

Committee Name:

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions
(SC-PECFI)**

Appointments

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Clearinghouse Rules

01hr_SC-PECFI_CRule_01-

Committee Hearings

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Committee Reports

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Executive Sessions

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Hearing Records

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Misc.

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Record of Committee Proceedings

01hr_SC-PECFI_RCP_pt00



Testimony before the
Senate Committee on Privacy, Electronic Commerce and Financial Institutions
and
Assembly Committee on Financial Institutions

In Support of Amendment 1 to SB 372 and AB 723

10:00 am, February 14, 2002
by Rose Oswald Poels
Wisconsin Bankers Association

Senator Erpenbach, Representative Jeskewitz and members of the Committees, my name is Rose Oswald Poels. I am the vice president of the legal department for the Wisconsin Bankers Association (WBA). WBA represents nearly 400 commercial banks, savings banks and savings & loan institutions of all sizes throughout the state. All WBA members are affected by Article 9 legislation and, in particular, affected by section 409.617(1)(c) of the Wisconsin Statutes regarding the disposition of collateral. WBA is seeking this technical amendment to SB 372 and AB 723 to correct what it believes was a drafting error.

WBA's technical amendment would restore the prior law in Wisconsin with regard to the effect of a sale of collateral under Article 9, as the committee of the State Bar of Wisconsin and others working on the Article 9 revision intended. The amendment would also bring Wisconsin's law back into conformity with other states. Prior to July 1, 2001, when 2001 Wisconsin Act 10 generally became effective, the law in Wisconsin was exactly what the WBA is now asking it be reverted to, that a sale of collateral under Article 9 means the collateral is sold free of all subordinate liens, including any subordinate state or local government lien. The LRB drafter, by including the general clause at the end of sec. 409.617(1)(c) of the Wisconsin Statutes, stating "other than liens held by this state or a local governmental unit, as defined in s. 19.42(7u)" is essentially elevating all state and local government liens to a superpriority position over previously perfected creditors.

Under old Article 9, when a bank repossessed and sold collateral, the collateral was sold free of the repossessing bank's lien and also all subordinate liens, including state tax liens and other government liens. Under new sec. 409.617(1)(c) of the Wisconsin Statutes, the sale is free of all subordinate liens, OTHER THAN liens of the State of Wisconsin or municipalities. Consequently, for example, this means that junior tax warrants are in effect given priority over the bank in a collateral repossession and liquidation. Even if the tax warrant is two years later than the bank's financing statement, the bank cannot sell the collateral without either getting the tax warrant released or paid. WBA's amendment would put

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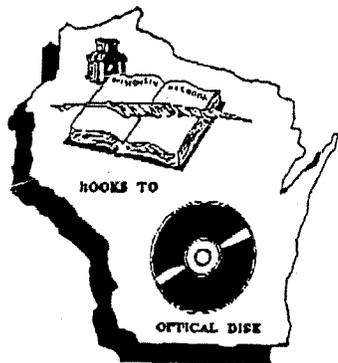
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state and local government liens back to the old "first in time first in right" rule, as they were under the old Article 9 in effect prior to July 1, 2001. Again, this is the intent of everyone involved in the Article 9 revision process.

The drafting instructions provided by the National Conference of Commissioners on Uniform State Laws (NCCUSL) did not intend for this provision to be drafted in a broad manner as Wisconsin did to include a general reference to all state or local government liens. The model uniform law as recommended by NCCUSL provided for the following instructions with regard to creating section 9-617(a)(3): "(3) discharges any subordinate security interest or other subordinate lien [cite acts or statutes providing for liens, if any, that are not to be discharged.]." The intent of NCCUSL in providing the optional bracketed language was to remind drafters that **IF** there was a state or local law that specifically provided that a particular state or local lien was not to be discharged, then a reference to that statute should be included here. In Wisconsin, as is the case in many states, there is currently no state or local lien law that includes a specific provision that such a lien should not be discharged in a sale of collateral. The language in current section 409.617(1)(c) of the Wisconsin Statutes simply goes too far and is beyond what the NCCUSL drafters intended.

No other state legislature that passed revised Article 9 included such a broad reference to "all state or local government liens" in its legislation. In a survey of revised Article 9 legislation either introduced or passed in all of the other 49 states, WBA found that none included a broad reference to "all government liens." Almost all other states adopted only the language that WBA is seeking through this amendment. WBA found only one state where there was a specific reference to a particular state statute providing for non-dischargeability of a state lien. In that state, it was clearly appropriate to include a reference to that particular state's statute in this section. Since Wisconsin does not have any similar state or local lien law, there should be no reference to the non-dischargeability of "all government liens" in section 409.617(1)(c) of the Wisconsin Statutes. It is important that Wisconsin's law is as uniform as possible with that of other states. Right now, the law is too broad, goes beyond what the drafters intended and needs to be corrected.

