

12  
SENATE HEARING SLIP  
(Please Print Plainly)

DATE: 2/20

BILL NO. SB 9

SUBJECT WCC

Arthale 9

Poppy Parthenfelder  
(NAME)

100 R. Campbell

(Street Address or Route Number)

MADISON 53703

(City and Zip Code)

Deere & Co

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

SENATE HEARING SLIP  
(Please Print Plainly)

DATE: Feb 20/01

BILL NO. SB 9

SUBJECT

KURT BAUER  
(NAME)

BUTWORE LAKE

(Street Address or Route Number)

MADISON WI 53718

(City and Zip Code)

WIS. BANKERS

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

SENATE HEARING SLIP  
(Please Print Plainly)

DATE: 2/20/01

BILL NO. SB 9

SUBJECT

Jenny Boese  
(NAME)

5302 Eastpark

(Street Address or Route Number)

MADISON

(City and Zip Code)

STATE BAR of WI

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20

BILL NO. SB-9

OR

SUBJECT \_\_\_\_\_

Daryl Lund  
(NAME)

2818 Big Sky Drive, Ste 104  
(Street Address or Route Number)

Madison 53719

(City and Zip Code)

Community Bankers of WI  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-20-2001

BILL NO. S.B. 9

OR

SUBJECT \_\_\_\_\_

Steve Radke  
(NAME)

720 E. Wisconsin Ave.  
(Street Address or Route Number)

Milwaukee, WI 53202

(City and Zip Code)

Noel Huestern Mutual  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-20-'01

BILL NO. SB9

OR

SUBJECT UCC-Att.9

Doug Johnson  
(NAME)

1 E. Main - #350  
(Street Address or Route Number)

Madison 53703

(City and Zip Code)

WI Merchants  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-20-01

BILL NO. Senate Bill 9  
OR

SUBJECT \_\_\_\_\_

(NAME) Annis Winters

(Street Address or Route Number) 2820 Welton Commons West

(City and Zip Code) Madison, WI 53718

(Representing) WI Agri-business Council  
WI Fertilizer & Chemical Assn.

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Feb

BILL NO. SB 9  
OR

SUBJECT \_\_\_\_\_

(NAME) R#1 Peter Dykman

(Street Address or Route Number) 6055 Plains

(City and Zip Code) 53508

(Representing) \_\_\_\_\_

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2-20-2001

BILL NO. SB 9  
OR

SUBJECT \_\_\_\_\_

(NAME) Jane Lick

(Street Address or Route Number) 2964 Hwy AB  
McFarland WI

(City and Zip Code) \_\_\_\_\_

(Representing) Wis Reg Deeds Assn

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20/51

BILL NO. SB 9

OR  
SUBJECT \_\_\_\_\_

MICHAEL R. VROGHAN  
(NAME)

P.O. BOX 2038  
(Street Address or Route Number)

MADISON WI 53701  
(City and Zip Code)

WISCONSIN BANKERS ASSOCIATION  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20/01

BILL NO. SR 9

OR  
SUBJECT \_\_\_\_\_

Dave Anderson / Susan Dietzel  
(NAME)

345 West Washington  
(Street Address or Route Number)

Madison  
(City and Zip Code)

Dept. of Financial Inst.  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2. 20-01

BILL NO. SB 9

OR  
SUBJECT \_\_\_\_\_

Marvel A. Lemke  
(NAME)

553 E. Arguheart  
(Street Address or Route Number)

Medford WI 54451  
(City and Zip Code)

WI Register of Deeds Assn  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20/01

