

Date of enactment:

2011 Senate Bill 416 Date of publication*:

* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2011 WISCONSIN ACT

AN ACT to repeal 409.503 (1) (c) 1. and 2. and 409.516 (2) (e) 3.; **to renumber and amend** 409.105 (intro.), 409.105 (1) to (6), 409.502 (3) (c), 409.503 (1) (d) and 409.518 (3); **to amend** 409.102 (1) (bm) 2., 409.102 (1) (cg), 409.102 (1) (km), 409.102 (1) (mg), 409.102 (1) (rg), 409.307 (6) (b), 409.311 (1) (c), 409.316 (title), 409.317 (2) and (4), 409.326, 409.406 (5), 409.408 (2), 409.503 (1) (a), 409.503 (1) (b), 409.503 (1) (c) (intro.), 409.503 (2) (b), 409.507 (3), 409.515 (6), 409.516 (2) (c) 2. (intro.), 409.516 (2) (c) 3., 409.516 (2) (e) 1., 409.516 (2) (e) 2., 409.518 (1), 409.518 (2) (intro.), (a) 2. and (b), 409.607 (2) (b) 1. and 409.625 (3) (title); **to repeal and recreate** 409.521 (2) (form) and 409.521 (3) (form); and **to create** 409.102 (1) (qp), 409.316 (8) and (9), 409.502 (3) (c) 2., 409.503 (1) (c) 1m. and 2m., 409.503 (1) (dm) and (e), 409.503 (6), (7) and (8), 409.518 (3m) and (4) and subchapter VIII of chapter 409 [precedes 409.802] of the statutes; **relating to:** adopting amendments to the Uniform Commercial Code Article 9, relating to secured transactions, recommended by the National Conference of Commissioners on Uniform State Laws.

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

SECTION 1. 409.102 (1) (bm) 2. of the statutes is amended to read:

409.102 (1) (bm) 2. ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the~~ With present intent of the authenticating person to identify the person and to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

SECTION 2. 409.102 (1) (cg) of the statutes is amended to read:

409.102 (1) (cg) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

SECTION 2M. 409.102 (1) (km) of the statutes is amended to read:

409.102 (1) (km) "Good faith" means honesty in fact ~~and the observance of~~ reasonable commercial standards of fair dealing in the conduct or transaction concerned.

SECTION 3. 409.102 (1) (mg) of the statutes is amended to read:

409.102 (1) (mg) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

SECTION 4. 409.102 (1) (qp) of the statutes is created to read:

409.102 (1) (qp) "Public organic record" means a record that is available to the public for inspection and is:

1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
3. A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

SECTION 5. 409.102 (1) (rg) of the statutes is amended to read:

409.102 (1) (rg) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

SECTION 6. 409.105 (intro.) of the statutes is renumbered 409.105 (1m) and amended to read:

409.105 (1m) GENERAL RULE: CONTROL OF ELECTRONIC CHATTEL PAPER. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(2m) SPECIFIC FACTS GIVING CONTROL. Without limiting the generality of sub. (1m), a system satisfies sub. (1m) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

SECTION 7. 409.105 (1) to (6) of the statutes are renumbered 409.105 (2m) (a) to (f), and 409.105 (2m) (a), (d) and (f), as renumbered, are amended to read:

409.105 (2m) (a) A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in ~~subs. (4) to (6)~~ pars. (d) to (f), unalterable;

(d) Copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

(f) Any ~~revision~~ amendment of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~.

SECTION 8. 409.307 (6) (b) of the statutes is amended to read:

409.307 (6) (b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

SECTION 9. 409.311 (1) (c) of the statutes is amended to read:

409.311 (1) (c) A ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~the~~ a certificate of title as a condition or result of the

security interest's obtaining priority over the rights of a lien creditor with respect to the property.

SECTION 10. 409.316 (title) of the statutes is amended to read:

409.316 (title) ~~Continued perfection of security interest following~~ **Effect of change in governing law.**

SECTION 11. 409.316 (8) and (9) of the statutes are created to read:

409.316 **(8)** EFFECT ON FILED FINANCING STATEMENT OF CHANGE IN GOVERNING LAW. The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(b) If a security interest perfected by a financing statement that is effective under par. (a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) EFFECT OF CHANGE IN GOVERNING LAW ON FINANCING STATEMENT FILED AGAINST ORIGINAL DEBTOR. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under s. 409.203 (4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in s. 409.301 (1) or 409.305 (3) or the expiration of the 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SECTION 12. 409.317 (2) and (4) of the statutes are amended to read:

409.317 **(2)** BUYERS THAT RECEIVE DELIVERY. Except as otherwise provided in sub. (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) LICENSEES AND BUYERS OF CERTAIN COLLATERAL. A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property collateral~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

SECTION 13. 409.326 of the statutes is amended to read:

409.326 Priority of security interests created by new debtor. (1) SUBORDINATION OF SECURITY INTEREST CREATED BY NEW DEBTOR. Subject to sub. (2), a security interest that is created by a new debtor which is in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that ~~is effective solely under s. 409.508 in collateral in which a new debtor has or acquires rights~~ would be

ineffective to perfect the security interest but for the application of s. 409.316 (9) (a) or 409.508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~that is effective solely under s. 409.508.~~

(2) PRIORITY UNDER OTHER PROVISIONS; MULTIPLE ORIGINAL DEBTORS. The other provisions of this subchapter determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under s. 409.508~~ described in sub. (1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

SECTION 14. 409.406 (5) of the statutes is amended to read:

409.406 (5) INAPPLICABILITY OF SUB. (4) TO CERTAIN SALES. Subsection (4) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under s. 409.610 or an acceptance of collateral under s. 409.620.

SECTION 15. 409.408 (2) of the statutes is amended to read:

409.408 (2) APPLICABILITY OF SUB. (1) TO SALES OF CERTAIN RIGHTS TO PAYMENT. Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under s. 409.610 or an acceptance of collateral under s. 409.620.

SECTION 16. 409.502 (3) (c) of the statutes is renumbered 409.502 (3) (c) (intro.) and amended to read:

409.502 (3) (c) (intro.) The record satisfies the requirements for a financing statement in this section ~~other than an indication, but:~~

1. The record need not indicate that it is to be filed in the real property records; and

SECTION 17. 409.502 (3) (c) 2. of the statutes is created to read:

409.502 (3) (c) 2. The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom s. 409.503 (1) (dm) applies; and

SECTION 18. 409.503 (1) (a) of the statutes is amended to read:

409.503 (1) (a) ~~If~~ Except as otherwise provided in par. (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~of the debtor indicated that is stated to be the~~ registered organization's name on the public organic record ~~of the debtor's most recently filed with or issued or enacted by the registered organization's~~ jurisdiction of organization which shows the debtor to have been organized purports to state, amend, or restate the registered organization's name;

SECTION 19. 409.503 (1) (b) of the statutes is amended to read:

409.503 (1) (b) ~~If the debtor is a decedent's estate~~ Subject to sub. (6), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the ~~debtor is an estate~~ collateral is being administered by a personal representative;