

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs and Campaign Finance Reform

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs and Campaign Finance Reform

RE: PAPER BALLOT EXECUTIVE SESSION-- Senate Bill 9, relating to: revising the Uniform Commercial Code Secured Transactions and related statutes and granting rule-making authority.

DATE: May 1, 2001

Attached please find a PAPER BALLOT for SB 9.

Please return the ballot by 3:00 PM tomorrow (Wednesday).

Senate Bill 9 relates to secured transactions under the Uniform Commercial Code and makes revisions to Charter 409, Wis. Stats., based on a Model Act approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

Attached also, please find a copy of a Senate Substitute Amendment to Senate Bill 9 (LRB s0082/1) and a copy of a Legislative Council memorandum describing the provisions of the substitute amendment.

Thank you for your cooperation.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Senate Bill 9

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold an Executive Session on Senate Bill 9 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 3:00 PM Wednesday, May 2, 2001.**

Introduction and Adoption of Substitute Amendment (LRB s0082/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Substitute Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Substitute Amendment)
- _____ **Aye** (In Favor of Adoption of the Substitute Amendment)
- _____ **No** (Oppose Adoption of the Substitute Amendment)

Passage of Senate Bill 9 As Amended:

- _____ Moved (Optional -- Please check if you wish to Move Passage of the Bill as Amended)
- _____ Seconded (Optional -- Please check if you wish to Second Passage of the Bill as Amended)
- _____ **Aye** (In Favor of Passage of the Bill as Amended)
- _____ **No** (Oppose Passage of the Bill as Amended)

Signed: _____

March 7, 2001

Please return to Sen. George's Office by noon Wednesday, March 7, 2001.



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney 

RE: Senate Substitute Amendment __ (LRBs0082/1) to 2001 Senate Bill 9

DATE: May 1, 2001

2001 Senate Bill 9, generally relating to secured transactions under the Uniform Commercial Code, was introduced on January 12, 2001. The bill revises ch. 409, Stats., based on a Model Act approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. This memorandum describes changes made to the bill by Senate Substitute Amendment __ (LRBs0082/1).

A. PRODUCTION-MONEY SECURITY INTEREST

Current law, in limited circumstances, provides that a creditor who has a perfected security interest in crops for new value given to enable the debtor to produce those crops has a priority in the collateral over an earlier perfected security interest. The priority applies only in a case in which the "new value" security interest is given not more than three months before the crops become growing crops and only if an earlier perfected security interest secures obligations due more than six months before the crops become growing crops. [See s. 409.312 (2), Stats.]

The drafters of the Model Act report that the priority contained in s. 409.312 (2), Stats., has been thought to be of little value for its intended beneficiaries and has been left out of the Model Act. In its place, the drafters provided an option for the states to consider. This option creates a production-money security interest and establishes this interest's priority over other security interests. [See Appendix II, Model Provisions for Production-Money Priority, in the Model Act.]

The substitute amendment incorporates portions of Appendix II of the Model Act regarding a production-money security interest. A production-money obligation occurs when a creditor gives new value to a debtor in order to allow the debtor to produce crops, if the new value is in fact used for the production of the crops. In this case, a production-money security interest will be created and that interest will have priority over a conflicting, nonproduction-money security interest in the same crops if the following conditions are met:

1. The production-money security interest is perfected by filing when new value is first given.
2. The production-money secured party sends a notice to the holder of the conflicting security interest not less than 20 or more than 30 days before the production-money secured party first gives new value, if the holder of the conflicting security interest had filed a financing statement before the date of the filing made by the production-money secured party.
3. The notification sent by the production-money secured party states that the production-money security interest is expected to be acquired and provides a description of the crops, the names and addresses of all the parties involved, the date on which the transaction would take place and the maximum amount of new value to be provided.

[See proposed ss. 409.102 (1) (pu) and (pv), 409.1035 and 409.3242, Stats., as contained in the substitute amendment.]

B. STATUTORY DAMAGES

Senate Bill 9 creates new statutory damages in the amount of \$500 in each case from a person that does any of the following:

1. Fails to properly release collateral.
2. Files a record that the person is not entitled to file.
3. Fails to file or send a required termination statement.
4. Fails to respond with an appropriate explanation regarding, or a waiver of, a liability for a deficiency following the disposition of collateral.
5. Fails to respond to a request for an accounting.

[See s. 409.623 (5) and (6), Stats., as contained in Senate Bill 9.]

The substitute amendment deletes the statutory damages contained in Senate Bill 9.

C. WORKER'S COMPENSATION

The substitute amendment creates s. 409.109 (4) (cm), Stats., to provide that ch. 409, Stats., does not apply to an assignment of a claim or right to receive compensation for injuries or sickness under a worker's compensation or worker's disability statute under any state.

D. USE OF SOCIAL SECURITY NUMBERS

Senate Bill 9 does not require that a financing statement be in a particular format. However, the bill provides that if a statutory form is used, a filing office must accept it. The statutory forms contained in Senate Bill 9 include places for the indication of a debtor's Social Security number. [See proposed s. 409.521, Stats., as contained in Senate Bill 9.]