BILL NO. SB9

SUBJECT \_\_\_\_\_

(NAME) David Cisar

(Street Address or Route Number) 735 N. Wabash Street

(City and Zip Code) Milwaukee WI 53202

(Representing) Business Law Section of State Bar

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20/01

BILL NO. SB9

SUBJECT \_\_\_\_\_

(NAME) John M. McCabe

(Street Address or Route Number) 211 E Ontario #1300

(City and Zip Code) Chicago IL 60611

(Representing) NCCU

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/20/01

BILL NO. S.B. 9

SUBJECT \_\_\_\_\_

(NAME) Emory Ireland

(Street Address or Route Number) 3014 W. Marietta

(City and Zip Code) Milwaukee, Wis. 53211

(Representing) State Bar

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

MAY 01 2001

# 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.**

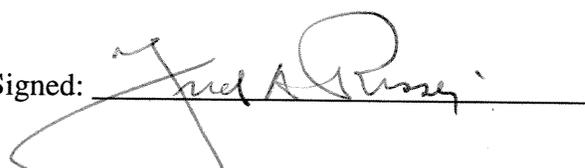
**Introduction and Adoption of Substitute Amendment (LRB s0082/1):**

- \_\_\_\_\_ 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: \_\_\_\_\_



May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 2001.



**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.**

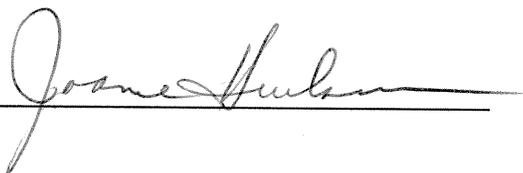
**Introduction and Adoption of Substitute Amendment (LRB s0082/1):**

- 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: \_\_\_\_\_



May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 2001.

**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: \_\_\_\_\_

*Robert W. Welch*

May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 2001.

**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: \_\_\_\_\_

*Gayle R. George*

May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 2001.

**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: \_\_\_\_\_ May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 2001.

**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: \_\_\_\_\_ May 2, 2001

Please return to Sen. George's Office by noon Wednesday, May 2, 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:

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:tl;ksm



**State of Wisconsin**  
*Department of Financial Institutions*

Scott McCallum, Governor

John F. Kundert, Secretary

**Senate Bill 9 - Revised UCC Article 9**

**Testimony of  
David G. Anderson, Executive Assistant  
Department of Financial Institutions**

Chairman George and committee members – Thank you for your willingness to schedule this important legislation for a hearing. My name is David Anderson and I am the Executive Assistant at the Department of Financial Institutions (DFI). Because our role at DFI is to manage the filing and retrieval of liens under Article 9 of the Uniform Commercial Code, we have a significant interest in SB 9. I am pleased to be able to testify today in strong support of this bill.

One of the primary functions of Article 9 is to provide the framework for public notice, through a centralized filing system, for those persons who have or wish to establish a lien on property. Through this public notice a potential lender may determine if there is a security interest that precedes theirs.

Currently, that “public notice” is provided by a network between the 72 offices of the County Registers of Deeds and the Department of Financial Institutions. The state established a statewide database in 1993, whereby all filing offices index all UCC filings by debtor and creditor information to one central index housed by the state. Once this central index was established, debtors and creditors were able to access lien-filing information from any of the 73 filing offices. The central index system was completely replaced in 2000, including a new web-based system, and new equipment for each of the 72 counties paid for mostly by the Department. Under this new system, persons using the statewide system can also access copies of the scanned documents and beginning in July of 2000, users have been able to conduct their own searches for lien information, directly through the web.

While Wisconsin is fortunate to already have in place a central index system (other states are not so far ahead), significant changes to this system will be required in order to implement the requirements of the revised Article 9. In general, SB 9 creates a centralized filing office for personal property liens, imposes significant new processing deadlines, facilitates electronic filings and searches, and sets new parameters for the storage and retrieval of information filed.

Both the fiscal note and the summary you have received provide more details on the modifications we will need to make. DFI projects that costs associated with retooling our databases and implementing full electronic filing capabilities will be offset by the filing fees we will set by rule. In addition, I would like to emphasize that we project we can recoup those costs within three to five years. We are confident that implementation can be achieved by the July 1<sup>st</sup> national deadline and have already taken steps to ensure our systems are ready for this new challenge.

I would be more than happy to respond to any questions you might have. I would also like to introduce Susan Dietzel, Budget Director at the Department of Financial Institutions, who can respond to any specific questions on our fiscal note. Thank you again for the opportunity to testify.

