

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman
Committee Clerk. John O'Brien

Thursday June 12, 2003

ADVANCED BALLOT NOTICE TO MEMBERS

SENATOR SCHULTZ, CHAIRMAN OF THE SENATE COMMITTEE ON AGRICULTURE, FINANCIAL INSTITUTIONS AND INSURANCE.

WISHES TO INFORM THE MEMBERS THAT HE INTENDS TO CIRCULATE A PAPER BALLOT ON MONDAY, JUNE 16TH, 2003. ON **ASSEMBLY BILL 2. (FINANCIAL MODERNIZATION)**

THE BALLOT WILL BE CIRCULATED TO MEMBERS BY BOTH E-MAIL AND HARD COPY TO THEIR RESPECTIVE OFFICES. THE CHAIRMAN REQUEST THAT THE BALLOT BE RETURNED TO OUR OFFICE NO LONGER THAN NOON ON JUNE 16TH, 2003.

NOTE

NEGOTIATIONS ON ASSEMBLY BILL 2 ARE ONGOING. THE COMMITTEE WILL TAKE A VOTE ON MONDAY IF YOU HAVE QUESTIONS, PLEASE CONTACT THE CHAIRMAN'S IN HIS OFFICE 266-0703, AT HIS HOME (608) 647-4614 OR BY CELL PHONE AT (608) 444-2794

THE BALLOT WILL ASK MEMBERST TO VOTE ON THE FOLLOWING MATTER WHICH HAD A PUBLIC HEARING BEFORE THE COMMITTEE ON JUNE 3RD, 2003.

ASSEMBLY BILL 2. (FINANCIAL MODERNIZATION)

An Act to repeal 186.235 (16) (b), 186.41 (1) (d), 186.41 (6) (b) and 186.41 (8); to renumber 186.41 (6) (a); to renumber and amend 186.02 (2) (d), 186.11 (4) (a), 186.113 (11), 186.235 (16) (a), 186.41 (1) (a) and 186.41 (1) (c); to amend 93.01 (1m), 186.01 (2), 186.02 (2) (a) 1., 186.02 (2) (b) 2., 186.02 (2) (c), 186.06 (4), 186.11 (4) (title), 186.11 (4) (c), 186.113 (1), 186.113 (1m) (a) (intro.), 186.113 (6) (b) and (c), 186.22 (12m), 186.235 (7) (a) (intro.), 186.36, 186.41 (title), 186.41 (2) and (3), 186.41 (4) (intro.), (a) to (d) and (f), 186.41 (5) (a), (b), (c) and (cr), 220.04 (9) (a) 2. and 409.617 (1) (c); to repeal and recreate 186.11 (4) (b) and 186.17 (1); and to create 186.02 (2) (b) 2m., 186.02 (2) (d) 2., 186.07 (3m), 186.11 (4) (a) 1., 186.11 (4) (bd) and (bh), 186.113 (11) (b), 186.113 (24), 186.113 (25), 186.20, 186.235 (7) (c), 186.235 (7m), 186.235 (16m), 186.45, 186.80, 220.14 (5) and chapter 222 of the statutes; relating to: credit union membership, powers, operation, and regulation; the application of agriculture, trade, and consumer protection statutes to credit unions; the creation of a new type of financial institution; the powers of and requirements applicable to the new type of financial institution; the discharge of governmental liens under the Uniform Commercial Code; providing an exemption from emergency rule procedures; granting rule-making authority; and providing a penalty. (FE)



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR DALE SCHULTZ
FROM: Nicholas Zavos, Staff Attorney
RE: Amendments to Assembly Bill 2
DATE: June 2, 2003

This memorandum, prepared at the request of your aide, Jonathan Klein, summarizes the changes to 2003 Assembly Bill 2 made by Senate Substitute Amendment __ (LRBs0071/1) and by the two simple amendments LRBa0581/2 and LRBa0567/2.

CHAPTER 109

Background

Under current state law, the Department of Workforce Development (DWD) or an employee may bring an action to collect unpaid wages. DWD or an employee has a lien upon all property of the employer, real or personal, located in this state. The lien is for the full amount of any wage claim or wage deficiency. [s. 109.09 (2) (a), Stats.] If DWD or the employee does not bring an action to enforce the lien within two years, the lien ceases to exist. [See s. 109.09 (2) (b) and (c), Stats.]

A wage claim lien under ch. 109 is a "superpriority" lien. With two exceptions, it has priority over all liens or debts regardless of when the lien or debt arises. The amount of lien entitled to priority is unlimited, and the wages may date back in time as long as two years from when the wages were due. The exceptions to this superpriority status are: (1) liens of financial institutions that originate before the wage claim lien; and (2) liens relating to costs of certain environmental remediation expenses incurred by the state. [See s. 109.09 (2) (c), Stats.]