The substitute amendment specifically provides that the presence or absence of a Social Security number on a form of record providing for the insertion of a Social Security number must not affect the decision of the filing office to accept or refuse the record for filing. In other words, the statutory forms will indicate that the inclusion of a Social Security number is optional and that a form not containing a Social Security number nevertheless must be accepted by a filing officer. [See proposed ss. 409.520 (1) and 409.521, Stats., as contained in the substitute amendment.]

E. APPROPRIATIONS

The substitute amendment creates a new appropriation by increasing the dollar amount for the appropriation to the Department of Financial Institutions by \$442,600 for fiscal year 2000-01 for the administration of ch. 409, Stats., including an increase in the authorized full-time employment (FTE) project positions for the department by 3.0 program assistant positions for the period ending on June 30, 2002.

F. TERMINATION STATEMENT

Current law provides that there is no fee for the filing of a termination statement with regard to a secured transaction under ch. 409, Stats. [See s. 409.404 (3), Stats.]

Senate Bill 9 provides that the fee for filing and indexing a record will be prescribed by filing-office rule. [See proposed s. 409.525 (1), Stats., as contained in Senate Bill 9.]

The substitute amendment specifically provides that there is no fee for the filing of a termination statement. [See proposed s. 409.525 (1m), Stats., as contained in the substitute amendment.]

G. TECHNICAL CHANGE

The substitute amendment corrects various references by replacing the phrase "1999 Act . . ." with the phrase "2001 Act . . ."

RS:tlu;ksm

TALKING POINTS – SB 9 (Uniform Commercial Code Revised Article 9)

- **WHERE DID REVISED ARTICLE 9 (SB 9) COME FROM?**

Revised Article 9 is a uniform law which was developed and approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL), in conjunction with the American Law Institute, and recommended for passage in all 50 states. It is also endorsed by the American Bar Association.

Continuing its usual practice, Wisconsin's four legislative Uniform Laws Commissioners—Senator Huelsman, Senator George, Representative Cullen and Representative Gundrum—are the legislative sponsors of this legislation.

- **DOES SB 9 DEVIATE FROM THE UNIFORM ACT?**

As introduced, Wisconsin's legislation contains no substantive changes from the Uniform Act. The only changes in the legislation are to conform the Uniform Act to statutes which are unique to Wisconsin, such as Wisconsin's marital property law.

- **WHAT DOES SB 9 DO?**

SB 9 is an overhaul of Article 9 of the Uniform Commercial Code (UCC). Article 9 provides the statutory framework across states that governs secured transactions—transactions which involve the granting of credit secured by personal property. The legislation *modernizes* current Article 9, *clarifies* it and *expands* its scope to bring the law to reflect today's economic and transactional environment.

- **WHO HAS ADOPTED REVISED ARTICLE 9?**

It has already been enacted in at least 35 other states, including our neighbors in Illinois, Michigan and Minnesota, and is pending in 15 others.

- **WHAT IS THE SIGNIFICANCE OF THE JULY 1 EFFECTIVE DATE?**

Original Article 9 was last revised in 1972 and adopted by every state. Revised Article 9 includes a uniform effective date of July 1, 2001 across the states to ensure that all, or most, states will be operating under the same laws regarding secured transactions as they have done under original Article 9. The Revised Uniform Act updates the original law and brings it into the 21st Century.

- **WHAT ARE THE RAMIFICATIONS FOR NOT ENACTING SB 9 BY JULY 1, 2001?**

It is essential that Wisconsin adopt Revised Article 9 by July 1. Without it there are significant legal and economic ramifications. **Legal ramifications** include serious **choice of law conflicts** (ie: which state's laws govern for transactions) and large-scale commercial and credit confusion.

Economic ramifications: failure to pass Revised Article 9 by July 1, 2001 could restrict credit availability, creating a disincentive to invest in Wisconsin businesses. It could also result in:

- Higher transactional costs,
- Loss of state revenues,
- Potential for an increase in bankruptcies.

- **WHY IS THERE A FISCAL IMPACT?**

Under Revised Article 9, the Dept. of Financial Institutions will house a centralized database for UCC financing statements. The database is an important feature of Revised Article 9 and will help facilitate electronic filing and searches. The Department's fiscal estimate reflects a fiscal impact – **impacting program revenue** – to redesign their current database and conform it to the needs as set out in SB 9.

While this may be the case, the legislation will also have a positive fiscal impact which will fully cover these costs. The revenue gain will come from fees charged for filing of the financing statements which are to be set by administrative rule.

DFI states in its Feb. 15 fiscal estimate that it "intends to plan for a 3 to 5 year cost recovery for the system changes." In essence, the projected fiscal impact of SB 9 will be fully covered by revenues that will be collected in association with enactment of the bill.

