

1969 Assembly Bill 2

Date published:
May 22, 1969**CHAPTER 39, LAWS OF 1969**

AN ACT to repeal 402.312 (1) (c), 403.118 (7) and 408.401 (3); to amend 402.205, 402.207 (2) (intro.), 402.702 (3), 402.725 (1), 403.104 (3), 403.501 (3), 403.806, 404.405 (2), 406.107 (3), 407.207 (1), 407.210 (2) (b), 408.208 (1) (a), 408.401 (1) (intro.), 409.105 (1) (b), 409.106, 409.302 (1) (d), 409.307 (2), 409.403 (1) and 409.407 (1) and (2); to repeal and recreate 402.725 (2) and 405.113 (2); and to create 182.25 and 401.209 of the statutes, relating to the elimination of variances between the Wisconsin statutes and the official text of the Uniform Commercial Code.

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

PREFATORY NOTE: The 1967-69 legislative council established an advisory committee on the uniform commercial code, as an advisory body to the interim insurance and banking committee, to review Wisconsin nonconforming amendments to the official text of the uniform commercial code and to make recommendations on the continuation or elimination of these variations. This bill constitutes the recommendations of that advisory committee. Each section of the bill is followed by a note which explains the committee's reason for recommending the change made by that section.

SECTION 1. 182.25 of the statutes is created to read:

182.25 STOCK TRANSFERS ON BOOKS, HOW COMPELLED. Whenever it is made to appear to the circuit court by affidavit or otherwise that the proper officer or agent of an issuer, in violation of the issuer's duty under s. 408.401 (1) has neglected or refused for 2 days after proper demand to register the transfer of a security, the court immediately shall issue an order requiring the officer or agent to show cause why he should not register the transfer of the security. The court shall in the order prescribe the manner of its service and the date, not more than 10 days after the date of the order, when the issuer's officer or agent must show cause before the court. Unless the officer or agent at that time shows to the satisfaction of the court why the transfer should not be registered, the court shall order him to register the transfer at a time and place the court deems reasonable.

NOTE: This section restates former s. 408.401 (3) which was derived from s. 183.24 Wis. Stat. (1963) and added to the official text of the code. As a matter of general policy, the UCC does not include procedural provisions. Therefore, in the interest of uniformity s. 408.401 (3) is repealed by SECTION 20 of this bill and this section is created to retain existing law.

SECTION 2. 401.209 of the statutes is created to read:

401.209 SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

NOTE: Proposed by the UCC editorial board, this new section makes clear that an agreement by which the rights of one unsecured creditor are subordinated to the rights of another unsecured creditor of a

common debtor does not of itself create a security interest. The section is intended to clarify rather than change existing law.

SECTION 3. 402.205 of the statutes is amended to read:

402.205 An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months ~~unless consideration is given~~; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

NOTE: The phrase "unless consideration is given" has been deleted in the interest of uniformity and on the basis that it is unnecessary. An open offer accompanied by consideration would be, in effect, an option and not an offer.

SECTION 4. 402.207 (2) (intro.) of the statutes is amended to read:

402.207 (2) (intro.) The additional ~~or different~~ terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

NOTE: The phrase "or different" had been added by Wisconsin to the official text of the code to make clear that "different" as well as "additional" terms became a part of a contract if not objected to within a reasonable time. In the interest of uniformity of language and law, the phrase "or different" is deleted.

SECTION 5. 402.312 (1) (c) of the statutes is repealed.

NOTE: The warranty of quiet possession as to personal property was deliberately abolished by the commercial code draftsmen. Wisconsin, however, in par. (c), which it created, retained this warranty. In the interest of uniformity and in keeping with this state's overall policy of eliminating potential litigation after a reasonable period of time, the committee recommends abolition of the warranty of quiet possession as to personalty. It is believed that other provisions in s. 402.312 (1) will afford ample protection for the buyer.

SECTION 6. 402.702 (3) of the statutes is amended to read:

402.702 (3) The seller's right to reclaim under sub. (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser ~~or lien creditor~~ under s. 402.403. Successful reclamation of goods excludes all other remedies with respect to them.

NOTE: This amendment deleting the phrase "or lien creditor" is in accordance with the recommendations of the UCC editorial board. The change eliminates a confusing cross reference and also is designed to avoid the type of result reached in *In re Kravitz*, 278 F.2d 820 (3d Cir. 1960). That case held that the pre-code law of Pennsylvania was carried forward by the code, that under that law a defrauded seller was subordinated to a creditor who obtained a lien by levy upon the goods in the buyer's hands, and that the buyer's trustee in bankruptcy as an "ideal lien creditor" had the rights of such a lien creditor, thus defeating the seller's right of recovery. The amendment leaves open the question of the extent to which an actual creditor, such as a secured party, may be a good faith purchaser within the meaning of this subsection.