Definition of Employee

The **substitute amendment** changes the definition of "employee" for all of ch. 109 to exclude a larger class of workers. Section 109.01 (1r) defines "employee" for the purposes of ch. 109. Under the current definition, "employee" excludes: (1) an officer or director of a corporation; (2) a member or manager of a limited liability company; (3) a partner of a partnership or joint venture; and (4) the owner

of a sole proprietorship. The amendment adds three other groups to the list of excluded workers: (1) an independent contractor; (2) a person employed in a managerial, executive, or commissioned sales capacity; and (3) a person employed in a capacity in which the person is privy to confidential matters involving the employer-employee relationship. Unlike the rest of the changes that the substitute amendment makes to ch. 109, the change in the definition of "employee" affects more than wage claims. The new group of excluded workers would also be excluded from all of the provisions of ch. 109, Stats., including requirements as to when employees must be paid and plant closing laws.

Lenders Who Trump After the First \$3,000

As mentioned above, one of the exemptions to the wage lien's superpriority status is for liens of financial institutions that arose before the wage lien took effect. A "financial institution" is defined as a bank, savings bank, savings and loan association, or credit union that is authorized to do business under state or federal laws relating to financial institutions. [ss. 69.30 (1) (b) and 109.09 (2) (c), Stats.] The **substitute amendment** expands the group of lenders who take precedence over a wage lien from financial institutions to "commercial lending institutions." The draft does not define the term "commercial lending institution."

LRBa0567/2 is a simple amendment to the substitute. It defines the term "commercial lending institution" as having the same definition as "financial institution" as in s. 243.01 (5k). That subsection defines a financial institution as "a bank, savings bank, savings and loan association, credit union, insurance company, finance company, mortgage banker registered under s. 224.72, community development corporation, small business investment corporation, pension fund or other lender which provides commercial loans in this state."

\$3,000 of Wages Within Last Six Months

The **substitute amendment** creates an exception to the priority given to the commercial lender's prior lien. A wage lien will take precedence over the lien of a commercial lender that originated before the wage lien took effect "only to the extent" that the wage lien is: (1) for unpaid wages of \$3,000 or less; and (2) earned within the six months preceding either the date on which the employee files a wage claim with DWD or the date the employee brings his or her own action to collect the wages.

There are two ways to interpret how the "to the extent" language interacts with the \$3,000 limit. The first and more likely interpretation is that \$3,000 of the wage lien would be paid to the employee first, before the commercial lenders. After the employee is paid \$3,000, the commercial lenders would be paid the full amount of their liens. Then, after the commercial lenders are paid in full, the employee would be paid the remaining amount of the wage lien, if any.

The second way to interpret the "to the extent" language is that it limits the type of liens that are given any priority over commercial lenders. Under this interpretation, only a lien that is for wages of \$3,000 or less earned within the appropriate time period would be given first priority. Under that interpretation, a lien for \$6,000 of unpaid wages would be paid, in its entirety, after the lien of a financial institution.

LRBa0581/2 is a simple amendment to the substitute. It changes the wording of the sentence in proposed s. 109.09 (2) (c) 2. in favor of the first option to make it clear that the first \$3,000 of a wage

lien will take precedence over a commercial lender. The amendment deletes the "to the extent language." Instead, the sentence now states that a wage lien will take precedence over a prior lien of a commercial institution "as to the first \$3,000 of unpaid wages covered under the lien" earned within the six months preceding the date the employee files a wage claim with DWD or the date the employee brings his or her own action to collect the wages.

Applicability

The **substitute amendment** has several provisions affecting when the changes would take effect. The substitute amendment would affect no current financial institution liens. The amendment provides that a lien of a financial institution that exists on the day before the effective date of the bill would still take precedence over a wage lien. In addition, the amendment specifies that any money advanced by a financial institution after a wage lien takes effect would take precedence over that wage lien if the money was advanced under a contract entered into before the effective date. This includes any extension or renewal of such a contract.

The liens of commercial lenders other than financial institutions would trump any wage liens created after the effective date of the bill. Any wage lien that exists on the day before the effective date of the bill still takes precedence over liens of commercial lenders other than financial institutions, regardless of when the commercial lender's lien originated.

ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Wisconsin's version of Article 9 of the Uniform Commercial Code is contained in ch. 409. Under current s. 409.617, when collateral is disposed of by a secured party pursuant to a debtor's default, all subordinate liens and security interests are discharged *except* for liens held by the state or a local governmental unit. [s. 409.617, Stats.]

Current ch. 409 was created by 2001 Wisconsin Act 10. It has been in effect since July 1, 2001. Before Act 10, when collateral was disposed of by a secured party pursuant to a debtor's default, all subordinate liens and security interests were discharged *including* liens held by the state or a local governmental unit. [s. 409.504 (4), 1999 Stats.] As originally drafted, Assembly Bill 2 would have changed the law to how it was before Act 10. The bill was amended on the Assembly floor to remove the change to s. 409.617 and retain the current exemption for state and local government liens.

The **substitute amendment** puts the change to s. 409.617 back in the bill so that when collateral is disposed of by a secured party pursuant to a debtor's default all subordinate liens and security interests are discharged *including* liens held by the state or a local governmental unit.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

NZ:rv:jal:wu:jal:tlu



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR DALE SCHULTZ
FROM: Nicholas Zavos, Staff Attorney
RE: Wage Liens and Article 9 of the Uniform Commercial Code
DATE: February 6, 2003

This memorandum, prepared at your request, addresses a number of issues concerning Wisconsin's wage claim law, which is contained in ch. 109, and Wisconsin's version of article 9 of the Uniform Commercial Code, which is contained in ch. 409. Specifically, you asked for: (1) a description of the history of the wage claim lien's priority; (2) the history of the provision in ch. 409 concerning the disposition of collateral pursuant to default, including how that provision would have been affected by 2003 Assembly Bill 2; and (3) an explanation of how these provisions would play out in a hypothetical situation.

