



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa0260/1
PJD:kmg:rs

SENATE AMENDMENT ,
TO 2001 SENATE BILL 9

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 41, line 4: after that line insert:

3 “(pu) “Production–money crops” means crops that secure a production–money
4 obligation incurred with respect to the production of those crops.

5 (pv) “Production–money obligation” means an obligation of an obligor incurred
6 for new value given to enable the debtor to produce crops if the value is in fact used
7 for the production of the crops.

8 (pw) “Production of crops” includes tilling and otherwise preparing land for
9 growing, planting, cultivating, fertilizing, irrigating, harvesting, and gathering
10 crops, and protecting them from damage or disease.”.

11 **2.** Page 48, line 2: after that line insert:

12 “409.1035 Production–money crops; production–money obligation;
13 production–money security interest; burden of establishing. (1) A security

1 interest in crops is a production–money security interest to the extent that the crops
2 are production–money crops.

3 (2) If the extent to which a security interest is a production–money security
4 interest depends on the application of a payment to a particular obligation, the
5 payment must be applied:

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

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

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

13 1. To obligations that are not secured; and

14 2. If more than one obligation is secured, to obligations secured by
15 production–money security interests in the order in which those obligations were
16 incurred.

17 (3) A production–money security interest does not lose its status as such, even
18 if:

19 (a) The production–money crops also secure an obligation that is not a
20 production–money obligation;

21 (b) Collateral that is not production–money crops also secures the
22 production–money obligation; or

23 (c) The production–money obligation has been renewed, refinanced, or
24 restructured.

1 (4) A secured party claiming a production–money security interest has the
2 burden of establishing the extent to which the security interest is a
3 production–money security interest.”.

4 **3.** Page 95, line 21: after that line insert:

5 **“409.3245 Priority of production–money security interests and**
6 **agricultural liens.** (1) Except as otherwise provided in subs. (3), (4), and (5), if the
7 requirements of sub. (2) are satisfied, a perfected production–money security
8 interest in production–money crops has priority over a conflicting security interest
9 in the same crops and, except as otherwise provided in s. 409.327, also has priority
10 in their identifiable proceeds.

11 (2) A production–money security interest has priority under sub. (1) if:

12 (a) The production–money security interest is perfected by filing when the
13 production–money secured party first gives new value to enable the debtor to
14 produce the crops;

15 (b) The production–money secured party sends an authenticated notification
16 to the holder of the conflicting security interest not less than 10 or more than 30 days
17 before the production–money secured party first gives new value to enable the debtor
18 to produce the crops if the holder had filed a financing statement covering the crops
19 before the date of the filing made by the production–money secured party; and

20 (c) The notification states that the production–money secured party has or
21 expects to acquire a production–money security interest in the debtor’s crops and
22 provides a description of the crops.

1 (3) Except as otherwise provided in sub. (4) or (5), if more than one security
2 interest qualifies for priority in the same collateral under sub. (1), the security
3 interests rank according to priority in time of filing under s. 409.322 (1).

4 (4) To the extent that a person holding a perfected security interest in
5 production–money crops that are the subject of a production–money security interest
6 gives new value to enable the debtor to produce the production–money crops and the
7 value is in fact used for the production of the production–money crops, the security
8 interests rank according to priority in time of filing under s. 409.322 (1).

9 (5) To the extent that a person holds both an agricultural lien and a
10 production–money security interest in the same collateral securing the same
11 obligations, the rules of priority applicable to agricultural liens govern priority.”

12

(END)

State of Wisconsin



GARY R. GEORGE
SENATOR

MEMORANDUM

CONFIDENTIAL

TO: Peter J. Dykman, General Counsel
Legislative Reference Bureau Drafting

FROM: Dan Rossmiller *DR*

DATE: February 2, 2001

RE: Drafting Request

Senator George would like to have an amendment drafted to 2001 Senate Bill 9, relating to revising UCC Article 9--Secured Transactions that would incorporate the changes identified in the attached sheet. This bill is currently in the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform, chaired by Senator George.

Thank you for your assistance.

Please feel free to contact me (6-2500) if you have any questions.