*Office of the Secretary*

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5<sup>th</sup> Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: [www.wdfl.org](http://www.wdfl.org)



**State of Wisconsin**  
*Department of Financial Institutions*

Scott McCallum, **Governor**

John F. Kundert, **Secretary**

**Revised UCC Article 9**  
**SB 9 and AB 111**

**Overview**

The Uniform Commercial Code Article 9 provides the statutory framework establishing priority of liens on property. One of the primary functions is to provide public notice, through a centralized filing office, for those persons who have or wish to establish a lien on property. Through this public notice a potential lender may determine if there is a security interest that precedes theirs.

Currently, the "public notice" is a network between the 72 offices of the County Registers of Deeds and the Department of Financial Institutions (DFI). Under current law, liens relating to real-estate and personal property are required to be filed in the county in which the property or debtor is located. State law provides that liens involving business property be filed with the state office (DFI). The Department receives and processes approximately half of all liens filed in the state. The counties handle the other 50 percent.

In 1993 the state established the network, whereby counties would submit basic debtor and creditor information to a central index housed by the state. The statewide system was completely replaced in 2000, including a new web-based system, and new equipment for each of the 72 counties paid for mostly by the Department. Beginning in July of 2000, users have been able to conduct their own searches for lien information, directly through the web.

**Revised Article 9**

Significant changes to the filing system are included in revised Article 9. In general the bill creates a centralized filing system for personal property liens, imposes significant processing deadlines, facilitates electronic filings and searches, and sets new parameters for the storage and retrieval of information filed.

Central filing office – While Wisconsin is fortunate to already have in place a central index system, Revised Article 9 requires that there be only one (state) filing office (DFI) for filing purposes. However, by request of the Department, the bill allows DFI to designate register of deeds offices as agents of the Department for filing purposes. The lien records associated with real property must continue to be filed in the counties under this bill. In addition, counties will be required to maintain existing personal property records until 2008.

---

*Office of the Secretary*

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5<sup>th</sup> Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: [www.wdfi.org](http://www.wdfi.org)

Electronic filing – The Revised Article 9 also facilitates the use of electronic communications and records by removing signature requirements. In addition, the bill sets up a framework for standardized electronic filing and record retrieval.

Office Standards – The bill also imposes significant deadlines for the processing of files and retrieval of information. The Department or its agents are required to process and return all filings or search requests within a five-day period for the first three years after enactment, then two days thereafter. The bill grants flexibility for these requirements in the event of equipment failures or other substantial disruptions of service.

Other changes – Under Revised Article 9 the Department must also modify its existing computer programs to accommodate changes to file retention requirements, number requirements, changes to data information fields, and changes to the process of rejecting documents. (For additional technical information see fiscal note.)

### **Summary**

While Revised Article 9 makes significant changes to the Department's systems, we recognize the necessity of ensuring Wisconsin is on track for the July 1, 2001 implementation deadline. For that reason, the Department requests speedy consideration and passage of this important legislation.

UNIFORM COMMERCIAL CODE  
REVISED ARTICLE 9, SECURED TRANSACTIONS (1999)

*- A Summary -*

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs—a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1999. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

**1. The Scope Issue.** The 1999 revision expands the “scope” of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

**2. Perfection.** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. “Control” is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor’s consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

**3. Choice of Law.** In interstate secured transactions, it is necessary to determine which state’s laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1999 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection,

and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

**4. The Filing System.** Improvements in the filing system in the 1999 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1999, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

**5. Consumer Transactions.** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1999 revisions to Article 9 than it was pre-1999. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him

or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1999 revisions to Article 9.

**6. Default and Enforcement.** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with “secondary” obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

*Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.*

## ALERT !!

**JULY 1, 2001**

### **REVISED UCC ARTICLE 9: THE IMPORTANT DATE**

Revised Article 9 of the Uniform Commercial Code improves secured financing between creditors and debtors by allowing additional kinds of property to serve as collateral, by simplifying the paperwork for these transactions, by simplifying public notice that helps avoid bankruptcy risk, and by providing fairer and more efficient enforcement when a secured debt is in default. These benefits require prompt and uniform enactment in every state, and the same effective date in every state. Revised Article 9 has a prospective uniform effective date of **July 1, 2001**, for all the states. *It is very important that each state adopt Revised Article 9 so that it will become effective in that state on July 1, 2001, for the following reasons:*