WAGE CLAIM LIEN

Background

Under current state law, the Department of Workforce Development (DWD) or an employee may bring an action to collect unpaid wages. DWD or an employee who brings such an action has a lien upon all property of the employer, real or personal, located in this state. The lien is for the full amount of any wage claim or wage deficiency. [s. 109.09 (2) (a), Stats.] If DWD or the employer does not bring an action to enforce the lien within two years, the lien ceases to exist. [See s. 109.09 (2) (b) and (c), Stats.]

History of Wage Lien Priority

Generally speaking, liens are given priority on a first-in-time basis. As originally written the wage lien under ch. 109 took ". . . precedence over all other debts, judgments, decrees, liens or mortgages against the employer . . ." [s. 109.09, 1977 Stats.] In 1998, the Wisconsin Court of Appeals held that that language created a "superpriority lien." Thus, a wage lien would take precedence over all other debts, judgments, decrees, liens, and mortgages against the employer, regardless of when they were filed. The statute provided only that certain liens relating to environmental remediation costs had

priority over wage claim liens. [See *Pfister v. Milwaukee Economic Development Corporation*, 216 Wis. 2d 242, 576 N.W.2d 554 (Ct. App. 1998).]

Shortly after the ruling in *Pfister*, the Legislature, in 1997 Wisconsin Act 237 (budget adjustment act), amended the statutory provision at issue in *Pfister* to provide that wage claim liens take precedence over other debts and liens against the employer that "originate after the lien takes effect." [SECTION 354r 1997 Wisconsin Act 237.] Thus, wage claim liens were treated, like nonstatutory liens, on a first-in-time basis. Wage liens were made subordinate to liens and other debts filed before the wage claim lien.

Subsequently, in 1999 Wisconsin Act 9 (the Biennial Budget Act), the Legislature further amended the provision. Act 9 restored the priority of wage claim liens to where it had been before the Act 237 amendments with the exception that a lien of a financial institution that originates before the wage claim lien would have priority over the wage claim lien. This is where the law stands today. Thus, under current law a wage claim lien under ch. 109 would have priority over all liens or debts except: (1) a lien of a financial institution that originates before the wage claim lien; and (2) a lien relating to costs of certain environmental remediation expenses incurred by the state. [See s. 109.09 (2) (c), Stats., as affected by 1999 Wisconsin Act 9.]

ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Wisconsin's version of article 9 of the Uniform Commercial Code is contained in ch. 409. Under current 409.617, when collateral is disposed of by a secured party pursuant to a debtor's default all subordinate liens and security interests are discharged *except* for liens held by the state or a local governmental unit. [s. 409.617, Stats.]

The current ch. 409 was created by 2001 Wisconsin Act 10. It has been in effect since July 1, 2001. Before Act 10, when collateral was disposed of by a secured party pursuant to a debtor's default all subordinate liens and security interests were discharged *including* liens held by the state or a local governmental unit. [s. 409.504 (4), 1999 Stats.] As originally drafted, Assembly Bill 2 would have changed the law to how it was before Act 10 took effect.

THE HYPOTHETICAL

Finally, you have asked for a description of how these two provisions would play out in a hypothetical. The facts of the hypothetical you provided are as follows: The Schultz Company has a loan from Bank. Bank has a first priority lien on all of the company's assets. The company falls on hard times and defaults on its loan to Bank. The company also fails to pay its employees, and the State files a wage claim lien on their behalf. (Note: A wage lien is simply one kind of a State lien. The result would be the same if there were some other lien in favor of the State, such as an income tax lien.)

The relative priority of the Bank's lien and the State's lien matters only when the company cannot satisfy both debts. The law then has several mechanisms for selling off assets and allocating the proceeds.

In a disposition under Article 9 of the Uniform Commercial Code, codified under ch. 409, Wis. Stats., the Bank could take the company's machinery and sell it. Under s. 409.617, Stats., since a wage

lien is a lien of the State, when Bank sells the machinery the State's wage lien will not be discharged. The State's lien will remain attached to the machinery. In theory, the Department of Workforce Development could pursue a claim against the machinery when the machinery is in the hands of the new owner. Practically speaking, however, a buyer would not want to buy machinery that still has a lien attached to it. It is most likely that Bank will pay off the wage lien at the time it sells the machinery, even though the Bank would have to share proceeds with the State.

Where Article 9 does not apply, the exception under s. 409.617 would not, either. For example, Article 9 does not apply to the disposition of real property. If Bank foreclosed on the company's building and land, the State's lien would enjoy only the priority it is assigned under current s. 109.09 (2), Stats. The Bank would pay itself out of the proceeds of the sale up to the amount of the defaulted loan, and then, if any funds remained, pay toward the wage lien.

I hope the information in this memorandum is helpful. Please feel free to contact me at the Legislative Council staff offices if I can be of any further assistance.

