



State of Wisconsin  
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

December 10, 2001

Representative Scott R. Jensen  
Room 211 West  
State Capitol  
P.O. Box 8952  
Madison 53708-8952

Senator Fred Risser  
Room 220 South  
State Capitol  
P.O. Box 7882  
Madison 53707-7882

Dear Representative Jensen and Senator Risser:

Pursuant to s. 227.19(2), Stats., notice is hereby given that CR 01-122 (proposed rule creating chs. DFI—CCS 1, 2, 3, 4, 5, 6 and 7; and repealing ch. SS 3) is in final draft form. Pursuant to s. 227.19(3), Stats., the following documentation accompanies this notice in triplicate: proposed rule; the material specified in s. 227.14(2) to (4), Stats., (analysis, note regarding forms and fiscal estimate); a copy of any recommendations of legislative council staff; and an analysis pursuant to s. 227.19(3), Stats. If you have any questions regarding this matter or the enclosed, please do not hesitate to contact me at tel. 267-1705.

Sincerely,

Mark Schlei  
Deputy General Counsel

encls

Office of the Secretary

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## NOTE

Pursuant to s. 227.14 (3), Stats., an agency shall include a reference to forms in a note to the proposed rules and shall attach a description of how copies of the forms may be obtained. Pursuant to s. 227.14 (3), a copies of forms may be obtained at the following:

Department of Financial Institutions  
Uniform Commercial Code Section  
345 W. Washington, 3rd Floor  
P.O. Box 7847  
Madison, WI 53707-7847  
tel. (608) 264-7965



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 01-122

AN ORDER to repeal chapter SS 3; and to create chapters DFI-CCS 1 to 7, relating to the uniform commercial code.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

10-24-01 RECEIVED BY LEGISLATIVE COUNCIL.

11-20-01 REPORT SENT TO AGENCY.

RNS:RJC;jal;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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### CLEARINGHOUSE RULE 01-122

#### Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

#### 1. Statutory Authority

a. In s. DFI-CCS 1.12 (1), under what authority does the department propose not refunding fee overpayments of less than \$2.00 and greater overpayments if a written request is not made?

b. It is noted that s. 227.01 (13) (a), Stats., excludes from the definition of a rule matters which concern the internal management of an agency and which do not affect private rights or interests. It is also noted that s. DFI-CCS 1.15 authorizes a filing officer to adopt practices and procedures for the filing of various Uniform Commercial Code (UCC) documents. It would appear that so long as those practices and procedures do not affect private rights or interests, they would not need to be promulgated as a rule. However, should those practices and procedures affect private rights or interests, it would appear that ch. 227, Stats., would require the promulgation of a rule for these practices and procedures.

#### 2. Form, Style and Placement in Administrative Code

a. Since ch. SS 3 alphabetically follows the chapters with a DFI-CCS prefix, the material in SECTION 1 should be placed at the end of the rule.

b. In s. DFI-CCS 1.01 (19), "nonstandard" should replace "non standard."

c. In s. DFI-CCS 1.01 (28), it is suggested that the last phrase beginning after the semicolon could be better placed in a note to the rule.

d. In s. DFI-CCS 1.06 (1) to (3), "this method" is unclear. The title of these subsections is not a substantive part of the rule and therefore needs to be incorporated into the text.

e. The entire rule makes excessive use of capitalization. For example, see "Correction statement" in s. DFI-CCS 1.08 and "Termination Statement" in s. DFI-CCS 1.10 (2) (e). [See s. 1.01 (4), Manual.]

f. Throughout the rule, "shall" or "may" should be used to express duties and permissive actions, respectively. They should replace words like "cannot," "must," and "will." In s. DFI-CCS 2.01 (intro.), "may not do any" should replace "does none."

g. The "example" in s. DFI-CCS 2.03 (10), and elsewhere throughout the rule, should not be placed in parentheses. In addition, it appears that the term "you" should be changed to the term "an individual" or a similar term.

h. In s. DFI-CCS 2.08, is the phrase "and may not, in fact, have the resources to do so or to identify such defects" really necessary to the rule? If it is, it should be placed in a note to the rule as it seems to be more editorial comment or speculation rather than a substantive provision.

i. Throughout the rule, an appropriate article should be substituted for "such." For example, see ss. DFI-CCS 2.08 and 3.02 (1) (a). [See s. 1.01 (9) (c), Manual.]