1. Most secured creditors must file a financing statement identifying collateral in a central office to fix a security interest's priority in time versus other security interests.
2. A major rule change in Revised Article 9 requires financing statements to be filed in the state where the debtor is located (generally its state of formation) rather than in the state in which the collateral is found. The new rule promotes greater certainty for secured creditors.
3. Any state in which Revised Article 9 is not effective on July 1, 2001, will confuse creditors. If collateral and debtors are in different states, some with the old Article 9 and some with Revised Article 9, a secured creditor will not know exactly where to file effective financing statements. The secured creditor will be forced to file in all states in which collateral may be located at any time, plus the state in which the debtor is located. *Creditors will be unsure which of these filings will, in fact, establish priority with respect to the collateral. This will increase the cost of transactions and credit for borrowers in states that have not adopted Revised Article 9 effective July 1, 2001.*
4. Revised Article 9 expands the types of collateral in which a security interest may be taken. Not only will a creditor not know with any certainty in which state to file a financing statement for new kinds of collateral, that creditor will not know if a security interest is effective at all if the collateral and debtor are in different states with different laws, even if that creditor files in both states. *Again, costs will be increased.*
5. Even when the debtor and the collateral are in a state that has adopted Revised Article 9, possible bankruptcy jurisdiction in a state that has not adopted Revised Article 9 makes even perfection of those security interests uncertain. A bankruptcy court in a state that has not adopted Revised Article 9 may have the ability to void the perfection that is valid in the state in which the interest is perfected under Revised Article 9. This uncertainty will also increase the cost of secured loans for all involved.

**FOR THESE REASONS, EVERY STATE MUST ADOPT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE BEFORE JULY 1, 2001, WITH THAT EFFECTIVE DATE.**

A Few Facts About  
REVISED UCC ARTICLE 9, SECURED TRANSACTIONS (1999)

**PURPOSE:** Updates UCC Article 9, last revised in 1972 and adopted in every state. Article 9 provides a statutory framework that governs secured transactions— transactions which involve the granting of credit secured by personal property.

**ORIGIN:** Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1999.

**ENDORSED BY:** American Bar Association

<b>STATE ADOPTIONS:</b>	Alaska	Montana
	Arizona	Nebraska
	California	Nevada
	Delaware	North Carolina
	District of Columbia	Oklahoma
	Hawaii	Rhode Island
	Illinois	South Dakota
	Indiana	Tennessee
	Iowa	Texas
	Kansas	Utah
	Kentucky	Vermont
	Maine	Virginia
	Maryland	Washington
	Michigan	West Virginia
Minnesota		

<b>2001 INTRODUCTIONS:</b>	Alabama	New Jersey
	Arkansas	New Mexico
	Colorado	New York
	Georgia	North Dakota
	Massachusetts	Oregon
	Mississippi	Pennsylvania
	Missouri	US Virgin Islands
	New Hampshire	Wisconsin
		Wyoming

For any further information regarding the Revision of UCC Article 9, Secured Transactions, please contact John McCabe or Katie Robinson at 312-915-0195.

*(Please note: this information can also be found on our Website at [www.nccusl.org](http://www.nccusl.org))*

(2/15/01)

## WHY STATES SHOULD ADOPT UNIFORM COMMERCIAL CODE ARTICLE 9 - SECURED TRANSACTIONS

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code—a manufacturer finances the acquisition of machinery and raw materials, a retailer finances inventory, a consumer finances furniture for a new house. The manufacturer, the retailer, and the consumer all depend upon Article 9 of the Uniform Commercial Code to make it possible for them to obtain the credit they need. Their creditors get assurance, in the form of the collateral that secures the granting of credit, that it will cushion the risk of default in the event the debtor does not pay the debt. Article 9 of the Uniform Commercial Code is absolutely necessary to economic function in the United States. It is the crankshaft for the American economic engine, and it is the envy of the rest of the world, which often struggles with the mechanics of credit granting and enforcement of creditor's rights.