NZ:tlu;ksm



Testimony before the
Senate Committee on Agriculture, Financial Institutions and Insurance

9:00 a.m., June 3, 2003
by Rose Oswald Poels
Wisconsin Bankers Association

Senator Schultz and members of the Committee, my name is Rose Oswald Poels. I am the vice president of the legal department for the Wisconsin Bankers Association (WBA). WBA represents nearly 320 commercial banks, savings banks and savings & loan institutions of all sizes throughout the state. All WBA members are affected by and in support of Senate Substitute Amendment (LRBs0071/1) to 2003 Assembly Bill 2, generally relating to financial modernization.

With some modification, which I will address in a few minutes, this bill is a reintroduction of 2001 Assembly Bill 299 and represents compromise legislation agreed to by the Wisconsin Bankers Association, the Community Bankers of Wisconsin, and the Wisconsin Credit Union League. These associations represent virtually all state banks, state savings banks, state savings and loan associations, and state credit unions in Wisconsin. The legislative process regarding this bill has gone on for several years. Many of you are familiar with the process and content of this bill.

This bill is intended to grant state chartered financial institutions the authority necessary to be competitive in the financial services marketplace with federally chartered financial institutions and providers of financial services. The bill is primarily a parity bill. The bill is even more critical since the enactment of the Federal Financial Services Modernization Act in 1999.

The bill gives state chartered financial institutions and the appropriate state regulatory authority the tools necessary for those financial institutions to be competitive while at the same time providing the protections necessary for the benefit of depositors, investors, members and the public. For example, a state bank may elect to exercise these parity provisions only if:

- The bank is well-capitalized.
- The bank does not have any significant financial, managerial, operational or compliance weaknesses.
- The bank is not subject to any regulatory enforcement action.
- The bank has received an outstanding or satisfactory Community Reinvestment Act rating.
- The bank is in substantial compliance with the new federal privacy laws.

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In addition:

- The Department of Financial Institutions must limit or restrict the powers of a bank certified under this bill to exercise the parity powers if the bank fails to maintain its compliance with these requirements, including revocation of the bank's certification if that is appropriate under the circumstances.
- The Department of Financial Institutions may establish additional limits or requirements if necessary to protect depositors, investors, members and the public.

One of the modifications to the bill is particularly important and, as a result, necessitates some explanation. Section 53 of the Senate Substitute Amendment (LRBs0071/1) to 2003 Assembly Bill 2 modifies a section of the revised Wisconsin Uniform Commercial Code enacted by the Legislature in 2001 regarding subordinate state and local governmental liens.

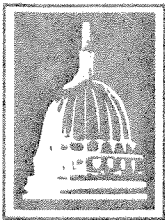
Until the enactment of revised Article 9 of the Uniform Commercial Code in 2001, subordinate state and local governmental liens, along with all other subordinate liens, were discharged in connection with the sale of collateral by a prior secured creditor after default by the customer. Revised Article 9 of the Uniform Commercial Code, however, provides that a sale of collateral by a prior secured creditor after default by a customer does not discharge subordinate state and local governmental liens. The resulting breadth of current law is contrary to the intent of the drafters of the uniform law and contrary to what exists in all other states that have adopted revised Article 9 of the Uniform Commercial Code. This provision has very serious but unintended consequences for all financial institutions when making business loans. This bill would correct the language in revised Article 9 of the Uniform Commercial Code to be consistent with the law in effect in Wisconsin prior to July 1, 2001, and be consistent with the law in other states.

Requests to correct revised Article 9 have caused the issue to be linked to the wage claim issue, despite the fact that they are legally distinct issues. As a result, WBA staff and Board of Directors have spent an extensive amount of time working toward a compromise solution to both issues in good faith with all affected parties, including representatives from labor. Toward that end, modifications have been incorporated into Senate Substitute Amendment (LRBs0071/1) to 2003 Assembly Bill 2 that WBA supports to the extent that they remain consistent with the negotiated solution reached in good faith through the Department of Commerce's efforts with regard to providing workers a \$3,000 priority lien ahead of "commercial lending institutions," which include financial institutions as well as other entities making commercial loans.

WBA is aware of other amendments being advanced from the Wisconsin Department of Justice that would make further changes with regard to the Plant Closing and Health Care Cessation laws in Chapter 109 of the Wisconsin Statutes, and another amendment directly affecting the applicability of Chapter 109 of the Wisconsin Statutes in a bankruptcy proceeding. Both of these amendments are substantial new issues that were not part of the negotiations described above, in fact, not discussed with anyone ahead of time, and are completely unacceptable to WBA and its members. The amendments encompass issues that are very far off point from our collective negotiations, and considerably broaden the scope of the agreed-upon changes. This bill does not change the dollar amounts available to workers under the Plant Closing and Health Care Cessation laws. In fact, the bill would give workers in these instances a \$3,000 priority that currently does not exist in Chapter 109 for such violations. While there may be a benefit currently enjoyed through the mistake drafted into revised Article 9 of the Uniform Commercial Code, this bill seeks to correct that change as part of the negotiated package that does not include these amendments.