SECTION 7. 402.725 (1) of the statutes is amended to read:

402.725 (1) An action for breach of any contract for sale must be commenced within 6 years after the cause of action has accrued. ~~This~~ *By the original agreement the parties, if they are merchants, may reduce the period of limitation to not less than one year. The period of limitation may not otherwise be varied by agreement of the parties.*

NOTE: To protect the inexperienced buyer from unwittingly reducing his rights to sue for breach of contract, Wisconsin adopted the sentence "This period of limitation may not be varied by agreement of the parties" in lieu of the code language "By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it". This amendment partially restores the code language but would restrict the right to vary periods of limitation to parties who are merchants. While uniformity between the Wisconsin statutes and the UCC official text is desirable, the protection of buyers other than merchants is deemed more important.

SECTION 8. 402.725 (2) of the statutes is repealed and recreated to read:

402.725 (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

NOTE: This amendment deletes the reference to the warranty of quiet possession (see SECTION 5 of this bill) and thus restores uniformity with the official code text.

SECTION 9. 403.104 (3) of the statutes is amended to read:

403.104 (3) As used in other chapters of this code, and as the context requires, the ~~term~~ terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are so negotiable within this chapter as well as to instruments which are so negotiable.

NOTE: Corrects grammatical error in present statute.

SECTION 10. 403.118 (7) of the statutes is repealed.

NOTE: This subsection, not a part of the official UCC text, was derived from s. 116.14, Wis. Stat. 1963, which in turn purported to codify an old common-law rule. The need for the provision is not apparent, and the committee concluded that it ought to be repealed in the interest of uniformity.

SECTION 11. 403.501 (3) of the statutes is amended to read:

403.501 (3) Unless excused (s. 403.511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

NOTE: Amendment suggested by the UCC editorial board to eliminate or reduce cumbersome protest requirements for items moving between the several states, Puerto Rico, and dependencies and possessions of the United States.

SECTION 12. 403.806 of the statutes is amended to read:

403.806 Any person who issues a check or other draft which is not honored upon presentment, because the drawer does not have an account with the drawee or because the drawer does not have sufficient funds in his account or sufficient credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which such check or draft was written.

NOTE: The word "reasonable" is inserted to indicate that there should be a limit as to costs and expenses, especially attorney fees, to be charged in collecting on checks or drafts not honored. This section

is not a part of the UCC official text. Therefore, uniformity is not affected by this amendment.

SECTION 13. 404.405 (2) of the statutes is amended to read:

404.405 (2) ~~Subject to s. 72.11,~~ Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

NOTE: The cross reference to s. 72.11, which was added by Wisconsin to make clear that this subsection does not affect any liability for inheritance taxes incurred by a bank, is deleted in the interest of uniformity. There is no intent to change existing Wisconsin law.

SECTION 14. 405.113 (2) of the statutes is repealed and recreated to read:

405.113 (2) an indemnity agreement inducing honor, negotiation or reimbursement:

(a) Unless otherwise explicitly agreed, applies to defects in the documents but not in the goods; and

(b) Unless a longer time is explicitly agreed, expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before the expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving the notice is under a duty to send notice to its transferor before its midnight deadline.

NOTE: Wisconsin deleted par. (b) of the official text on the grounds that an automatic statutory 10-day termination of an indemnity agreement could create controversy and work hardship in certain instances. The use of indemnity agreements by Wisconsin banks is negligible and, in the interest of uniformity, par. (b) of the official text is made a part of the Wisconsin law.

SECTION 15. 406.107 (3) of the statutes is amended to read:

406.107 (3) The notice in any case shall be delivered personally or sent by registered mail or ~~by certified mail as specified in s. 990.001 (13)~~ to all the persons shown on the list of creditors furnished by the transferor (s. 406.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

NOTE: Stylistic and technical changes. This amendment deletes the word "by" and the phrase "as specified in s. 990.001 (13)" which were added to the code text by Wisconsin. The cross reference is not necessary as the requirements of s. 990.001 (13) are applicable to all sections of the statutes authorizing or requiring the use of registered or certified mail except those specifically excluded by the subsection.

SECTION 16. 407.207 (1) of the statutes is amended to read:

407.207 (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled ~~where authorized by agreement or custom.~~

NOTE: The phrase "where authorized by agreement or custom" was added by Wisconsin to preserve existing law and to make clear that fungible goods could be commingled only if authorized by agreement or custom. The UCC editorial board rejected the Wisconsin variation as a reversal of a policy deliberately adopted by the code draftsmen. This phrase is now deleted in the interest of preserving uniformity of law and in view of the fact that s. 407.207 (2) affords ample protection for the owners of different lots of fungible goods.