Proposed Amendments to SB 9

1. Page 46, delete lines 17 and 18 and substitute:
“(5) APPLICATION OF PAYMENT. If the extent to which a”.
2. Page 47, delete lines 7 and 8 and substitute:
“(6) NO LOSS OF STATUS OF PURCHASE-MONEY SECURITY INTEREST. A purchase-money security interest does not lose its status as such, even”.
3. Page 47, delete lines 17 and 18 and substitute:
“(7) BURDEN OF PROOF. A secured party claiming a”.
4. Page 47, delete lines 21 to 24.
5. Page 48, delete lines 1 and 2.
6. Page 131, after line 15, insert:
“(5) NO FEE. There is no fee for the filing of a termination statement.”.
7. Page 179, line 1, delete “, (4), and (6)” and substitute “and (4)”.
8. Page 179, delete lines 21 to 25.
9. Page 180, delete lines 1 to 14.

(END)

3 Areas of Concern

- 1) So-called "dual status" rule
used for commercial transactions
but not for consumer transactions
in the draft prepared by NCCUSL

consumer groups opposed provisions
when it was

certainty is in everyone's interest

- 2) Filing of termination §1

present law - non-uniform

no-fee for filing termination

should be no fee - promotes
filing of termination

- 3) Automatic Awards

2 provisions in remedies
in addition

\$500 awards

extra vigorous

Proposed Amendments to SB 9

1. Page 46, delete lines 17 and 18 and substitute:
“(5) APPLICATION OF PAYMENT. If the extent to which a”.
2. Page 47, delete lines 7 and 8 and substitute:
“(6) NO LOSS OF STATUS OF PURCHASE-MONEY SECURITY INTEREST. A purchase-money security interest does not lose its status as such, even”.
3. Page 47, delete lines 17 and 18 and substitute:
“(7) BURDEN OF PROOF. A secured party claiming a”.
4. Page 47, delete lines 21 to 24.
5. Page 48, delete lines 1 and 2.
6. Page 131, after line 15, insert:
“(5) NO FEE. There is no fee for the filing of a termination statement.”.
7. Page 179, line 1, delete “, (4), and (6)” and substitute “and (4)”.
8. Page 179, delete lines 21 to 25.
9. Page 180, delete lines 1 to 14.

(END)

State of Wisconsin



GARY R. GEORGE
SENATOR

MEMORANDUM

CONFIDENTIAL

TO: Peter Dykman, General Counsel
Legislative Reference Bureau

FROM: Dan Rossmiller *DR*

DATE: February 16, 2001

RE: Drafting Request

Senator George has been asked to have the attached proposal drafted as an amendment to 2001 Senate Bill 9. I sent you an e-mail regarding this request.

Thank you for your assistance.

Please feel free to contact me (6-2500) if you have any questions.

APPENDIX II

MODEL PROVISIONS FOR PRODUCTION-MONEY PRIORITY

Legislative Note: States that enact these model provisions should add the following definitions to Section 9-102(a) following the definition of "proceeds" and preceding the definition of "promissory note", renumbering paragraphs in 9-102(a) accordingly:

() "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

() "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

() "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting, and gathering crops, and protecting them from damage or disease.

[MODEL SECTION [9-103A]. "PRODUCTION-MONEY CROPS"; "PRODUCTION-MONEY OBLIGATION"; PRODUCTION-MONEY SECURITY INTEREST; BURDEN OF ESTABLISHING.

(a) A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

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

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

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) A production-money security interest does not lose its status as such, even if:

(1) the production-money crops also secure an obligation that is not a production-money obligation;

(2) collateral that is not production-money crops also secures the production-money obligation; or

(3) the production-money obligation has been renewed, refinanced, or restructured.

(d) A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

Legislative Note: This section is optional. States that enact this section should place it between Sections 9-103 and 9-104 and number it accordingly, e.g., as Section 9-103A or 9-103.1.

Official Comment

1. Source. New.

2. **Production-Money Priority; "Production-Money Security Interest."** This section is patterned closely on Section 9-103, which defines "purchase-money security interest." Subsection (b) makes clear that a security interest can obtain production-money status only to the extent that it secures value that actually can be traced to the direct production of crops. To the extent that a security interest secures indirect costs of production, such as general living expenses, the security interest is not entitled to production-money treatment.

[MODEL SECTION [9-324A]. PRIORITY OF PRODUCTION-MONEY SECURITY INTERESTS AND AGRICULTURAL LIENS.