After all the time and effort put forth by all parties over the last several months to arrive at a negotiated solution, the focus should be on that part of the bill and nothing more. Consequently, WBA supports the Senate Substitute Amendment (LRBs0071/1) to 2003 Assembly Bill 2 as drafted, with two minor amendments for clarification purposes only, and vehemently opposes any other changes to the bill.

Thank you for the opportunity to provide comments on this important bill. I would be happy to respond to questions.



Wisconsin Merchants Federation

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MEMORANDUM

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TO: Members of the Senate Committee on Agriculture, Financial Institutions and Insurance

FROM: Doug Johnson, Sr. Vice President/General Counsel

DATE: June 3, 2003

RE: AB2

Background: Current wage lien law prohibits non-bank commercial lenders from effectively and competitively providing capital in Wisconsin. It is important to note that non-bank commercial lenders provide a significant and increasing share of total loans to corporate borrowers on a nation-wide basis. In Wisconsin, the flow of capital from non-bank commercial lenders has been highly restricted due to wage lien laws. Numerous non-bank commercial lenders have exited Wisconsin in recent years due to existing wage lien law. The new legislation will allow non-bank commercial lenders to provide capital on a competitive basis, benefiting Wisconsin's companies, its labor force and the state's economy.

Bringing significant, new capital from non-bank commercial lenders into Wisconsin will save and add jobs, tax revenue and bolster general economic development.

- The inflow of non-bank commercial lenders will provide additional capital to support companies' new projects, expansion and acquisitions - which adds jobs and tax revenue.
- Also, non-bank commercial lenders are able to provide capital to companies during difficult economic and company-specific conditions, when regulated financial institutions cannot. This capital may allow a company to stay in business instead of closing down. The impact of a business closing on a community is often devastating, including many lost jobs.
- Companies will also benefit from the lower cost of commercial loans due to additional competition created by the presence of non-bank commercial lenders.

In conclusion, the proposed change to wage lien law is a win-win proposition for Wisconsin.

- The new capital described above will save and create new jobs, a long-term benefit to the labor force in Wisconsin.
- The new capital will save and create tax revenues - an important benefit to the ongoing fiscal strength of Wisconsin.

- Wisconsin has historically rated poorly on a national basis on new capital investments in the state. This change in wage lien law will bring capital investment from non-bank commercial lenders into Wisconsin, at no cost to the state.

The benefits to the state of Wisconsin from revised wage lien provisions in Assembly Bill 2 are significant.

Thank you.

DQJ:mb

Good Morning. I would like to, again, thank everyone for being here this morning. Assembly Bill 2 has a long history spanning more than one biennium. I would like to begin by taking a moment to highlight several important milestones that have led to this point, but first I would like to offer my sincere thanks Representative Jeskewitz and Phil Montgomery. Representative Jeskewitz has been involved in this matter since day one and I truly admire her determination, leadership, and patience. Representative Montgomery I thank you for all you have done over the last several months in helping move us all toward consensus. Your leadership as Chair of the Assembly Financial Institutions Committee is very much appreciated.

Financial Modernization has an extensive background:

- In 1999 the Universal Bank Bill and the Credit Union bill were separate bills. They always had been separate bills and each bill would pass one house and then die in the other. Rep. Jeskewitz believed that every bill in her committee should get a hearing, so when the credit union bill (SB 274) was referred to her committee, she heard the bill. It was then that negotiations started between the Wisconsin Credit Union League, the Wisconsin Bankers Association, the Community Bankers of Wisconsin and the Department of Financial Institutions.
- Negotiations continued until March of 2000. At that time, a substitute amendment was introduced that was supported by the banking community and the credit union community. This compromise included provisions of both the credit union bill and the universal bank bill. It passed in the Assembly and went back to the Senate for concurrence where it died at the end of the session.
- At the beginning of 2001, the compromise was introduced as a separate bill, dubbed **Financial Modernization 2001**. This bill had 113 cosponsors and passed out of the Assembly unanimously.
- The bill then became hostage to wage lien negotiations, and would not be heard in the Senate until wage lien priority was restored to workers (over that of financial institutions).
- In an effort to get this important compromise legislation passed, the parties again began meeting to see if there was a way to restore priority to workers.
- Multiple meetings were held in 2001 and 2002 between the original parties to work on wage lien issues. They often approached leadership with offers, only to be told to go back to renegotiate. The bill never was scheduled for a committee hearing and died in the Senate.
- Late in 2002, Representative Jeskewitz introduced a bill that included all of the original financial modernization language as well as language to address wage lien issues. This bill was heard at the end of session in the Assembly and was objected to on third reading and a final vote was never taken.
- In 2003, the compromise legislation was again introduced with a few changes. One of these changes was to UCC Article 9. Wisconsin's version of article 9 of the Uniform Commercial Code is contained in ch. 409. Under current 409.617, when collateral is disposed of pursuant to a debtor's default, all subordinate liens and security interests are discharged *except* for liens held by the state or a local governmental unit. Through the Department of Workforce Development (DWD) an employee may bring an action to collect the full amount of any unpaid wages. This complicates lending as lenders are not able to calculate the risk of a loan.
- In the Assembly Financial Institutions Committee, chaired by Phil Montgomery, the bill passed on a 16-0 vote, but on the Assembly floor, the UCC 9 issue came to the forefront, and the bill was amended to take that language out. The bill passed in the Assembly on a 95-2 vote.
- Recognizing the importance of wage lien issue, the Governor put together a workgroup to address UCC 9 and wage lien before consideration in the Senate. The group, of which I was part, included Representatives Jeskewitz and Montgomery, Secretary Nettles, Harry Argue of the WI Bankers Assn., Daryll Lund (Community Bankers of WI), Brett Thompson (WI Credit Union League), Tim Elverman of Bank One, Phil Neuenfeldt and David Newby of the AFL-CIO, Doug Johnson and Chris Tackett (WI Merchants Fed.). We met on a regular basis to come up with the compromise that is before us today. I thank all of you for your cooperation and hard work.