j. In ch. DFI-CCS 3, it does not appear to be necessary to specify in the rule the particular parameters of the various data entry fields intended for the UCC information management system. It may not be advisable to do so. Every change in the computer program could necessitate a change in the administrative rules. The rules should be reviewed to determine whether these items need to be included in the rule.

k. In s. DFI-CCS 3.03 (1), (2) and (3), various examples of names, titles, and prefixes are included in the substantive provision of the rule. Examples are to be placed in a note or an "example" following the applicable rule provision. [See s. 1.09 (1), Manual.] The entirety of the rule should be reviewed for this incorrect use of examples in substantive provisions.

l. The definitions in s. DFI-CCS 3.14 should be placed in s. DFI-CCS 1.01.

m. It would appear that s. DFI-CCS 4.02 needs introductory material. An introductory sentence should be added that provides something to the effect of: "When a document is received, the following functions shall occur:"

n. In s. DFI-CCS 4.06, it appears that the semicolon should be replaced by a colon and the material thereafter should be separated into separate subsections of the provision.

o. In s. DFI-CCS 6.04, the "1." before "(1)" should be deleted.

p. In s. DFI-CCS 6.04 (2) (a), the subdivisions that identify the address of the UCC Section of the Department of Financial Institutions should be set off as a note following those provisions. There is no need to include the address in the substantive provision of the rule. It would be sufficient simply to say that the filings may be hand delivered to the applicable office, and the address for that office would be identified in a note. This comment also applies to s. DFI-CCS 6.06 (1).

q. The creation of ch. DFI-CCS 7 should be in SECTION 8 of the rule; there are currently two SECTIONS numbered 7.

r. It appears that the final sentence in s. DFI-CCS 7.09 (2) should actually be numbered as sub. (3).

s. The fiscal estimate attached to the rule is a fiscal estimate for 2001 Senate Bill 9. That bill is now Act 10. In addition, the rule should contain a fiscal estimate that applies to it and not the act upon which it is based.

t. SECTION 8 of the rule is unnecessary.

u. A separate effective date provision should be added to the rule. [See s. 1.02 (4), Manual.]

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DFI-CCS 1.01 (7), why is the statutory reference in the definition of "file number" not a reference to s. 409.102 (1) (is), Stats.?

b. Does the definition of "filing office" in s. DFI-CCS 1.01 (9) comport with the description in s. 409.501 (1), Stats.?

c. In s. DIF-CCS 1.01 (27), can the "Uniform Commercial Code as adopted in this state" be cited with more specificity? Can specific statutes be cited?

d. In s. DFI-CCS 1.03, "this chapter" should replace "these rules." The entirety of the rules should be reviewed to correct instances of this type of error.

e. In s. DFI-CCS 1.06 (4) (a) 1., the term "rules" should be deleted. Also, "through DFI-CCS" should be replaced by "to."

f. In s. DFI-CCS 1.07, the first sentence, it appears, should contain a reference to the methods of delivery in s. DFI-CCS 1.06.

g. In s. DFI-CCS 1.10 (1) (g), the term "Subsection" should be deleted. In addition, the statutory references should be to "Stats." and not "Wis. Stats." Also, the reference to "501 (1) (a)" seems incomplete; there is no such statute.

h. Additionally, the second sentence refers to "59.43 (2) (e)." Is that a reference to a statute or rule? In the last sentence, the reference to s. DFI-CCS 1.10 (a) through (f) should simply be a reference to "pars. (a) through (f)."

i. In s. DFI-CCS 1.10 (2) (intro.), the reference to "s. DFI-CCS 1.10 (1)" should simply be a reference to "sub. (1)." This comment also applies to par. (d).

j. In s. DFI-CCS 2.03 (intro.), a phrase such as "in this chapter" or "in this section" should replace "herein."

k. In s. DFI-CCS 2.03 (1) (c) (intro.), the rule refers to "the following subparagraphs." The rule should refer to "the following subdivisions."

l. In s. DFI-CCS 2.03 (1) (d), the rule refers to "the agreement of August 1, 1997." What is this agreement and can a more apt cross-reference be provided?

m. In s. DFI-CCS 2.03 (3), what is an "organization number"?

n. In s. DFI-CS 4.02 (4), should "this chapter" replace "this section"?

o. In s. DFI-CCS 5.04 (4), the rule refers to the "Ending Noise Words list" as promulgated and adopted by the International Association of Corporation Administrators. Where can this list be found? The rule should contain a note identifying where this list can be found.

p. In s. DFI-CCS 6.02 (1) (b), the reference to "ch. 779.97 (5)" should be a reference to "s. 779.97 (5), Stats."

q. In s. DFI-CCS 6.03 (1) (intro.), the reference to "s. 109.09 (2) (b) (2), Stats.", should be to "s. 109.09 (2) (b) 2., Stats."

##### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The second phrase of s. DFI-CCS 1.01 (15) is unclear and should be clarified. Could the definition be written so that an "individual" means a human being, and includes a descendant?

b. In s. DFI-CCS 1.01 (17), the phrase "has the meaning of" should be replaced by the term "means."

c. Subdivisions 1. and 2. of s. DFI-CCS 1.01 (19) (a) are unclear. What are they modifying?

d. In s. DFI-CCS 1.01 (20), "that" should replace "who."

e. Section DFI-CCS 1.01 (24) could be simplified if, in the introductory paragraph, the material after the statutory cite were modified to read "which may include the following." Accordingly, the phrase "this may include" in both pars. (a) and (b) could be deleted.

f. In s. DFI-CCS 1.01 (25), the phrase "has the meaning of" should be replaced by the term "means."

g. In s. DFI-CCS 1.03, what are "usual and customary means"? Can this phrase be better defined or can examples be provided of what these means are?

h. In s. DFI-CCS 1.05, the term "a.m." should be inserted after "7:45" and the term "p.m." should be inserted after "4:30." In addition, the provision seems to imply that the offices are open different hours on state legal holidays. Is that the rule's intent?

i. In s. DFI-CCS 1.05, a parenthetical phrase is included in the last sentence. The rule should avoid the use of parenthetical expressions. [See s. 1.01 (6), Manual.] If the material is substantive and necessary to the rule, it should be set off by commas. If it is not substantive or not absolutely necessary for the rule, it can be placed in a note. The rule is replete with parenthetical expressions. The entirety of the rule should be reviewed to eliminate parenthetical expressions wherever they exist.

j. Several provisions of the rule discuss electronic filing of documents and electronic transmission of search requests. For example, see ss. DFI-CCS 1.06 (4) and 1.09. However, s. DFI-CCS 1.04 seems to prohibit this. These provisions should be reviewed for consistency.

k. In s. DFI-CCS 1.09 and throughout the rule, reference is made to "Department of Financial Institutions." However, the term "department" is defined in the rule and is a sufficient reference. This comment also applies to use of the undefined term "DFI" in s. DFI-CCS 6.04 (1) (intro.).

l. In s. DFI-CCS 1.10 (1) (e), the phrase "on half of the fee" appears. What does this phrase mean? In addition, the reference to "s. DFI-CCS 1.10 (1) (a)" can be simplified to a reference to "par. (a)." In the alternative, if the phrase is "one half," then "\$10.00" can replace everything after "be."

m. In s. DFI-CCS 1.10 (2) (intro.), the term "it" should be replaced by the term "the statement."

n. With respect to s. DFI-CCS 1.10 (2) (e), what is it an exception to? The paragraph should be redrafted, perhaps as a part of par. (d).

o. In s. DFI-CCS 1.10 (3) (c) (intro.), the sentence should begin: "The fee for copies . . . ." In the subdivisions that follow, the phrase "the fee" can be deleted, the word "for" can become the first word in each sentence, and a comma can replace "is." This comment also applies to par. (d).

p. In s. DFI-CCS 1.10 (3) (e) 1., does the CD-ROM contain images of all UCC documents filed or just those requested by the requester? The rule should be clarified.

q. In s. DFI-CCS 1.10 (4), the last sentence provides that there will be no reimbursement for processing termination statements. To whom will there be no reimbursement? The rule should be clarified.

r. The title to s. DFI-CCS 1.11 (4), and other parts of the rule, use slashed alternatives, such as "and/or." The rule should not use such terminology. [See s. 1.01 (9), Manual.]

s. Section DFI-CCS 1.11 (5) provides that additional approved forms of payment may be established by "department policy." Where will that be established and how will it be disseminated to the public? Will a rule be promulgated?

t. Section DFI-CCS 1.13 (1) uses the term "PDF form." If acronyms are to be used in the rule, they should be defined. [See s. 1.01 (8), Manual.]