(a) Except as otherwise provided in subsections (c), (d), and (e), if the requirements of subsection (b) are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security

interest in the same crops and, except as otherwise provided in Section 9-327, also has priority in their identifiable proceeds.

(b) A production-money security interest has priority under subsection (a) if:

(1) the production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) the production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than 10 or more than 30 days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) the notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e), if more than one security interest qualifies for priority in the same collateral under subsection (a), the security interests rank according to priority in time of filing under Section 9-322(a).

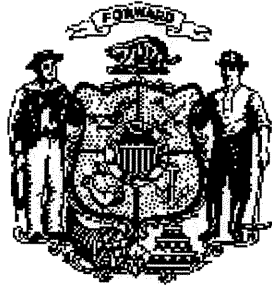
(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under Section 9-322(a).

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.]

Legislative Note: This section is optional. States that enact this section should place it between Sections 9-324 and 9-325 and number it accordingly, e.g., as Section 9-324A or 9-324.1.

Official Comment

1. **Source.** New; replaces former Section 9-312(2).
2. **Priority of Production-Money Security Interests and Conflicting Security Interests.** This section replaces the limited priority in crops afforded by former Section 9-312(2). That priority generally was been thought to be of little value for its intended beneficiaries. This section attempts to balance the interests of the production-money secured party with those of a secured party who has previously filed a financing statement covering the crops that are to be produced. For example, to qualify for priority under this section, the production-money secured party must notify the earlier-filed secured party prior to extending the production-money credit. The notification affords the earlier secured party the opportunity to prevent subordination by extending the credit itself. Subsection (d) makes this explicit. If the holder of a security interest in production-money crops which conflicts with a production-money security interest gives new value for the production of the crops, the security interests rank according to priority in time of filing under Section 9-322(a).
3. **Multiple Production-Money Security Interests.** In the case of multiple production-money security interests that qualify for priority under subsection (a), the first to file has priority. See subsection (c). Note that only a security interest perfected by filing is entitled to production-money priority. See subsection (b)(1). Consequently, subsection (c) does not adopt the first-to-file-or-perfect formulation.
4. **Holder of Agricultural Lien and Production-Money Security Interest.** Subsection (e) deals with a creditor who holds both an agricultural lien and an Article 9 production-money security interest in the same collateral. In these cases, the priority rules applicable to agricultural liens govern. The creditor can avoid this result by waiving its agricultural lien.



*Senator Gary R. George
State of Wisconsin
Sixth Senate District*

118 South, State Capitol Building
P. O. Box 7882
Madison, WI 53707-7882
(608) 266-2500

4011 W. Capitol Drive
Milwaukee, WI 53216
(414) 445-9436
(800) 362-9472

Facsimile Cover Sheet

Please deliver to the individual named below.

To: Peter Dykman, General Counsel
Legislative Reference Bureau

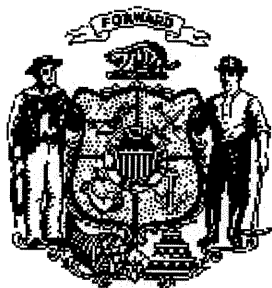
Phone: (608) 266-7098

Fax: (608) 264-8522

From: Dan Rossmiller, Chief of Staff

Number of pages: 6, including cover sheet

Message: (Per my e-mail.) Here is the language provided to our office re:
amendment to SB 9 (NUCCSL legislation, UCC, Art. 9 Revisions).
Thanks for your help. Please call me if you have any questions. (6-
2500)



Senator Gary R. George
State of Wisconsin
Sixth Senate District

118 South, State Capitol Building
P. O. Box 7882
Madison, WI 53707-7882
(608) 266-2500

4011 W. Capitol Drive
Milwaukee, WI 53216
(414) 445-9436
(877) 474-2000

Facsimile Cover Sheet

To: MICHAEL VAUGHAN, ESQ.
MURPHY & DESMOND, S.C.

From: Office of State Senator Gary R. George

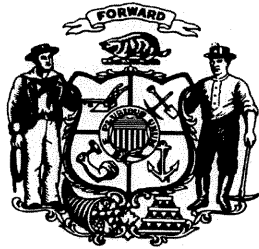
Recipient's Fax Number: (608) 257-2508

Number of pages: 3, including cover sheet.

Draft of amendment relating to treatment
of Social Security numbers on forms.

If you have difficulty receiving this fax transmission please call (608) 266-2500.