Major revisions to Article 9 were completed in 1999. These revisions bring Article 9 into the 21st Century. There are many reasons that Revised Article 9 should be adopted in every state.

- ◇ **Technology.** Paper-based transactions are giving way to electronic transactions. Revised Article 9 makes way for this revolution.
- ◇ **Volume.** Article 9 was first proposed in 1951. Its last update was in 1972. Since 1972 the volume of commerce and the volume of credit has increased exponentially. Volume of secured transactions increases proportionately and directly with increase in economic activity in the United States. *The filing system revisions are particularly necessary to meet the problem of increased volume.*
- ◇ **New Collateral.** New kinds of property and transactions have been developed since Article 9 was last amended. The *scope* of Article 9 expands to keep up and the 1999 revisions meet the needs for collateral into the new millennium. Examples of specific new collateral are deposit accounts and health insurance receivables.
- ◇ **Certainty of Perfection.** Uncertainties about where to perfect a security interest under old Article 9 are overcome by the new basic rule in the 1999 revisions that makes the location of the debtor the place where the creditor will perfect the security interest.
- ◇ **New Liens.** Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral, if there is no public notice of their existence. Article 9 includes certain statutory, non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

- ◇ **Clarification of Rules.** Over time, provisions of Article 9 have been interpreted by courts, sometimes in conflicting ways. Some decisions deal with issues that were not expressly addressed in original Article 9. The result is ambiguity in the application of some rules. The revisions to Article 9 address and cure the accrued ambiguity problems.
- ◇ **Consumer Impact.** Revised Article 9 addresses consumer issues that were not addressed in original Article 9.
- ◇ **Commitment to Uniformity.** Amendments to Article 9 from state to state have created differences that impair interstate transactions. The revisions address specific kinds of secured transactions in oil and gas and agriculture in an effort to re-establish uniformity of law governing these kinds of transactions.



**STATE BAR  
of WISCONSIN®**

5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158

**MEMORANDUM**

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

From: State Bar of Wisconsin

Date: February 20, 2001

Re: **SUPPORT SENATE BILL 9 - REVISED ARTICLE 9**

---

The State Bar of Wisconsin **supports enactment of Revised Article 9 as contained in Senate Bill 9.** Revised Article 9 of the Uniform Commercial Code (UCC) provides the statutory framework across states that governs secured transactions: transactions which involve the granting of credit secured by personal property.

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, in 1999. It is also supported by the American Bar Association. It has already been enacted in 28 other states, including our neighbors in Illinois, Michigan and Minnesota, and is pending in at least 14 others. **It is important for all states to enact Revised Article 9 by the uniform effective date of July 1, 2001; otherwise, there is the potential for great confusion as to the choice of filing offices.** The State Bar of Wisconsin urges quick passage and enactment of this legislation to avoid this confusion.

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. 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.

Following are just a few of the reasons the State Bar of Wisconsin supports adoption of Senate Bill 9 (Revised Article 9):

- It is a nationally uniform law designed with a uniform effective date of July 1, 2001. Twenty-eight states have already passed Revised Article 9, including our neighbors of Illinois, Michigan and Minnesota. It is currently pending in at least 14 other states. **Wisconsin will be viewed as a**

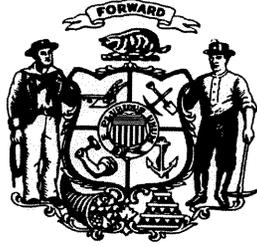
**commercial backwater (as well as a source of commercial confusion) if it does not pass the new law** and be consistent with the national uniform effective date of July 1, 2001.

- Revised Article 9 broadens the scope of Article 9; more items of collateral are within its reach. **Thus, Revised Article 9 should make it easier and less expensive to borrow, encouraging the economic attractiveness of our state.**
- Revised Article 9 changes the basis for determining in which state a creditor files its UCC financing statement (from a system based on the location of the collateral, or the borrower's principal place of business to a system based on the state of organization of a borrower). Therefore, maintenance of the uniformity of the effective date (July 1, 2001) is critical; otherwise it will be very confusing to determine where UCC financing statements should be filed. **Failure to pass Revised Article 9 by July 1, 2001, could restrict credit availability, creating a disincentive to invest in Wisconsin businesses.**
- **Revised Article 9 will facilitate electronic filing and searching.**
- Revised Article 9 clears up many areas of uncertainty in existing Article 9.