The Substitute Amendment: Incorporates the universal bank and credit union provisions of AB 2, with additional provisions aimed at reviving our state's sluggish economy and creating more jobs. The MOU that is being distributed, is the basis for the changes made to AB2 in this substitute amendment.

1. COMMERCIAL LENDING

- The Substitute Amendment will allow non-bank commercial lenders to provide capital on a competitive basis
- The inflow of non-bank commercial lenders will provide additional capital to support companies' new projects, expansion, and acquisitions - which adds jobs and tax revenue.
- Also, non-bank commercial lenders are able to provide capital to companies during difficult economic and company-specific conditions, when regulated financial institutions cannot. This capital may allow a company to stay in business instead of closing down. The impact of a business closing on a community is often devastating, including many lost jobs.
- Wisconsin will benefit as new capital will save and create new jobs and tax revenue.

2. WAGE LIEN claims are addressed in the Substitute Amendment

- The **substitute amendment** creates an exception to the priority given to the commercial lender's prior lien. A wage lien will take precedence over the lien of a commercial lender that originated before the wage lien took effect "only to the extent" that the wage lien is: (1) for unpaid wages of \$3,000 or less; and (2) earned within the six months preceding either the date on which the employee files a wage claim with DWD or the date the employee brings his or her own action to collect the wages. The average wage claim filed in Wisconsin is \$1900.

3. THIS IS NOT RETROACTIVE. Changes in the amendment apply to wage claims filed after enactment of this bill.

4. "EMPLOYEES" is redefined regarding wage claims.

- The amendment excludes executive, managerial, independent contractors, and persons privy to confidential matters from receiving a wage claim. (EXAMPLE: Enron)

Clarifications/Language Changes offered as simple amendments to the Substitute Amendment:

- **The Commercial Lending Institution Amendment (LRBa0567/2)** is a simple amendment to the substitute. Because the substitute did not explicitly define "commercial lending institution" this amendment defines the term as "a bank, savings bank, savings and loan association, credit union, insurance company, finance company, mortgage banker registered under s. 224.72, community development corporation, small business investment corporation, pension fund or other lender which provides commercial loans in this state."
- **The Wage Lien Clarification Amendment (LRBa0581/1)** is a simple amendment to the substitute. It change makes it clear that the first \$3,000 of a wage lien will take precedence over a commercial lender. The amendment deletes the "to the extent language." Instead, the sentence now states that a wage lien will

take precedence over a prior lien of a commercial institution “as to the first \$3,000 of unpaid wages covered under the lien” and only as to wages earned within the six months preceding the date the employee files a wage claim with DWD or the date the employee brings his or her own action to collect the wages.

Conclusion:

I strongly encourage you to support this bill. It's enactment will have a positive and significant impact on our states struggling economy by allowing an inflow of much needed capital. At this time I would be happy to answer any questions you may have.



Memorandum

TO: Members of the Senate Agriculture, Financial Institutions and Insurance Committee

FROM: Daryll Lund
President & CEO

DATE: June 2, 2003

RE: **Support of Senate Substitute Amendment to 2003 Assembly Bill 2**

On behalf of the Community Bankers of Wisconsin (CBW), and our 220 member banks I am writing to urge your support of the Senate substitute amendment to 2003 Assembly Bill 2. The Senate substitute amendment represents compromise legislation agreed to by the Community Bankers of Wisconsin, the Wisconsin Bankers Association and the Wisconsin Credit Union League.

The Senate substitute amendment contains important language to strengthen Wisconsin financial institutions, enhance services to Wisconsin consumers and provide appropriate regulatory oversight for the Wisconsin Department of Financial Institutions (DFI).

Specifically I would like to comment on provisions in the Senate substitute amendment that relate to banks, savings banks, and savings and loans associations as well as changes to Chapter 109.

Key reasons for our support of the Senate substitute amendment are as follows:

- The financial services marketplace is extremely competitive. Passage of this legislation will enhance the ability of Wisconsin state chartered banks, savings banks, and savings and loans associations to more effectively compete by allowing these institutions the ability to exercise powers that have been granted to federally chartered financial institutions.
- The Senate substitute amendment provides the DFI with appropriate regulatory oversight for those financial institutions that seek to become certified as a universal bank. DFI maintains this necessary oversight to protect depositors, shareholders, and the general public.
- The Senate substitute amendment makes changes to ch. 109 that balances the needs of workers and lenders. The certainty provided in this amendment will allow lenders to more accurately determine the level of risk when extending credit to businesses that employ workers thereby resulting in job creation and economic development for Wisconsin communities.