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs

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

RE: Drafts for Tomorrow's Hearing and Executive Session

DATE: February 19, 2001

Attached please find a copy of an amendment to Senate Bill 9, which is on the hearing agenda for tomorrow's hearing (2-20-2001). This amendment (LRB #a0156/1) does three things: 1) it makes it clear what the law is with regard to the status of a creditor with a purchase money security interest if there is a subsequent refinancing of the loan or if the loan documents contain a cross-collateralization clause; 2) it eliminates the automatic award of \$500 for specified failures to comply with certain provisions of UCC Article 9; and 3) it eliminates the fee for filing a termination statement.

Enclosed also please find copies of background information (resumes, Statement of Economic Interest, etc.) for each of the appointees on tomorrow's hearing agenda.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa0156/1
PJD:kmg:km

SENATE AMENDMENT ,
TO 2001 SENATE BILL 9

1 At the locations indicated, amend the bill as follows:

2 1. Page 46, line 17: delete lines 17 and 18 and substitute:

3 “(5) APPLICATION OF PAYMENT. If the extent to which a”.

4 2. Page 47, line 7: delete lines 7 and 8 and substitute:

5 “(6) NO LOSS OF STATUS OF PURCHASE-MONEY SECURITY INTEREST. A
6 purchase-money security interest does not lose its status as such, even”.

7 3. Page 47, line 17: delete lines 17 and 18 and substitute:

8 “(7) BURDEN OF PROOF. A secured party claiming a”.

9 4. Page 47, line 21: delete lines 21 to 24.

10 5. Page 48, line 1: delete lines 1 and 2.

11 6. Page 149, line 3: after that line insert:

12 “(1m) NO FEE FOR FILING TERMINATION STATEMENT. There is no fee for the filing
13 of a termination statement.”.

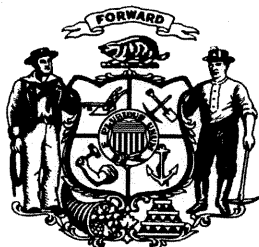
1 **7.** Page 179, line 1: delete “, (4), and (6)” and substitute “and (4)”.

2 **8.** Page 179, line 21: delete lines 21 to 25.

3 **9.** Page 180, line 1: delete lines 1 to 14.

4 **(END)**

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: Drafts for Tomorrow's Hearing and Possible Executive Session

DATE: March 5, 2001

Attached please find a copies of 2 amendments to Senate Bill 9, which is on the agenda for a possible executive session following tomorrow's hearing (3-06-2001). The first amendment (LRB #a0262/1) is a technical amendment to correct some incorrect date references in the draft. The second amendment (LRB #a0278/1) deals with Social Security numbers on forms and reflects an agreement worked out during meetings between the Department of Financial Institutions, the Registers of Deeds Association and the Business Law Section of the State Bar of Wisconsin.

In addition, please find a list of the concerns of the Registers of deeds Association and a letter from the Department of Financial Institutions describing how those concerns were addressed.

Attached also, please find a copy of a substitute amendment to Senate Bill 28 (LRB s0054/1). Senate Bill 28 relates to relinquishing custody of newborn babies and is being referred to by some as the "abandoned babies" bill.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa0262/1
PJD:jld:pg

SENATE AMENDMENT ,
TO 2001 SENATE BILL 9

1 At the locations indicated, amend the bill as follows:

2 1. Page 184, line 20: delete "1999" and substitute "2001".

3 2. Page 185, line 2: delete "effective" and substitute "the effective".

4 3. Page 185, line 3: on lines 3, 9, 11, 19, and 21, delete "1999" and substitute
5 "2001".

6 4. Page 186, line 2: on lines 2 and 12, delete "1999" and substitute "2001".

7 5. Page 187, line 2: on lines 2, 13, 16, 22, and 24, delete "1999" and substitute
8 "2001".

9 6. Page 189, line 12: delete "1999" and substitute "2001".

10 7. Page 192, line 1: on lines 1 and 8, delete "1999" and substitute "2001".

11 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa0278/1
PJD:kmg:kjf

**SENATE AMENDMENT ,
TO 2001 SENATE BILL 9**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 139, line 21: after "409.516 (2)." insert "The presence or absence of a
3 social security number on a form of record providing for the insertion of a social
4 security number as such shall not affect the decision of the filing office to accept or
5 refuse the record for filing."