u. In s. DFI-CCS 1.13, and consistently throughout the rule, the rule uses the passive voice in directing that certain things should be done. For example, throughout the rule, phrases such as "methods are available," "copies will be made available," and "name is treated" appear. The rule should use active voice when providing direction. Thus, a form "shall be available," "copies shall be made available" and a "name shall be treated." The entirety of the rule should be reviewed for consistent use of the active voice in providing the rule's directives. In addition, it should be clear in the rule who is being directed to do something.

v. Section DFI-CCS 1.15 refers to "Article 9." That term is not defined in the rule. What is Article 9? The rule should be clarified.

w. Section DFI-CCS 2.03 (intro.) is worded rather awkwardly. It is suggested that the first sentence be reworded substantially as follows: "A filing may be refused if it does not comply with any of the following requirements:". In addition, s. DFI-CCS 2.03 (intro.) is not really introductory material. Introductory material always ends in a colon and leads into the subunits and contains words like "all of the following." The entirety of the rule should be reviewed to ensure that introductory material is introductory and the appropriate end punctuation is provided.

x. Section DFI-CCS 2.03 (1) (a) uses the term "ASCII." That term is not defined. It should be.

y. Section DFI-CCS 2.03 purports to identify grounds for refusal of the UCC document. However, it does not appear that sub. (6), as drafted, is a ground for refusal.

z. In s. DFI-CCS 2.05 (1) and (2), the sentences do not appear to be complete. The reader is left to ask: "Not later than five business days from what?" This comment also applies to subs. (1) and (2) of s. DFI-CCS 2.06.

aa. In s. DFI-CCS 3.13, what does the phrase "but no action is then taken" mean? Does it mean that action is prohibited, or does it mean that action need not be taken but may be taken?

ab. In s. DFI-CCS 4.05, last sentence, should "or 30th" be inserted after "fifth"?

ac. In s. DFI-CCS 4.07, the first sentence should begin: "Correcting an error . . . ." The second sentence should be: "An error may be corrected by . . . ."

ad. Section DFI-CCS 5.04 should be preceded by the title "DFI-CCS".

ae. In s. DFI-CCS 5.04 (intro.), the phrase "and only the following rules" should be deleted.

af. In s. DFI-CCS 6.02 (2) (b), the second occurrence of the phrase ", if they wish," should be deleted.

ag. In s. DFI-CCS 6.03 (1) (a), the term "DFI agents" is not defined in the rule. Only defined terms should be used.

ah. In s. DFI-CCS 6.03 (1) (c), the term "These" should be replaced by the phrase "Wage claim liens."

ai. In s. DFI-CCS 6.03 (2) (a), and elsewhere throughout the rule, the rule fails to use complete sentences. Generally, rule provisions should be drafted as complete sentences. The entirety of the rule should be reviewed to ensure that complete sentences are used when necessary.

aj. In s. DFI-CCS 6.04 (1), "department" should replace "DFI." Also, "into" should replace "in to." In sub. (1) (d), "fee" should replace "fees."

ak. In s. DFI-CCS 6.04 (2) (e) 2., is the \$5.00 fee per page or per document? The rule should be clarified.

al. In s. DFI-CCS 7.01 (1) (a) and (b), the sentences should begin with a capital letter and end with a period. This comment also applies to s. DFI-CCS 7.02 (1) to (3).

am. Chapter DFI-CCS 7 repeatedly uses the term "land recording offices." What are these offices? The rule does not define them. It should.

an. In s. DFI-CCS 7.03 (3), "require" should replace "requires."

ao. Section DFI-CCS 7.03 (5) (a) and (b) should be written as complete sentences.

**Fiscal Estimate — 2001 Session**

- Original       Updated  
 Corrected       Supplemental

|             |   |
|-------------|---|
| LRB Number  | Amendment Number if Applicable                |
| Bill Number | Administrative Rule Number<br>DFI-CCS Ch. 1-6 |

**Subject**  
 Revised Article 9 of the Uniform Commercial Code

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No  
 Decrease Costs

Local:  No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations  
 20.144(1)(g)

**Assumptions Used in Arriving at Fiscal Estimate**

Ar2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (UCC) Article 9. The Act creates centralized filing for personal property liens with the Department and authorizes the Dept of Financial Institutions to promulgate these rules to implement the UCC. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens.

**Effect on Revenue**

Fees for UCC filings and searches are established by this rule. Fees for filings submitted electronically are one-half of the fee for filings submitted on paper. An anticipated shift in workload from the county level and the easy availability of the new system to the public will have a positive impact on revenues received by the Department. It is anticipated that revenues received will more than double from the current \$1,250,000 to over \$2,500,000. This increase will result from the convenience of on-line searching, an increased volume of filings processed by the Department, and the adjustment of fees over the current fee structure. The increase in fees will cover the increase in expenditures.

