

Committee Name:

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

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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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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.

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:

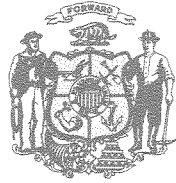
As chair of the Privacy, Electronic Commerce and Financial Institutions Committee, I would urge your careful attention and support for our UCC trailer Legislation sponsored by Senator Plache in the Senate and Rep. Lasee in the Assembly. The bill is necessary as a result of Act 10 which implemented Revised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

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KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT
February 14, 2002

TO: Chairperson Jon Erpenbach, and members of the
Senate Committee on Privacy, Electronic Commerce,
and Financial Institutions

FR: Senator Kimberly Plache

RE: Senate Bill 372, UCC relating to registers of deeds
and the department of financial institutions

Thank you for holding a public hearing on Senate Bill 372. I was asked to introduce this follow up legislation on behalf of the Wisconsin Registers of Deeds.

Senate Bill 372 makes a number of changes regarding the recording and filing of documents with the offices of registers of deeds and the Department of Financial Institutions:

Under SB 372, Documents pertaining to security interests that are filed with the offices of registers of deeds must meet most of the format and legibility standards for documents recorded with the offices.

Documents pertaining to security interests and certain other records that are filed with the offices of registers of deeds are indexed in the real estate records index, rather than indexes in books.

Senate Bill 372 clarifies which documents are recorded and which are filed with the offices of registers of deeds, and which are filed with the department of financial institutions and which are filed with the offices of registers of deeds, and which fees apply to which documents.

This bill provides that only the department of financial institutions, not the offices of registers of deeds, when assigning a file number for a document pertaining to security interests, must include a digit that is mathematically derived from or related to the other digits of the file number and aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

This bill provides that only the department of financial institutions, not the offices of registers of deeds, is required to provide results of searches of its records for financing statements filed in its filing system.

Senate Bill 372 eliminates the requirement that the department of financial institutions and the offices of registers of deeds enter all information regarding filings under the provisions of the Uniform Commercial Code relating to security interests into the statewide lien system.

And finally, SB 372 eliminates, effective July 1, 2008, the requirement that the statewide lien system be maintained.

I ask you to please introduce and recommend for passage, an amendment, which is agreed upon by the registers of deeds and the bankers relating to subordinate security interest and other subordinate liens. This section was inadvertently omitted from the bill draft.

Thank you, again, for holding this public hearing on SB 372.

UCC Article 9 Amendment:

During the drafting and numerous reviews of the UCC Article 9 legislation, an error was made that changed the way subordinate liens are discharged under 409.617. The error was not discovered until after the UCC Article 9 legislation was enacted. The goal of this amendment is to change the law to what the UCC Article 9 drafters originally intended.

Prior to July 1, 2001 (the date of enactment for UCC Article 9), the law provided that all subordinate liens were to be discharged upon the sale of collateral under Article 9 to a purchaser. This allows the purchaser to take the property free of any security interest or subordinate lien.

The statute as passed in new 409.617 is too broad, goes beyond the intent of the drafters of the model law and is contrary to both the old law in Wisconsin and to that of the new law in other states that enacted new Article 9. The new state statute essentially elevates state liens to a super priority position over liens of all other creditors. There is currently no state statute that specifically gives a state lien this kind of super priority.

UCC did not include:

- Broad exemptions for liens*
- Takeout of the liens and*