6 **2.** Page 141, line 1d of the form: after "EIN" insert "an asterisk".

7 **3.** Page 141, line 2d of the form: after "EIN" insert "an asterisk".

8 **4.** Page 141, line 8 of the form: after the bold line following that line, insert:

9 "**An individual's social security number is not required to be placed on the form in
10 Wisconsin. (See instructions.)"

11 **5.** Page 142, line 11d of the form: after "EIN" insert "an asterisk".

12 **6.** Page 142, line 18 of the form: after the bold line following that line, insert:

Prepared by
Marvel A. Lemke, UCC Chair
Wisconsin Register of Deeds Association

Concerns with reference to Senate Bill 9:

- **UCC Prescribed Form**

Includes Social Security Number

- **Liability of Recording Office**

There are three areas of concern to registers about liability for their actions with respect to UCC filings.

- (1) Failure to index a debtor name accurately.
- (2) Wrongful rejection of a filing for some other reason than those set forth in 9-516(b).
- (3) Failure to reject a filing for one of the reasons than those set forth in 9-516(b).

A filing that contains one of the critical errors but not rejected will remain on the record of the office until it lapses. If it is determined that the filing was not perfected because of the error, a liability issue may arise.

Those recording offices that conduct searches for the public may also have a liability issue if the results of the search are for any reason not correct.

- **Refusal to accept record; record effective as filed record.**

409.516(4) 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 one set forth in sub (2), is effective as a filed record....

409.520(2) Communication concerning refusal. If a filing office refuses to accept a record for filing, the filing office 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.

Question: Is it necessary for the recorder to assign a number, date and time (thereby requiring a receipt to be generated and enable bookkeeping systems to account for a document to be filed but being returned to customer).

- **Too much money**

If a recorder rejects a UCC filing because it is submitted with too much money, a hidden lien is created – yet a recorder may be restricted by law from accepting overpayments.

- **“Exact matches only” searches**

According to an article in the NACRC (National Association of County Recorders), state central filing offices are expected to develop a new search strategy that will require the entry of the full name of the debtor, for which only the exact matching entries in the index will be returned.

- **Legal Descriptions required on subsequent filings**

Current legislation requires the legal description to be on the face of the original instrument. Many recorders currently require legal descriptions on subsequent filings (amendments, continuations, terminations) so a complete history of filings can be found in the tract index.

- **UCC-3 (Real Property) Filings**

Will UCC-3 real property filings be required to be put in both local filing office tract index and state central filing office system.

- **Public Availability of Records**

409.523(6) Public Availability of Records – At least weekly, the 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 department of financial institutions. Question: Will local filing real property filing offices that are governed under this chapter, be required to make available, real property records “on a nonexclusive basis, in bulk, copies of all records filed” in their offices.



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, Governor

John F. Kundert, Secretary

TO: State Senator Gary George

FROM: Wisconsin Department of Financial Institutions
Wisconsin Register of Deeds Association
State Bar of Wisconsin

SUBJECT: Concerns of Registers of Deeds regarding Revised UCC Article 9

DATE: February 28, 2001

At your request, representatives of the Wisconsin Department of Financial Institutions, the Wisconsin Registers of Deeds Association and the State Bar of Wisconsin have met extensively since the Senate Judiciary Committee had its hearing on SB 9 last week. We are pleased that all of the issues of concern raised by the Wisconsin Register of Deeds Association during their testimony and afterwards have been addressed.

1. UCC forms include social security numbers.

As you know, the State Bar of Wisconsin has been working with your office in the crafting of an amendment that will satisfactorily address concerns related to the fact that there is a block for the social security number on the statutory, national UCC filing form. We have all agreed to an amendment that will add an asterisk in the item specified for the social security number and a footnote at the bottom of the page notifying the submitter that the social security number is not required in Wisconsin. In addition, the Department of Financial Institutions will specify clearly in the instructions with regard to use of the UCC form that the social security number is optional. The amendment also includes statutory language which reads as follows: "The presence or absence of a social security number on a form of record providing for the insertion of a social security number as such shall not affect the decision of the filing office to accept or refuse the record for filing."

2. Liability of recording office.

Existing legal protections for recording offices from liability are carried forward in the revised UCC Article 9.