**Effect on Expenditures:**

Article 9, with details set forth in the rules, requires substantial changes to the UCC information system and to the way filings are processed. Below are costs associated with implementing these rules.

**Redesign of Database**

The revision to UCC Article 9 requires substantial programming changes and reconfigurations to the database. The rules specify the format for the UCC Information System. The cost of the redesign, including system development, programming, and testing is \$401,900.

**Long-Range Fiscal Implications**

|                               |                           |                                 |
|-------------------------------|---------------------------|---------------------------------|
| Prepared By:<br>Susan Dietzel | Telephone No.<br>267-0399 | Agency<br>DFI                   |
| Authorized Signature          | Telephone No.<br>267-0399 | Date (mm/dd/ccyy)<br>06/27/2001 |

### Electronic Filings

Article 9 and these rules place strict processing deadlines for filing and indexing of documents. Initially, a 5-day turnaround is required. By July 1, 2003, the deadline is 2 days. In order to accommodate these deadlines, electronic filings, searches, acknowledgements, and the use of credit cards and Automated Clearing House (ACH) payments to pay fees will be required. Total costs to develop the on-line filing capability, single-user sign-on for ACH transactions, accounting changes to allow multiple electronic payment methods, and creation of a vehicle for the bulk upload of filings from large filers (XML process) is \$941,200.

### Hardware and Software

To implement single user sign-on capability for acceptance of ACH transactions, equipment and software must be employed to hold sensitive account information, provide the ability to give users a single sign-on and develop a directory service supporting the single sign-on. Hardware and software costs associated with this technology total \$225,000 for 3 servers, required software, tapes and tape backup. Appropriate electrical infrastructure will also be needed to support the hardware. The costs for UPS, network routing and configuration, a switch and card total \$21,700.

### Workload Increase

Prior to implementation of Article 9, the Department processed approximately half of all filings with the other half processed at the 72 county register of deeds offices. In fiscal year 1999-2000, the Department processed approximately 93,000 filings and 24,000 terminations. The Department's 7.0 FTE processors average 13,300 filings and 3,500 terminations each. Initially, the Department estimated that the total percentage of filings coming to DFI would increase from 50% to 75%. However, the Department is now processing 100% of all the filings. To accommodate the projected increase in filings, the Department received authorization for 3 project positions in the Act 10 legislation. Because the Department is now receiving all of the filings, additional resources are necessary to meet required processing deadlines until electronic filings and searches are fully implemented. Overtime costs of UCC employees associated with processing the additional filings are estimated at \$62,400.

### Administrative Costs

Travel, printing, and mailing costs associated with informing and educating over 10,000 UCC filers as well as county register of deeds offices are estimated at \$13,500.

### Local Government Fiscal Effect

These rules may have a fiscal impact on county register of deeds offices, depending upon whether they serve as a filing office or opt out and have the state serve as the filing office. However, at this time, the number of counties choosing to participate is not known and a cost cannot be determined.

| <u>Cost Summary</u>                           | <u>FY 2002</u> | <u>Ongoing</u> |
|---|----------------|----------------|
| Redesign of database                          | \$ 401,900     |                |
| Development of electronic filing capabilities | 941,200        |                |
| Hardware, Software & Electrical               | 246,700        |                |
| 3.0 Project Position FTE's                    | 69,000         |                |
| Fringe benefits                               | 24,000         |                |
| UCC Staff Overtime                            | 62,400         |                |
| Administrative Costs                          | 13,500         |                |
| Total Costs                                   | \$1,758,700    | \$ 89,200      |
| Less unallotted reserve funding provided      | (60,000)       |                |
| Funding provided in Act 10*                   | (442,600)      |                |
| Unfunded                                      | \$1,256,000    | \$ 89,200      |

Note: Ongoing system maintenance costs of \$89,200 per year are anticipated in FY 2003 and in subsequent years.

\*The Act includes \$442,600 for FY 2001-02, including 3.0 project positions.

DATE: December 10, 2001

TO: Senator Fred Risser, President  
Wisconsin State Senate

Representative Scott Jensen, Speaker  
Wisconsin State Assembly

FROM: Mark Schlei, Deputy General Counsel  
Department of Financial Institutions

SUBJECT: Report on CR 01-122

This report is submitted pursuant to s. 227.19 (2) and (3), Stats., regarding CR 01-122 (proposed rule creating chs. DFI—CCS 1, 2, 3, 4, 5, 6 and 7; and repealing ch. SS 3).

1. STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to give effect to the provisions of the UCC. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation-wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, other notices of liens under the UCC, and realty-related filings.

2. MODIFICATIONS MADE AS A RESULT OF TESTIMONY RECEIVED AT THE PUBLIC HEARING

No modifications were made as a result of testimony received at the public hearing.

3. PERSONS APPEARING OR REGISTERING FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARING

The following persons registered for the proposed rule:

Ms. Julie Kubicek, National Public Records, Inc.

No persons registered against the proposed rule.

4. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS

Legislative council staff recommendations were accepted in whole.

5. FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to s. 227.19(3m), a final regulatory flexibility analysis is not required.

PROPOSED RULE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CORPORATE AND CONSUMER SERVICES

Analysis: To create chs. DFI-CCS 1, 2, 3, 4, 5, 6 and 7; and to repeal ch. SS 3. Statutory authority: 1995 Act 27 s. 9150 (2bt)(f), and ss. 227.24 (1), 227.11 (2) and 409.526, Stats. Summary: 2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code ("UCC"), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to give effect to the provisions of the UCC. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation-wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, other notices of liens under the UCC, and realty-related filings. Agency person to be contacted for substantive questions and responsible for the agency's internal processing: Ray Allen, Administrator, Department of Financial Institutions, Division of Corporate and Consumer Services, tel. (608) 264-9566. Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Corporate and Consumer Services adopts the following:

SECTION 1: CHAPTER DFI-CCS 1 is created to read:

CHAPTER DFI- CCS 1

UNIFORM COMMERCIAL CODE SECTION

**DFI-CCS 1.01 Definitions.** In chs. DFI-CCS 1 to 7:

- (1) "Active filing" means a UCC document that has not reached the one-year anniversary of its lapse date.
- (2) "Amendment" means a UCC document that amends the information contained in a financing statement. Amendment includes an assignment, continuation and termination.
- (3) "Assignment" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.
- (4) "Continuation statement" has the meaning set forth in s. 409.102 (1) (gm), Stats.
- (5) "Correction statement" filed under s. 409.518, Stats., means a UCC document that indicates that a financing statement is inaccurate or wrongfully filed.
- (6) "Department" means the department of financial institutions.

- (7) "File number" has the meaning set forth in ss. 409.102(1)(is) and 409.519(2), Stats.
- (8) "Filing agent of the department" means any office duly authorized by the department to receive documents under ch. 409, Stats.
- (9) "Filing office" means the department or a filing agent of the department.
- (10) "Filing officer" means the UCC section of the department.
- (11) "Filing officer statement" means a statement of correction entered into the filing office's information management system to correct an error by the filing officer.
- (12) "Financing statement" has the meaning set forth in s. 409.102(1)(jm), Stats.
- (13) "Inactive filing" means a UCC record that has reached the first anniversary of its lapse date.
- (14) "Index" means information that is entered into the filing office's information management system to create a means by which to retrieve filing information.
- (15) "Individual" means a human being, or a decedent in the case of a debtor that is the decedent's estate.
- (16) "Initial financing statement" means a UCC document containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement that does not identify itself as an amendment or identify an initial financing statement.
- (17) "Lapse date" means the expiration date for an initial financing statement set forth in s. 409.515, Stats.
- (18) "Lapsed filing" means a UCC document that has reached its expiration date.
- (19) "Land recording office" means an office as set forth in s. 409.501(1)(a), Stats.
- (20) "Nonstandard UCC filing" means any of the following:
- (a) the standard initial financing statement ("UCC1") which includes more than two UCC financing statement addendums ("UCC1ad"), or the standard amendment ("UCC3") which includes more than two UCC amendment addendums ("UCC3ad") as set forth in s. 409.521, Stats.
  - (b) The standard form to which is attached writings which are not set forth in s. 409.521, Stats.
  - (c) Any other writings, which do not conform to the standard forms, set forth in s. 409.521, Stats.

(21) "Organization" means a legal person that is not an individual.

(22) "Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" shall not include a person responsible merely for the delivery of the document to the filing office, but may include a service provider who acts as a filer's representative in the filing process.

*Note:* The postal service and a courier service are merely responsible for the delivery of the document to the filing office.

(23) "Secretary" means the secretary of the department.

