection relates back to an earlier time, such as attachment of the security interest. A “relation back”

provision may be inconsistent with the federal Bankruptcy Code and may create a trap for the unwary. See Official Comment 5 to Section 9–311.

More generally, the legislature should review its certificate-of-title statutes to determine whether there are in those statutes other inconsistencies with the treatment of titled goods under Revised Article 9 that would need to be eliminated. See Sections 9–303, 9–311 and 9–316(d) and (e) as well as Official Comment 6 to Section 9–303. For example, the enacting jurisdiction’s certificate-of-title statute might contain a provision dealing with loss of perfection of a secured party’s security interest when goods titled in another jurisdiction and subject to the security interest perfected under the certificate of title laws of the other jurisdiction are brought into the enacting jurisdiction and are titled in the enacting jurisdiction. That provision might not be consistent with Sections 9–316(d) and (e). If so, the provision should be amended to be consistent or should be deleted in deference to the overlapping provisions contained in Revised Article 9. Early coordination with the jurisdiction’s legal staff administering the certificate of title scheme for a particular type of titled goods is, of course, encouraged.

Statutes Inconsistent with Section 9–334(i). Section 9–334(i) provides that a perfected security interest in crops growing on real property prevails over a conflicting real estate mortgage, other real estate encumbrance or other real estate interest. If a statute of the jurisdiction provides otherwise, the statute should be listed in Section 9–334(j) or the statute should be amended to be subject to Section 9–334(i).

Agricultural Lien Statutes Inconsistent with Revised Article 9. Revised Article 9 includes within its scope an agricultural lien as defined in Section 9–102(a)(5). That definition requires that the agricultural lien be, among other things, both

statutory and nonpossessory. Revised Article 9 then provides some rules for the creation, perfection and priority of an agricultural lien. Generally, the holder of an agricultural lien must file a financing statement to perfect the lien, and the lien is, but for Section 9-322(g), subject to the general "first to file or perfect" priority rule contained in Section 9-322(a). Revised Article 9, however, does not address proceeds in the context of an agricultural lien. The legislature may wish to review its agricultural lien statutes to remove any inconsistencies in those statutes with the treatment of agricultural liens under Revised Article 9. In addition, if the legislature elects to enact the product-money security interest provisions in Appendix II, any similar production-money security interest statute of the jurisdiction should be repealed.

Statutes Dealing with the Place of Filing of non-UCC Liens by Reference to Former Article 9. Statutes in the jurisdiction may provide for various non-UCC liens to be recorded by reference to provisions of former Article 9. These non-UCC liens might include, for example, the liens of lien creditors (e.g., attachment liens and judgment liens), state tax liens or environmental liens.

It will usually not be sufficient for these statutes to be amended merely to refer to the filing requirements of Revised Article. That is because Revised Article 9 makes two relevant but significant changes in the filing rules. First, it provides for perfection by filing in a single location for all assets, including goods, in which a security interest may be perfected by filing. Second, Revised Article 9 provides for the filing to be made where the debtor is located. Under Section 9-307, the debtor's location may be determined to be in another jurisdiction. Accordingly, if these non UCC lien recording statutes are amended merely to refer to Revised Article 9



instead of former Article 9, the jurisdiction may be requiring recording of these non-UCC liens in another jurisdiction instead of its own jurisdiction.

An example may be helpful in understanding this issue. Let's say that State X has a statute that provides that State X tax liens on a taxpayer's goods located in State X are to be recorded in the office where a financing statement would be filed to perfect against the taxpayer a security interest in the goods under Article 9. Debtor is a corporation organized under the laws of State Y. If no change were made to State X's statute, then, upon Revised Article 9 becoming effective, State X tax liens would need to be filed in State Y. This is because, under Section 9-301 of Revised Article 9, perfection by filing is to be made by a filing where the debtor is located and, under Section 9-307 of Revised Article 9, that type of debtor is located in State Y, not State X. State X, of course, would prefer to require its tax lien filings on goods located in State X to continue to be made in State X.

To address this issue, we recommend that the non-UCC lien recording statutes be amended to refer to Revised Article 9 but to add words such as "as if the debtor were located in this State." In our example, that would mean that the statute would be amended to provide that State X tax liens on a taxpayer's goods located in State X are recorded in the office where a financing statement would be filed to perfect against the taxpayer a security interest in the goods under Revised Article 9 as if the debtor were located in State X. In this way, the recordings would be made in the jurisdiction's own central filing office for the recording of financing statements even if under Section 9-307 the debtor were located in another jurisdiction.