3. Refusal to accept record effective as filed record.

In the course of our discussions, we were able to clarify that all filings that are rejected will have an attached rejection notice stating the date and time it was first submitted for filing. If a filing is rejected for a reason covered under s. 409.516 (2), Wis. Stats., and the filing is resubmitted, the resubmitted filing is

the document put on record. If a filing is wrongfully rejected and the submitter states the filing was wrongfully submitted, the copy of the scanned document, rejection notice and a notice from the filing office stating it was wrongfully rejected will be filed and given a filing number, date and time.

4. Acceptance of over payment.

The Department of Financial Institutions recognizes the concern of the Wisconsin Register of Deeds Association with regard the requirement that filings with overpayments be accepted and how overpayments will be refunded. It was agreed that this issue would be resolved administratively and clarified in a memorandum of understanding that will be entered into between the Department of Financial Institutions and those Registers of Deeds Offices which choose to become agents of the State of Wisconsin as it relates to UCC filings.

5. Searches and exact matches only.

As a result of our discussions, there was a general understanding as to the value of having a standard search logic which will be the same in all filing offices. For clarity, the standard search logic will be written and published in the Administrative Rules.

6. Legal descriptions required on subsequent filings.

It was clarified that this concern is adequately covered under s. 409.516 (2) 4, which specifies that fixture filings may be rejected if there is not a sufficient legal description.

7. UCC-3's (real property) filings.

It was clarified that there is only one form of UCC filing under the revised Article 9 and that UCC-3 filings, as we now know them, do not exist. When a UCC form is submitted to the county and it has the Real Estate filing box checked, it will be filed in that county's real estate records. If that county is an agent for DFI and they receive a UCC form and real estate box is not checked, they will file that as a central UCC filing, scan the document and enter the information on the central UCC Index.

8. Public availability of records.

As a result of our discussions, there was a general understanding that the UCC Index and all scanned documents will be available for public searching, checking and making copies.

In addition to discussions on the above concerns, conference calls with members of the UCC Committee as well as the Department's UCC Advisory Council provided an opportunity for a thorough discussion of other issues as well. The Department of Financial Institutions and the State Bar of Wisconsin have both pledged to continue to work closely with Wisconsin's Registers of Deeds as we move into the implementation of a revised UCC Article 9.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0054/1
GMM:jld:pg

SENATE SUBSTITUTE AMENDMENT,
TO 2001 SENATE BILL 28

1 **AN ACT** to renumber and amend 48.42 (2m); to amend 48.355 (2d) (c), 48.38
2 (4) (a), 48.38 (5) (c) 7. and 48.977 (2) (f); and to create 48.13 (2m), 48.195, 48.355
3 (2d) (b) 5., 48.415 (1m) and 48.42 (2m) (b) of the statutes; relating to:
4 relinquishing custody of a newborn child and granting rule-making authority.

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

5 **SECTION 1.** 48.13 (2m) of the statutes is created to read:

6 48.13 (2m) Whose parent has relinquished custody of the child under s. 48.195
7 (1);

8 **SECTION 2.** 48.195 of the statutes is created to read:

9 **48.195 Taking a newborn child into custody.** (1) **TAKING CHILD INTO**
10 **CUSTODY.** In addition to being taken into custody under s. 48.19, a child whom a law
11 enforcement officer, emergency medical technician, or hospital staff member
12 reasonably believes to be 72 hours old or younger may be taken into custody under

1 circumstances in which a parent of the child relinquishes custody of the child to the
2 law enforcement officer, emergency medical technician, or hospital staff member and
3 does not express an intent to return for the child. If a parent who wishes to relinquish
4 custody of his or her child under this subsection is unable to travel to a sheriff's office,
5 police station, fire station, hospital, or other place where a law enforcement officer,
6 emergency medical technician, or hospital staff member is located, the parent may
7 dial the telephone number "911" or, in an area in which the telephone number "911"
8 is not available, the number for an emergency medical service provider, and the
9 person receiving the call shall dispatch a law enforcement officer or emergency
10 medical technician to meet the parent and take the child into custody. A law
11 enforcement officer, emergency medical technician, or hospital staff member who
12 takes a child into custody under this subsection shall take any action necessary to
13 protect the health and safety of the child, shall, within 24 hours after taking the child
14 into custody, deliver the child to the intake worker under s. 48.20, and shall, within
15 5 days after taking the child into custody, file a birth certificate for the child under
16 s. 69.14 (3).