**The State Bar of Wisconsin as well as its Business Law Section urge the Legislature to enact Senate Bill 9 (Revised Article 9) before its uniform effective date of July 1, 2001.**

*If you have any questions please contact Jenny Boese at the State Bar at 608-250-6045 or email at [jboese@wisbar.org](mailto:jboese@wisbar.org).*

# 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.

# Vote Record

## Senate - Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

Date: 2/20/2001  
 Moved by: \_\_\_\_\_  
 Seconded by: \_\_\_\_\_  
 Clearinghouse Rule: \_\_\_\_\_  
 Appointment: \_\_\_\_\_  
 Other: \_\_\_\_\_

AB: \_\_\_\_\_ SB: 9  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_  
 AR: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: LRBa0156/1  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Sen. Gary George, Chair  
 Sen. Fred Risser  
 Sen. Robert Wirch  
 Sen. Joanne Huelsman  
 Sen. Scott Fitzgerald

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed

# Vote Record

## Senate - Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

Date: 2/20/2001  
 Moved by: \_\_\_\_\_  
 Seconded by: \_\_\_\_\_  
 Clearinghouse Rule: \_\_\_\_\_  
 Appointment: \_\_\_\_\_  
 Other: \_\_\_\_\_

AB: \_\_\_\_\_ SB: 9  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_  
 AR: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: LRB a 0262/1  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- |                                       |  |
|---------------------------------------|--|
| <input type="checkbox"/> Passage      | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling                 |
| <input type="checkbox"/> Adoption     | <input type="checkbox"/> Concurrence             |
| <input type="checkbox"/> Rejection    | <input type="checkbox"/> Nonconcurrence          |
|                                       | <input type="checkbox"/> Confirmation            |

Committee Member

Sen. Gary George, Chair  
 Sen. Fred Risser  
 Sen. Robert Wirch  
 Sen. Joanne Huelsman  
 Sen. Scott Fitzgerald

Aye	No	Absent	Not Voting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed

# Vote Record

## Senate - Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

Date: 2/20/2001

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

AB: \_\_\_\_\_ SB: 9

Clearinghouse Rule: \_\_\_\_\_

AJR: \_\_\_\_\_ SJR: \_\_\_\_\_

Appointment: \_\_\_\_\_

AR: \_\_\_\_\_ SR: \_\_\_\_\_

Other: \_\_\_\_\_

A/S Amdt: LRB a 0260/1

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_

A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Sen. Gary George, Chair

Sen. Fred Risser

Sen. Robert Wirch

Sen. Joanne Huelsman

Sen. Scott Fitzgerald

Aye	No	Absent	Not Voting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed

# Vote Record

## Senate - Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

Date: 2/20/2001

Bill Number: SB 9

Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

Motion: passage as amended

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Sen. Gary George, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Fred Risser	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Wirch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Joanne Huelsman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Scott Fitzgerald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed



# Wisconsin Agribusiness Council, Inc.

2820 Walton Commons West, Suite 100 • Madison, WI 53718-6797 • Phone (608) 224-1451 • Fax (608) 224-1451 • [www.wisagri.com](http://www.wisagri.com)

## **Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform February 20, 2001**

### **Testimony of Amy Winters, Vice President of Government Relations for the Wisconsin Agribusiness Council and Contract Lobbyist for the Wisconsin Fertilizer and Chemical Association, on Senate Bill 9 relating to revising the Uniform Commercial Code Secured Transactions and Related Statutes.**

Chairperson George, members of the committee, thank you for holding this committee hearing on Senate Bill 9 and giving me the opportunity to share our views on this important measure. The agribusiness industry is very interested in this bill as it pertains to agricultural lending and priority liens for crops.