It is my understanding that an amendment (LRBa0567/1) to the Senate substitute amendment will be offered to clarify the term "commercial lending institution". CBW supports this amendment to better define the types of institutions that will be subject to this legislation.

Thank you for the opportunity to comment on this important legislation for Wisconsin community banks.



June 3, 2003

To: Members of the Senate Committee on Agriculture, Financial Institutions and Insurance
From: Peter C. Christianson, for the Wisconsin Land Title Association
Re: Assembly Bill 2 - Wage Claim Lien Issue

I understand that the organizations which are advancing Assembly Bill 2 have expressed interest in resolving the wage claim lien issue. This is a laudable objective. I represent the Wisconsin Land Title Association, whose members provide title insurance and abstract services in all 72 counties in Wisconsin. We have a special issue relating to wage claim liens which has not yet been addressed. If the wage claim lien issue is to be addressed in the context of Assembly Bill 2, all of the "problem issues" should be addressed if the goal is to insure that workers who have not been paid will receive the wages which are due to them.

At the end of this memo you will find a press release which the Department of Justice issued last fall concerning the wage claim lien which was filed against Consolidated Freightways.

The press release notes that Consolidated Freightways had operations in 9 Wisconsin communities. Where was the wage claim lien filed? This is a potential problem, because our current wage claim lien statute does not provide any notice of the lien outside the county in which the lien was filed. Let me explain.

1. Under Wis. Stats. s. 109.09 (2) (b) 1, a lien may be filed "with the clerk of the circuit court of the county in which the services or some part of the services were performed..." But under Wis. State. s. 109.09 (2) (a), the lien is effective "...upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency."
2. According to the statute, a lien filed in Milwaukee County is also effective against property owned by the debtor in Bayfield County.
3. But if the lien is never filed in Bayfield County, it is not possible to find the lien when examining the appropriate records in that county. You can search every office in the courthouse there and you will not find the lien!

Why is this a problem? When real property is sold in Wisconsin, the seller must provide evidence of good title to the buyer. In most situations, the seller procures a title insurance commitment. That commitment outlines the liens and encumbrances on the property which must be cleared in order to provide clear title to the buyer. The list of liens and encumbrances is prepared by the title insurance agent after a search of the records on file at the local courthouse. Title insurance agents do not have the ability to search the records in adjacent counties let alone in far distant counties as in the hypothetical example set forth above.

For years the Wisconsin Land Title Association has attempted to have this serious problem corrected. The problem could be easily corrected in either of two ways:

- a. By requiring that the lien be filed in any county in which enforcement can be sought against the debtor. This would necessitate identifying the counties in which the debtor owns real property and paying the filing fee for each such filing.
- b. By creating a statewide lien filing system.

Since either scenario would cost money, the Department of Workforce Development has not been willing to solve the problem. The lawyers at Workforce Development are well aware, however, that the current law can't be enforced outside the county in which a lien has been filed.

Unless the law is cleaned up, there will be litigation if either the Department of Justice or the Department of Workforce Development attempts to enforce the law in a county where no notice has been provided. These liens are not being shown on title commitments which are issued outside the county where the lien was filed. If the wage claim lien problem is to be solved, this part of the problem should be addressed as well. If this part of the problem is not solved, workers who have not been paid may well continue to be denied that which they are rightfully due.

Here is the press release:

For Immediate Release

September 4, 2002

For More Information Contact:

Randy Romanski 608/266-1221

DOYLE FILES LIEN AGAINST CONSOLIDATED FREIGHTWAYS;

SEEKS COMPENSATION FOR DISPLACED WISCONSIN WORKERS

NEENAH - Attorney General Jim Doyle's office has filed a lien against a major trucking company for allegedly violating Wisconsin's plant closing law and failing to pay wages due to affected employees.

Doyle filed the lien against Consolidated Freightways Corporation, Vancouver, Washington. It charges that the company failed to give required notice under Wisconsin's plant closing law and failed to pay employees for two weeks of wages due prior to closing. The company has operated transportation terminals at several locations in the state including Milwaukee, Neenah, Onalaska, Wausau, Sheboygan, Marinette, Eau Claire, Madison and Superior.

"Working men and women were thrown out of their jobs on Labor Day with no warning and were locked out of their workplace when they reported at 2 a.m.," Doyle said. "This

Memorandum

kind of corporate behavior should not be tolerated in Wisconsin or any other state in the nation. Under Wisconsin's plant closing law, this company is liable for payments to affected workers. My office will do everything it can to make sure that former employees receive all that they can as compensation in this case."

According to the Wisconsin Department of Workforce Development (DWD), approximately 400 Wisconsin workers may have lost their jobs on Monday when the company allegedly terminated their employment with no advanced warning. Consolidated Freightways announced Monday that it was planning to file for bankruptcy and lay off 15,500 people around the country. Employees reported that the company's terminals in Wisconsin were closed and secured Monday morning without warning.