17 (2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph,
18 a parent who relinquishes custody of a child under sub. (1) and any person who
19 assists the parent in that relinquishment have the right to remain anonymous. The
20 exercise of that right shall not affect the manner in which a law enforcement officer,
21 emergency medical technician, or hospital staff member performs his or her duties
22 under this section. No person may induce or coerce or attempt to induce or coerce a
23 parent or person assisting a parent who wishes to remain anonymous into revealing
24 his or her identity, unless the person has reasonable cause to suspect that the child
25 has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the

1 person assisting the parent is coercing the parent into relinquishing custody of the
2 child.

3 (b) A parent who relinquishes custody of a child under sub. (1) and any person
4 who assists the parent in that relinquishment may leave the presence of the law
5 enforcement officer, emergency medical technician, or hospital staff member who
6 took custody of the child at any time, and no person may follow or pursue the parent
7 or person assisting the parent, unless the person has reasonable cause to suspect
8 that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d),
9 or that the person assisting the parent has coerced the parent into relinquishing
10 custody of the child.

11 (c) No officer, employee, or agent of this state or of a political subdivision of this
12 state may attempt to locate or ascertain the identity of a parent who relinquishes
13 custody of a child under sub. (1) or any person who assists the parent in that
14 relinquishment, unless the officer, employee, or agent has reasonable cause to
15 suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981
16 (1) (d), or that the person assisting the parent has coerced the parent into
17 relinquishing custody of the child.

18 (d) Any person who obtains any information relating to the relinquishment of
19 a child under sub. (1) shall keep that information confidential and may not disclose
20 that information, except to the following persons:

21 1. The birth parent of the child, if the birth parent has waived his or her right
22 under par. (a) to remain anonymous, or the adoptive parent of the child, if the child
23 is later adopted.

24 2. Appropriate staff of the department, county department, or licensed child
25 welfare agency that is providing services to the child.

1 3. A person authorized to provide or providing intake or dispositional services
2 under s. 48.067, 48.069, or 48.10.

3 4. An attending physician for purposes of diagnosis and treatment of the child.

4 5. The child's foster parent, treatment foster parent, or other person having
5 physical custody of the child.

6 6. A court conducting proceedings under s. 48.21, proceedings relating to a
7 petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI
8 or VIII relating to the child, the county corporation counsel, district attorney, or
9 agency legal counsel representing the interests of the public in those proceedings, or
10 the guardian ad litem representing the interests of the child in those proceedings.

11 7. A tribal court, or other adjudicative body authorized by an American Indian
12 tribe or band to perform child welfare functions, that is exercising jurisdiction over
13 proceedings relating to the child, an attorney representing the interests of the
14 American Indian tribe or band in those proceedings, or an attorney representing the
15 interests of the child in those proceedings.

16 **(3) INFORMATION FOR PARENT.** (a) Subject to par. (b), a law enforcement officer,
17 emergency medical technician, or hospital staff member who takes a child into
18 custody under sub. (1) shall make available to the parent who relinquishes custody
19 of the child the maternal and child health toll-free telephone number maintained by
20 the department under 42 USC 705 (a) (5) (E).

21 (b) The decision whether to accept the information made available under par.
22 (a) is entirely voluntary on the part of the parent. No person may induce or coerce
23 or attempt to induce or coerce any parent into accepting that information.

24 **(4) IMMUNITY FROM LIABILITY.** (a) Any parent who relinquishes custody of his
25 or her child under sub. (1) and any person who assists the parent in that

1 relinquishment are immune from any civil or criminal liability for any good faith act
2 or omission in connection with that relinquishment. The immunity granted under
3 this paragraph includes immunity for exercising the right to remain anonymous
4 under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not
5 to accept any information under sub. (3) (b) and immunity from prosecution under
6 s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

7 (b) Any law enforcement officer, emergency medical technician, or hospital
8 staff member who takes a child into custody under sub. (1) is immune from any civil
9 liability to the child's parents, or any criminal liability for any good faith act or
10 omission occurring solely in connection with the act of receiving custody of the child
11 from the child's parents, but is not immune from any civil or criminal liability for any
12 act or omission occurring in subsequently providing care for the child.