Currently under Article 9 of the Uniform Commercial Code, a lender secured by crops enjoys by law a kind of control over a farmer that is not possible in any other type of financing. As currently applied to crops, Article 9's priority rules give the lender first claim to any crops the farmer grows even when the lender contributed nothing to the production of the crops. Other lenders who enabled the farmer to produce new crops cannot obtain a priority lien until the farmer fully satisfies all debts to the lender that are secured by crops or until that lender consents.

When article 9 was first passed, this problem did not exist. Originally farmers were not allowed to give a security interest in crops to be grown in the future; moreover, there was a provision that the drafters hoped would allow creditors that finance a crop to jump ahead of earlier filed creditors that did not finance that crop. That provision turned out to be useless. In 1972 when the owners of the Uniform Commercial Code drafted official changes to Article 9, they removed the restrictions on farmers giving security interests in future crops. The result was that there was no effective way of giving farm lenders an analogue to the Production Money Security Interest (PrMSI) so that those that financed the crop could get ahead of those that did not finance the crop.

Farmers are therefore bound to their creditors who have floating liens on all the farmers' future crops. This is contrary to the very founding principles of the Code. The freedom to avoid overreaching by the floating lienor by giving priority to new value financiers is already enjoyed by all other business people shopping for enabling credit, and no principled basis exists for continuing to deny it to farmers.

This is a perfect time to have the legislature join the several states that have adopted provisions to rectify this problem. The drafters of the proposed revision to article 9 have included in the appendix to their work a model provision that should be enacted to end this unfair power. We urge to include this in Senate Bill 9.

Our farmer and farm supply members who are arguing for this proposal assert that there is no

principled basis for perpetuating the current rule. No good reason exists for restricting farmers' access to enabling credit more than any other class of business people.

The argument for fairness is that "since the credit supplied by the purchase money lender is what makes the debtor's acquisition of the collateral possible, it is just, as well as financially necessary, that the purchase money lender should prevail over other secured parties in any priority dispute regarding the collateral itself.

Because the purchase or production money financier gets priority only in goods she financed or their proceeds, the floating lien lender's position is no worse than if the borrower had not acquired the goods. Giving priority to the purchase money financier, therefore, essentially takes nothing away from the floating lien lender.

Although no one suggests eliminating the floating lien from crops, it does make sense to give a production money interest a priority over that floating lien in the same way that other enabling interests are given an incentive to provide financing and a priority with regard to the value they create.

The proponents of a Production Money Security Interest prevailed in the legislatures of several states including Washington, Georgia and North Carolina during the 1980's to enact a statute either inside or outside of Article 9 that provided priority in the crops for credit that allowed the crops to be grown. Maine, Nebraska, North Carolina, Vermont, and West Virginia have now recently adopted appendix II. The experience in these states is the best evidence countering the argument that the existence of such a statute will reduce the willingness of banks to provide agricultural credit in the state. This problem has simply not occurred in those states that have a production money security interest.

The model statute includes the following provisions.

- The language of the statute is intended to limit the total amount of money that can qualify for PrMSI status to that necessary and directly used in the production of the current crop. Payment of living expense and other indirect costs associated with the production of crops do not fall within the definition of a production money security interest.
- Once established, the PrMSI holder is given priority over all prior perfected and unperfected security interests and lien holders, if that PrMSI has given notice of its PrMSI to such competing interest holders between 10 and 30 days before the date of the first advance of the loan for which the PrMSI is being claimed. This deals with the "credit squeeze" problem by giving the floating lienor the opportunity to provide the credit on comparable terms.
- Where there are multiple PrMSI holders in the same collateral, their interests rank by date of filing.

Now that Article 9 is about to be amended it is the perfect time to enact this model provision that more fairly deals with the liens of creditors that finance a farmer's crop.

In the current farm economy it is more important than ever that the monopoly power of the bank

not prohibit the farmer from going ahead and putting a crop in when there are suppliers and lenders that would finance such an effort. The rule is functioning very well in those states that have previously amended their laws to provide on such a rule. There is simply no reason not to enact this model provision that will be fairer and will be consistent with the rest of the UCC.

### **Reasons to Pass Appendix II**

The proposed statute limits the total amount of money that can qualify for PrMSI status to the amount necessary and directly used in the production of the current crop. Payment of living expenses and other indirect costs associated with the production of crops do not fall within the definition of a PrMSI.