(24) "Secured party of record" has the meaning set forth in s. 409.511, Stats.

(25) "Standard UCC filing" means any writing presented to a filing officer for filing, presented on an 8 1/2 x 11 inch standard UCC form as set forth in s. 409.521, Stats., which may include the following:

(a) On UCC1, this may include the attachment of one UCC1Ad.

(b) On UCC3, this may include the attachment of UCC3Ad.

(26) "Standard UCC form" means the forms set forth in s. 409.521, Stats.

(27) "Termination statement" has the meaning set forth in s. 409.102(1)(tm), Stats.

(28) "UCC" means the uniform commercial code, chs. 401 to 411, Stats.

(29) "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings.

*Note:* This definition is used for the purpose of chs. DFI—CCS 1 to 7 only. The use of the term "UCC document" in these chapters shall have no relation to the definition of the term "document" in s. 409.102 (1)(hg), Stats. UCC documents may be expressed or transmitted electronically or through media other than these writings.

(30) "UCC index" means a compilation of all index information as set forth in s. 409.519, Stats.

(31) "XML" means eXtensible Markup Language. XML is a language for storing data and metadata.

(32) "XML document" means a UCC document transmitted from a remitter to the filing officer in XML format and via techniques authorized under this rule.

**DFI—CCS 1.02 Place to file.** The filing office shall be the office for filing UCC documents relating to all types of collateral except for timber to be cut, as-extracted collateral as set forth in s. 409.102 (1)(bg), Stats., and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. Regardless of the nature of the collateral, the filing office shall be the office for filing all UCC documents where the debtor is a transmitting utility.

**DFI—CCS 1.03 Filing office identification.** The filing office shall disseminate information of its location, mailing address, telephone numbers, and its Internet and other electronic addresses.

**DFI—CCS 1.04 Electronic mail and facsimile.** (1) Except as authorized by the department, electronic mail shall not be used for filing UCC documents or for requesting searches of the records of financing statements.

(2) Facsimile shall not be used for filing UCC documents or for requesting searches of the records of financing statements.

**DFI—CCS 1.05 Office hours.** Office hours shall be from 7:45 a.m. until 4:30 p.m. There shall be no office hours on state legal holidays. The office shall receive transmissions electronically 24 hours every day of the year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically, but not less often than once each day the filing office is open for business, on a batch basis.

**DFI—CCS 1.06 UCC document delivery.** UCC documents shall be tendered for filing at the filing office by any of the following:

(1) When filed by personal delivery at the filing office's street address, the file time shall be the time that the UCC document is accepted for review by the filing office even though the UCC document may not yet have been accepted for filing and may subsequently be rejected. A UCC document delivered after regular business hours or on a day the filing office is not open for business shall have a filing time of the start of business on the next day the filing office is open for business.

(2) When filed by courier delivery at the filing office's street address, the file time shall be the time of delivery, even though the UCC document may not yet have been accepted for filing and may subsequently be rejected. A UCC document delivered after regular business hours or on a day the filing office is not open for business shall have a filing time of the start of business on the next day the filing office is open for business.

(3) When filed by postal service delivery, the file time shall be the date and time of actual arrival in the filing office, even though the UCC document may not yet have been accepted for filing and may subsequently be rejected. A UCC document delivered after regular business hours or on a day the

filing office is not open for business shall have a filing time of the start of business on the next day the filing office is open for business.

(4) **ELECTRONIC FILING.** (a) When available, UCC documents may be transmitted electronically by any of the following:

1. Using the XML standard approved by the International Association of Corporation Administrators as described in ss. DFI—CCS 3.14 to DFI—CCS 3.20.
2. Transmitting a UCC document through data entry on the filing officer's Internet web page.

(b) The file time for a UCC document delivered by these methods shall be the time that the filing office's system analyzes the relevant transmission and determines that the required elements of the transmission have been received in the required format and are machine readable.

**DFI—CCS 1.07 Search request delivery.** UCC search requests shall be delivered to the filing office by any of the means set forth in s. DFI—CCS 1.06. UCC search requests upon a debtor named on an initial financing statement shall be made by an appropriate indication on the face of the initial financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the initial financing statement.

*Note:* Requirements concerning search requests are set forth in s. DFI—CCS 5.02.

**DFI—CCS 1.08 Approved forms.** The forms prescribed by s. 409.521, Stats. shall be accepted by the filing office. Forms approved by the International Association of Corporate Administrators and forms approved by the department shall be accepted. When filing a correction statement, the "UCC correction statement" form, UCC—5, shall be used. Other forms shall not be accepted by the filing office.