Statutes Assuming the Scope of or Definitions in Former Article 9. The legislature should consider whether provisions of other laws affected by the expansion of the scope of Revised Article 9 from that in former Article 9, or the change

in definitions in Revised Article 9 from those in former Article 9, will necessitate changes in other statutes of the jurisdiction. For example, a statute in the jurisdiction may address the assignment of certain payment rights (e.g. health-care-insurance receivables or commercial tort claims) that are not within the scope of former Article 9 but are within the scope of Revised Article 9. A statute of the jurisdiction might also use former Article 9 terms (e.g. accounts) which have different meanings under Revised Article 9 than under former Article 9. Amendments to these statutes should be considered so that the statutes, as amended, are consistent with or are subject to Revised Article 9. Indeed, in some cases the best solution would be to repeal the statute if the matters addressed in the statute would be fully addressed in Revised Article 9.

**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.

**SECTION 3.** 422.413 (2r) (f) of the statutes is amended to read:

422.413 (2r) (f) The satisfaction of indebtedness secured by any subordinate security interest in the collateral, subject to the restrictions set forth in s. 409.504 (1) (c) [9-610 9-615].

\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1973 c. 2; 1979 c. 10; 1983 a. 389; 1985 a. 331; 1993 a. 368; 1995 a. 329; 1997 a. 302.

**SECTION 4.** 425.105 (4) of the statutes is amended to read:

425.105 (4) With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents (s. 409.105) as defined in s. 409.102 (1) which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to s. 409.504 [9-610 9-615 9-624 9-617 9-618] and the terms of the creditor's security agreement.

\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316.

**SECTION 5.** 425.203 (3) (intro.) of the statutes is amended to read:

425.203 (3) (intro.) Following recovery of collateral pursuant to a judgment under sub. (2), the merchant may either retain the collateral in full satisfaction of the customer's obligation pursuant to s. 409.505 [9 620 9-621 9-624], in which event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall dispose of the collateral pursuant to s. 409.504 [9-610 9-615 9-624 9-617 9-618], in which event:

\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1975 c. 407, 421.

**SECTION 6.** 425.204 (2) of the statutes is amended to read:

425.204 (2) The rights and obligations of the merchant and customer with respect to collateral voluntarily surrendered as defined in this section shall be

governed by ss. 409.504 to 409.507 [9-610 9-615 9-611 9-624 9-617 9-618 9-620 9-621 9-623 9-625 9-627], and are not subject to this subchapter.

\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1991 a. 316.

**SECTION 7.** 425.207 (2) of the statutes is amended to read:

425.207 (2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the customer has surrendered the collateral or leased goods, or judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.504 (1) [9-610 9-615]. In determining such expenses, leased goods



shall be considered collateral under s. 409.504 (1) [9-610 9-615]. However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection.

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; Sup. Ct. Order, 67 W (2d) 585, 776 (1975); 1975 c. 407, 421, 422; 1979 c. 10; 1981 c. 314 s. 146; 1997 a. 302.

**SECTION 8. 425.208 (6) of the statutes is amended to read:**

425.208 (6) The creditor shall not dispose of the collateral or enter into a contract for the disposition of the collateral, until the expiration of the period for redemption provided in this section, unless the collateral is perishable or threatens to decline speedily in value. Upon the expiration of such period any disposition of the collateral shall be subject to ss. 409.504, 409.505 and 409.506 [9-610 9-615 9-611 9-624 9-617 9-618 9-620 9-621 9-623], except that the customer may be liable for a deficiency only to the extent provided in ss. 425.209 and 425.210.

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302.

**SECTION 9. 779.97 (4) (b) 1. of the statutes is amended to read:**

779.97 (4) (b) 1. If a refileing of a notice of lien is presented to the department of financial institutions for filing, the filing officer shall cause the refiled notice of federal lien to be marked, held and indexed in accordance with s. 409.403 [9-516 (a) 9-515 9-522 9-519 9-525] as if the refileing were a continuation statement within the meaning of chs. 401 to 411, except that the time period in par. (d) shall apply instead of the time period in s. 409.403 (2) and (3) [9-515 9-522].

\*\*\*\*NOTE: What cross references should be substituted in this draft?

History: 1977 c. 29, 418; 1979 c. 89, 177, 223, 312, 355; Stats. 1979 s. 779.97; 1991 a. 39, 148, 304, 315; 1993 a. 70, 172, 214; 1995 a. 27, 201, 417.

(END)