13 (c) In any civil or criminal proceeding, the good faith of a person specified in par.
14 (a) or (b) is presumed. This presumption may be overcome only by clear and
15 convincing evidence.

16 (5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub.
17 (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

18 (6) RULES. The department shall promulgate rules to implement this section.
19 In promulgating those rules, the department shall consider the different
20 circumstances under which a parent might relinquish custody of a child under sub.
21 (1). The rules shall include rules prescribing a means by which a parent who
22 relinquishes custody of his or her child under sub. (1) may, until the granting of an
23 order terminating parental rights, choose to be identified as the child's parent.

24 SECTION 3. 48.355 (2d) (b) 5. of the statutes is created to read:

1 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
2 relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old
3 or younger.

4 **SECTION 4.** 48.355 (2d) (c) of the statutes is amended to read:

5 48.355 (2d) (c) If the court makes a finding specified in par. (b) 1., 2., 3. ~~or 4.~~,
6 or 5., the court shall hold a hearing within 30 days after the date of that finding to
7 determine the permanency plan for the child. If a hearing is held under this
8 paragraph, the agency responsible for preparing the permanency plan shall file the
9 permanency plan with the court not less than 5 days before the date of the hearing.

10 **SECTION 5.** 48.38 (4) (a) of the statutes is amended to read:

11 48.38 (4) (a) The services offered and any service provided in an effort to
12 prevent holding or placing the child outside of his or her home, while assuring that
13 the health and safety of the child are the paramount concerns, and to make it possible
14 for the child to return safely home, except that the permanency plan need not include
15 a description of those services offered or provided with respect to a parent of the child
16 if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or 4.~~, or 5. apply to
17 that parent.

18 **SECTION 6.** 48.38 (5) (c) 7. of the statutes is amended to read:

19 48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make
20 it possible for the child to return safely to his or her home, except that the court or
21 panel need not determine whether those reasonable efforts were made with respect
22 to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1.,
23 2., 3. ~~or 4.~~, or 5. apply to that parent.

24 **SECTION 7.** 48.415 (1m) of the statutes is created to read:

1 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
2 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
3 parent has relinquished custody of the child under s. 48.195 (1) when the child was
4 72 hours old or younger.

5 SECTION 8. 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and
6 amended to read:

7 48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this
8 subsection paragraph, notice is not required to be given to a person who may be the
9 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
10 (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that
11 a sexual assault as specified in this subsection paragraph has occurred or if the
12 person who may be the father of the child has been convicted of sexual assault as
13 specified in this subsection paragraph for conduct which may have led to the child's
14 conception. A person who under this subsection paragraph is not given notice does
15 not have standing to appear and contest a petition for the termination of his parental
16 rights. This subsection paragraph does not apply to a person who may be the father
17 of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2)
18 if that person was under 18 years of age at the time of the sexual assault.

19 SECTION 9. 48.42 (2m) (b) of the statutes is created to read:

20 48.42 (2m) (b) Parent who relinquished child. Except as provided in this
21 paragraph, notice is not required to be given to a parent who has relinquished
22 custody of his or her child under s. 48.195 (1) and who has exercised his or her right
23 to remain anonymous under s. 48.195 (2) (a). A person who under this paragraph is
24 not given notice does not have standing to appear and contest a petition for the
25 termination of his or her parental rights. This paragraph does not apply to a parent

1 who, prior to the granting of an order terminating parental rights, chooses to be
2 identified as the child's parent.

3 **SECTION 10.** 48.977 (2) (f) of the statutes is amended to read:

4 48.977 (2) (f) That the agency primarily responsible for providing services to
5 the child under a court order has made reasonable efforts to make it possible for the
6 child to return to his or her home, while assuring that the child's health and safety
7 are the paramount concerns, but that reunification of the child with the child's
8 parent or parents is unlikely or contrary to the best interests of the child and that
9 further reunification efforts are unlikely to be made or are contrary to the best
10 interests of the child, except that the court need not find that the agency has made
11 those reasonable efforts with respect to a parent of the child if any of the
12 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4. or 5. apply to that parent.

13 **SECTION 11. Initial applicability.**

14 (1) RELINQUISHMENT OF NEWBORN CHILD. This act first applies to a child whose
15 custody is relinquished, as described in section 48.195 (1) of the statutes, as created
16 by this act, on the effective date of this subsection.

17 (END)