WBA appreciates this opportunity to provide both Committees with information to clarify and support its amendment. WBA respectfully requests that you support this technical amendment to correct this drafting error. Thank you for your consideration of my comments.



WISCONSIN REGISTER OF DEEDS ASSOCIATION

DATE: Thursday, February 14, 2002

TO: **SENATE COMMITTEE ON
PRIVACY, ELECTRONIC COMMERCE
AND FINANCIAL INSTITUTIONS
ASSEMBLY COMMITTEE ON
FINANCIAL INSTITUTIONS**

FROM: **MARVEL A LEMKE
REGISTER OF DEEDS, TAYLOR COUNTY
WISCONSIN REGISTER OF DEEDS (WRDA)
UCC CHAIRPERSON**

I am writing on behalf of the WRDA in support of Assembly Bill 723 and Senate Bill 327. These bills make the following changes regarding recording and filing documents with the offices of register of deeds and the department of financial institution.

- Documents recorded in our offices must meet legibility standards cited in Wisconsin Statutes 59.43(2m). These legibility standards go farther than standards in Chapter 409 as it requires black ink. This is a necessary requirement in order to ensure that documents can be reproduced.
- Documents filed with the offices of register of deeds are indexed in the real estate records index, rather than indexes in "books".
- Clarifies that UCC documents still continue to be a "filed" document; however, they are processed as though they are recorded and real estate recording fees apply. It is important to have the fees clearly stated in the statutes.
- Provides that only the department of financial institution, not the offices of register of deeds, must use a check digit in their computerized indexing system. This would be a costly item to all counties to achieve, if required.
- Only the department of financial institutions, not local filing offices, does certified searches of UCCs. We are not in a position to offer this service since the statewide database is no longer maintained.
- With the passage of Revised Article 9, July 1, 2001, the registers and department of financial institutions are no longer required to enter data in the "Statewide Lien Search System".
- Eliminates, effective July 1, 2008, the requirement that the statewide system will be maintained. The former statewide system is no longer used to enter data.

Thank you for the opportunity to address your joint committee meeting.

"FEW THINGS MUST LAST AS LONG AS COUNTY RECORDS"

Laundrie, Julie

From: Knutson, Tryg
Sent: Tuesday, February 12, 2002 10:49 AM
To: Laundrie, Julie
Subject: FW:

-----Original Message-----

From: Licht, Jane [mailto:Licht@co.dane.wi.us]
Sent: Tuesday, February 12, 2002 9:23 AM
To: 'Senator Jon Erpenbach'
Subject:

Dear Senator Erpenbach:

As chair of the Privacy, Electronic Commerce and Financial Institutions Committee, I would urge your careful attention and support for our UCC trailer Legislation sponsored by Senator Plache in the Senate and Rep. Lasee in the Assembly. The bill is necessary as a result of Act 10 which implemented Revised Article 9, Uniform Commercial Code.

The main purpose of this clean-up bill is to facilitate processing the documents so that we can get the work done that needs to be done for our customers. Here is a recap of what the bills (AB 723 & SB 372) do:

1. Documents must meet legibility standards in 59.43 (this goes farther than standards in 409 - it requires black ink since blue ink does not scan and it requires that documents are reproducible)
2. Documents are indexed in our systems - reference to "books" (which we no longer use) is omitted.
3. Clarifies that UCC documents still continue to be "filed" (this was a compromise to satisfy UCC officials with the national committee); however they are processed as though they are recorded and the recording fees apply. (It is important to have the fees clearly stated in statute rather than inferred through admin code.)
4. Provides that only DFI must use a check digit in their computerized indexing system - not the local registers. (This would have been very costly to achieve and totally unnecessary.)
5. Certified searches of UCCs are done only by DFI, not by the registers. (We are not in a position to offer this service since there is no longer a statewide database that we are part of.)
6. The registers and DFI are no longer required to enter data in teh "Statewide Lien Search System." (This is the old system which is longer used to enter new documents.)
7. Emininates, effective July 1, 2008, the requirement that the statewide lien system will be maintained. (This is the old "UCC DataNet system that is no longer being used to file docs.)

In addition, Kurt Bauer of the American Bankers' Assn has been working with the sponsors to get an amendment that would clarify the order of priority of liens. (lender to record first gets first priority) We have been working with Kurt and have no objection to this provision.

Jane Licht
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