SECTION 17. 407.210 (2) (b) of the statutes is amended to read:

407.210 (2) (b) The notification must be delivered in person or sent by registered mail ~~or by certified mail as specified in s. 990.001 (13)~~ or certified letter to the last known address of any person to be notified.

NOTE: Technical change. The advisory committee agreed to substitute the code phrase "or certified letter" for the Wisconsin phrase "or by certified mail as specified in s. 990.001 (13)". As stated in the note to SECTION 15 of this bill, the cross reference is not necessary.

SECTION 18. 408.208 (1) (a) of the statutes is amended to read:

408.208 (1) (a) The security is genuine ~~and in proper form~~; and

NOTE: The phrase "and in proper form", which was added to code text by Wisconsin, is deleted. The UCC editorial board noted that the phrase created confusion, rather than clarification, due to a similar requirement in s. 408.208 (1) (c). Use of phrase in (1) (a), according to the editorial board, made the standard of liability as to proper form absolute while (1) (c) conditions liability upon the exercise of due care.

SECTION 19. 408.401 (1) (intro.) of the statutes is amended to read:

408.401 (1) (intro.) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if ~~the form requested is lawful and if~~:

NOTE: The phrase "the form requested is lawful and if", which had been added by Wisconsin to make clear that the issuer does not have a duty to register a transfer unless the form requested is legal. The advisory committee agreed that the phrase may well create confusion and that it could defeat the overall purpose of ch. 408 which is to facilitate the transfer of securities.

SECTION 20. 408.401 (3) of the statutes is repealed.

NOTE: See Note to SECTION 1 of this bill.

SECTION 21. 409.105 (1) (b) of the statutes is amended to read:

409.105 (1) (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in a lease of specific goods; *a charter or other contract involving the use or hire of a vessel is not chattel paper*. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

NOTE: This amendment, which was proposed by the UCC editorial board, makes clear that a ship charter is not chattel paper.

SECTION 22. 409.106 of the statutes is amended to read:

409.106 "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. *All rights earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are contract rights and neither accounts nor general intangibles*.

NOTE: This amendment, which, as in s. 409.105 (1) (b), was proposed by the UCC editorial board, makes clear that rights arising out of a ship charter are contract rights and neither accounts nor general intangibles.

SECTION 23. 409.302 (1) (d) of the statutes is amended to read:

409.302 (1) (d) A purchase money security interest in consumer goods having a purchase price not in excess of ~~\$250~~ \$500; but filing is required for a fixture under s. 409.313;

NOTE: Wisconsin, when adopting the code, changed the complete filing exemption in sub. (1) (d) of the official text by inserting the \$250 limit, as a compromise between the position that there should be no secret liens and the position that filing is unnecessary and wasteful in the case of consumer goods because it is generally known that such goods usually are purchased on credit and subject to lien. The advisory committee's study indicated that this state's \$250 limit was the lowest except for one other state and that a number of other states have adopted a \$500 limit. Also, it appears that Wisconsin banks, financial institutions and businesses for the most part do not file financing statements for less than \$500. The committee increased the filing exemption limit to \$500 to conform with general business practices and to facilitate interstate financial activities.

SECTION 24. 409.307 (2) of the statutes is amended to read:

409.307 (2) In the case of consumer goods or farm equipment having an original purchase price not in excess of \$500 and \$250, respectively, (other than fixtures, see s. 409.313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

NOTE: This amendment is necessitated by the change made in s. 409.302 (1) (d). See SECTION 23 of this bill.

SECTION 25. 409.403 (1) of the statutes is amended to read:

409.403 (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter. ~~A photo copy~~ *An accurate reproduction* of the financing statement, ~~certified by the secured party to be a true copy,~~ *certified to be a true copy by the secured party, public officer or notary public,* or a carbon copy bearing signatures appearing by carbon impression, may be filed.

NOTE: Past practice has indicated that allowing only the secured party to certify the truthfulness of the copy of the financing statement hinders interstate financial activities. Alternatively allowing a public officer or notary public to make the certification will provide ample protection for all concerned and will provide a more expeditious filing procedure.

SECTION 26. 409.407 (1) and (2) of the statutes are amended to read:

409.407 (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person. ~~Such notation by the filing officer does not constitute a certification by him that the copy is a true copy of the original.~~

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any ~~unterminated~~ *presently effective* financing statement filed or continued within the preceding 6 years naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate is \$2, plus 50 cents for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment for a uniform fee of \$1 for each page of the copied statement plus 50 cents for the certificate.

NOTE: The last sentence of sub. (1) is considered unnecessary by the advisory committee and, in the interest of uniformity, it has been deleted. No change in the law is intended or made by this amendment.

In sub. (2), the code phrase "presently effective" has been substituted for the Wisconsin term "unterminated" in the interest of uniformity. In actual practice, the use of the term "unterminated" creates administrative problems because it does not take into consideration lapsed financing statements.

Approved May 15, 1969.