Once established, the PrMSI holder is given priority over all prior perfected and unperfected security interests and lien holders with regard to the crops, if that PrMSI has given notice of its PrMSI to such competing interest holders between 10 and 30 days before the date of the first advance of the loan for which the PrMSI is being claimed. This deals with the "credit squeeze" problem by giving the floating lienor the opportunity to provide the credit on comparable terms.

The existing PrMSI-like provision for crops in 9-312(2) is eliminated in Revised UCC 9 leaving no way for new value lenders to gain priority in a new crop over a blanket perfected security interest other than by subordination granted by the prior lender. These provisions level the playing field as between traditional crop financing lenders (banks) and the newer crop financing lenders (e.g., agricultural input suppliers).

Since they are model language, the PrMSI provisions of Appendix II are consistent in both approach and language with the Revised UCC 9 PMSI treatment of other collateral types in new Sections 9-103 and 9-324. The language in Appendix II creates a PMSI-like opportunity for crops (like that afforded inventory, equipment, and livestock) vs. blanket, 5-plus year security interest.

## **Questions People Often Ask About the Production Money Security Interest**

1. What would the Production Money Security Interest do?

The Production Money Security Interest ("PrMSI") 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.

2. Isn't that the law already?

No. Currently, unless the creditor that already has a lien on a farmer's crops voluntarily subordinates its position, no one can get ahead of that creditor's lien.

3. Why should the new creditor get ahead of the old creditor on the crops?

This provision only goes into operation after the old creditor has notice and an opportunity to provide financing for the new crop. If they go forward with that financing, their lien will remain first; if they do not go forward, their lien will be behind that of the creditor that provided the financing that made the crops possible.

4. Why is that fair?

Because there would have been no crop without the financing from the creditor that provided the financing and received the PrMSI.

5. Isn't this different from the rest of the law in this area?

No. Actually, this makes farm lending more consistent with the rest of the law in this area. Most other types of lending already have the concept that the party that provides the money to buy something should get a first lien on that something. Outside of agriculture it is called a Purchase Money Security Interest and has been part of the law at least since the beginning of the Uniform Commercial Code article on secured lending which was written in the 1950's.

6. Won't this promote more bankruptcies?

No. It will actually lead to fewer bankruptcies. Under the present law in most states, the only way to give a first lien to a lender that wants to provide crop financing is to file a bankruptcy. Therefore, some bankruptcies are filed just to allow the crop lender to "prime" the existing lender that will not provide the financing. Since this will not be necessary if PrMSI becomes the law, farmers will not need to file bankruptcy just to achieve this result.

7. Do any states have this rule and if so, how has it worked?

Several states including Main, Nebraska, Vermont and North Carolina have enacted this rule and Washington and Georgia and California also passed similar language back in the 80's. In every one of those states it is working well.

8. Why isn't this provision part of the regular amendments to Article 9?

Some banks opposed this provision and the members of the Drafting Committee were concerned that if it were a part of the official amendments it might slow down adoption in certain states.

9. What arguments did the banks use to oppose this provision?

Their primary argument is that it would dry up agricultural credit since lenders will refuse to lend if their liens can be primed?

10. Is this true?

Absolutely not. The experience in each of the states that has a similar law shows that this actually promotes more farm lending rather than less.

11. How does the proposed revision work?

The statute limits the total amount of money that can qualify for PrMSI status to that necessary and directly used in the production of the current crop. Payment of living expenses and other indirect costs associated with the production of crops do not fall within the definition of a production money security interest.

12. What does the supplier or new lender have to do to get its position?

The PrMSI holder must give notice of its PrMSI to such competing interest holders between ten and thirty days before the date of the first advance of the loan or credit extension for which the PrMSI is being claimed. This deals with the "credit squeeze" problem by giving the floating lienor the opportunity to provide the credit on comparable terms.

13. What does the input supplier or financier get?

The PrMSI holder gets priority over all prior perfected and unperfected security interests and lien holders in the crops.

14. What happens if there are multiple PrMSI holders in the same crops?

Their interests rank by date of filing.