- **AMENDMENTS**

Senate Substitute Amendment 1 was unanimously adopted (5-0) by the Senate Judiciary Committee. Senate Substitute Amendment 1 makes the following changes:

- 1) **Clean-Up Provisions:** There are numerous clean up that were agreed needed to be addressed. They are:
 - a) Social Security Number—Makes social security numbers optional on the form. The change specifically states that the use of a social

security number on the uniform UCC financing form **is optional** in Wisconsin and was requested by the Register of Deeds Association. The uniform form is a "safe harbor" form which means that it must be accepted by other states. Wisconsin wants to have this form so it is important to maintain it in SB 9;

- b) Technical Change—A technical change so that the bill reflects the appropriate year (from 1999 to the year 2001);
 - c) DFI Expenditure Authority--An amendment requested by the DFI to give them their needed expenditure authority to implement the changes in the bill. The DFI indicates that its expenditure authority was inadvertently left out of the bill. The DFI costs are all included their fiscal estimate and the DFI has said this is standard expenditure language for agencies;
 - d) Workers Comp Exemption—A change requested by the Worker's Compensation Advisory Board to specifically exempt worker's comp./disability statutes from this Act. The Workers Compensation Advisory Board felt that bill was somewhat ambiguous and could inadvertently apply to workers comp. The Advisory Board requested the exemption in order to maintain the status quo for them.
- 2) **Agricultural Lien Compromise:** This change provides for production money security interest which would allow farmers to obtain financing by granting a first lien on a crop to the creditor that provides the money to put in that crop. This amendment is an agreed upon compromise by the Agribusiness Council, WI Fertilizer and Chemical Association, Wisconsin Bankers Association and the Community Bankers Association.
- 3) **Bankers Association Provisions:** There are two changes in the substitute amendment requested by the Wisconsin Bankers Association. They are to eliminate the \$500 automatic award for specified failures to comply with certain provisions of Article 9 and to eliminate the fee for filing termination statements.

SENATE FLOOR AMENDMENT

- 4) **Trust Exemption:** A floor amendment similar to the workers comp amendment which clarifies that assignability of claims or benefits under SB 9 would not apply to trusts, such as a spendthrift or special needs trusts. **In essence, the amendment MAINTAINS THE STATUS QUO.** The floor amendment addresses concerns that new Section 409.408 under SB 9 would negate restrictions on non-assignability of a payment intangible, whether contained in a document or statute. Wisconsin has a statute, contained in section 701 which specifically allows the creation of "spendthrift trusts" which restrict the assignability of income and/or residual interests in the Trust.

Proposed section 409.408 would automatically nullify this estate planning statute. This means that every "spendthrift trust" created in the State of Wisconsin will now be invalid and that beneficiaries will be able to control the disposition of the Trust despite the expressed intentions of the creator of the Trust. Thousands of Wisconsin families rely on "spendthrift trusts" as part of their estate plans - whether because of the "special needs" of the beneficiary, the susceptibility of the beneficiary to the influence of others, drug or alcohol addiction of the beneficiary, or because of simple estate and income tax planning purposes. Under current law, a grantor/settlor - be it a grandparent, parent, charitable benefactor, or other relative - can create a Trust which restricts the right of the beneficiary to pledge or assign his/her benefits from the Trust. If this right to restrict was not available, the Trust most likely would not be created. This proposed UCC Article 9 would undo all of that planning. In addition, it may have unintended income and estate tax consequences.

The State Bar supports adoption of this Senate floor amendment to provide for the trust exemption.

FLOOR AMENDMENT

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In addition, it may have unintended income and estate tax consequences. There is a difference in income and estate taxation between Trusts where a beneficiary has a right to control the income verses one where the beneficiary has no right to control the income. If a beneficiary has the right to assign the income, that is an element of control, and might change the current income taxation

The State Bar supports adoption of this Senate floor amendment to provide for the trust exemption.

Substitute Amendment

Agricultural Lien Amendment

- p. 37, lines 21-25
- p. 38, lines 1-2
- p. 45, lines 1-25
- p. 46, lines 1-3
- p. 94, lines 1-24
- p. 95, lines 1-11

Bankers Association Amendment

- p. 44, line 19 (NO CHANGE TO DUAL STATUS PROVISION)
- p. 148, lines 4-5 (Termination Fee Issue)
- p. 178, lines 1 (\$500 Liability Provision Deleted – Would Have Been Old (5) Under SB 9)
- p. 178, lines 21-22 (\$500 Liability Provision Deleted, Would Have Been Old (5) Under SB 9)

Technical Amendment (4 Items)

- p. 50, lines 13-14 (Workers Comp Exemption)
- p. 138, lines 21-23 (Social Security Number)
- p. 140 (SS# - Statutory Form)
- p. 141 (SS# - Statutory Form)
- p. 143 (SS# - Statutory Form)
- p. 182, line 24 (Date Change)
- p. 183, lines 1 (insert "the"), 7, 13, 15, 23, 25 (Date Change)
- p. 184, lines 6, 16 (Date Change)
- p. 185, lines 5, 16, 20, 25 (Date Change)
- p. 186, line 2 (Date Change)
- p. 187, line 14 (Date Change)
- p. 190, lines 4, 11 (Date Change)
- p. 2, lines 13-14 (DFI Appropriation Language)
- p. 201, lines 16-22 (DFI Appropriation Language)
- p. 202, line 1 (DFI Appropriation Language)