**DFI—CCS 1.09 Form - UCC search.** A form that meets the requirements regarding dimensions and location of information on the search form approved by the department or that is transmitted electronically in accordance with chs. DFI—CCS 1 to 6 shall be acceptable. Other forms shall not be accepted by the filing office.

**DFI—CCS 1.10 Fees.** (1) **FILING FEES.** The following fees shall be paid for UCC filings:

(a) For filing and indexing a UCC standard filing communicated on paper or in a paper-based format on the standard form, \$20.00.

(b) For filing and indexing a UCC non-standard filing communicated on paper or in a paper based format as defined in s. DFI—CCS 1.01(20)(a), \$40.00.

(c) For filing and indexing a UCC non-standard filing communicated on paper or in a paper based format as defined in s. DFI—CCS 1.01(20)(b), \$60.00.

(d) For filing and indexing a UCC non-standard filing communicated on paper or in a paper based format as defined in s. DFI—CCS 1.01(20)(c), \$80.00.

(e) For filing and indexing a UCC document communicated by an authorized medium which is other than on paper or in a paper-based format, \$10.00.

(f) For filing and indexing federal tax liens under s. 779.97, Stats., \$10.00.

(g) This section shall not apply to fees charged by a filing office described in s. 409.501(1)(a), Stats. A filing office described in 409.501(1)(a), Stats., shall charge fees in accordance with s. 59.43(2)(e), Stats., unless the filing office is described in s. 190.11, Stats, in which case the fees charged shall be in accordance with pars. (a) through (f).

(2) **ADDITIONAL FEES.** In addition to fees set forth in sub. (1), the following fees shall be paid for statements that indicate that the statement is filed in connection with any of the following:

(a) For filing an initial financing statement that indicates that it is filed in connection with a public finance transaction, \$20.00.

(b) For filing an initial financing statement that indicates that it is filed in connection with a manufactured home transaction, \$20.00.

(c) For filing an initial financing statement that indicates that it is filed as a transmitting utility, \$150.00.

(d) The fee for filing and indexing all UCC amendments or corrections shall be as stated in sub. (1).

(e) There shall be no fee for filing termination statements.

(3) **UCC SEARCH AND OTHER FEES.** The following fees shall be paid for UCC searches and other services:

(a) For UCC search request communicated on paper or in a paper-based format, \$15.00.

(b) For filing and indexing a UCC search request communicated by an authorized medium which is other than on paper or in a paper-based format, \$7.00.

(c) The fee for copies of individual documents are as follows:

1. For each page communicated by regular delivery method, \$2.00 per page.

2. For each page transmitted by facsimile, \$2.00.

3. For UCC copies for electronically transmitted search responses, \$1.00 per page or page equivalent.

(d) The fee for direct access to the information management system is as follows:

1. For searches, \$3.00 per debtor name.
2. For accessing images of filings, \$1.00 per page image.

(e) Fees for other services are as follows:

1. Images of UCC documents on CD-ROM filed for any calendar month, \$200.00 per month.
2. Monthly updates of the index of filings on CD-ROM, \$250.00 per month

(4) FILING AGENTS OF THE DEPARTMENT. With the exception of termination statements, filing agents of the department who have completed the training and met the requirements established by the filing officer shall retain \$10.00 from each paper filing processed by the filing agent's office. The remainder of the filing fee shall be sent to the department, not less than once each month. The filing agent shall receive no reimbursement for processing termination statements.

**DFI—CCS 1.11 Methods of payment.** Filing fees and fees for public records services shall be paid by any of the following methods:

(1) CASH. Payment in cash shall be accepted.

(2) CHECKS. Checks made payable to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, shall be accepted for payment if they are cashier's checks, certified checks and other negotiable instruments made payable to the filing office through a depository institution located in the United States.

(3) ELECTRONIC FUNDS TRANSFER. The filing office may accept payment via electronic funds transfer under National Automated ClearingHouse Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for these transfers and who authorize the relevant transfer pursuant to these arrangements.

(4) DEBIT CARDS OR CREDIT CARDS, OR BOTH. The department may accept payment by debit or credit cards, or both, from a major card company approved by the department. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued, and the billing address for the card. Payment shall not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment shall be forthcoming.

(5) OTHER. Additional forms of payment may be approved by the department.