Wisconsin's plant closing law requires companies to give 60 days notice of a business closing or mass layoff to affected employees, to the highest elected official of any municipality in which the affected employment site is located and to the state Department of Workforce Development. Violations of the law are subject to 60 days wages or whatever wages are due from the date employees should have received notice, along with a provision that can double the penalty if the employer does not cooperate with a subsequent investigation of the violation. In addition, current law allows the DWD to assess a \$500 per day business closing surcharge against an employer who fails to notify the highest elected public official of the municipality for each day beginning on the day the employer was required to give notice.

Doyle said that an affected worker has filed a claim with the state, and Milwaukee Mayor John Norquist has also asked the Attorney General's Office to consider immediate legal action to protect the interests of Consolidated Freightways employees.

Doyle's lien against the company seeks a total of \$3.4 million for affected employees including \$2.7 million for violating the plant closing law and \$700,000 in wages and benefits due for the two-week period employees worked prior to the closing. Doyle said that, if the company did not cooperate with a subsequent investigation of the alleged violation, his agency could pursue an action to double the claim.

The Department of Justice is working cooperatively with the Department of Workforce Development to enforce the state's plant closing law. The DWD must investigate the complaint to determine whether the plant closing law was violated and whether there are any wages due to the employees. Upon conclusion of the investigation, the DWD can refer the results of the investigation to the Department of Justice for possible enforcement.

The Department of Justice filed the lien against the company's assets with the Wisconsin Department of Financial Institutions on Tuesday afternoon.

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mjw

109.075 WAGE PAYMENTS, CLAIMS AND COLLECTIONS

recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

(5) (a) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines all of the following:

1. When the notice under sub. (2) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits.

2. That the employer reasonably and in good faith believed that giving the notice required under sub. (2) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par. (a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the department's rules. The employer shall provide the department with an affidavit verifying the content of the notarized documents.

(6) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines that the cessation of health care benefits is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

(b) Business circumstances that were not foreseeable when the notice would have been timely given.

(c) A natural or man-made disaster beyond the control of the employer.

(d) A temporary cessation in providing health care benefits, if the employer renews providing health care benefits for the affected employees, retirees and dependents on or before the 60th day beginning after the cessation.

(7) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth the rights of employees, retirees and dependents under this section. Any employer who violates this subsection shall forfeit not more than \$100.

(8) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1997 a. 237.

109.09 Wage claims, collection. (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having

appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) for the operation of the office of the district attorney who prosecuted the action.

(2) (a) The department of workforce development, under its authority under sub. (1) to maintain actions for the benefit of employees, or an employee who brings an action under s. 109.03 (5) shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency.

(b) 1. A lien under par. (a) upon real property takes effect when the department of workforce development or employee files a notice of the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed, pays the fee specified in s. 814.61 (5) to that clerk of circuit court and serves a copy of that petition on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The clerk of circuit court shall enter the notice of the lien on the judgment and lien docket kept under s. 779.07.

2. A lien under par. (a) upon personal property takes effect when the department of workforce development or employee files notice of the lien in the same manner, form, and place as financing statements are filed under subch. V of ch. 409 regarding debtors who are located in this state, pays the same fee provided in s. 409.525 for filing financing statements, and serves a copy of the notice on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The department of financial institutions shall place the notice of the lien in the same file as financing statements are filed under subch. V of ch. 409.

3. The department of workforce development or employee must file the notice under subd. 1. or 2. within 2 years after the date on which the wages were due. The notice shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the person filing the notice claims a lien on that property.

(c) A lien under par. (a) takes precedence over all other debts, judgments, decrees, liens or mortgages against the employer, except a lien of a financial institution, as defined in s. 69.30 (1) (b), that originates before the lien under par. (a) takes effect or a lien under s. 292.31 (8) (i) or 292.81. A lien under par. (a) may be enforced in the manner provided in ss. 779.09 to 779.12, 779.20 and 779.21, insofar as those provisions are applicable. The lien ceases to exist if the department of workforce development or the employee does not bring an action to enforce the lien within the period prescribed in s. 893.44 for the underlying wage claim.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10.

Under sub. (1), courts may award costs to DILHR when DILHR prevails but may not tax costs against DILHR when a defendant employer prevails. *DILHR v. Coatings, Inc.* 126 Wis. 2d 338, 376 N.W.2d 834 (1985).

Chapter 103 does not provide the exclusive remedy for enforcement of claims under that chapter. Claims under statutes enumerated in sub. (1) may be enforced by a private action brought under s. 109.03 (5). *German v. DOT*, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998). Affirmed. 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50.

Chapter 103 does not provide the exclusive remedy for enforcement of claims under that chapter. Claims under statutes enumerated in sub. (1) may be enforced by a private action brought under s. 109.03 (5). *German v. DOT*, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998). Affirmed. 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50.

109.10 Reciprocal agreements. (1) In this section, "responsible agency" means a state officer, agency or other body that is responsible for the collection of wage claims or wage deficiencies.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

June 2, 2003

The Honorable Dale Schultz, Chair
Senate Committee on Financial Institutions
State Capitol Building, Room No. 18 South
VIA INTER-DEPARTMENTAL MAIL

Re: LRBs0071/1 – Assembly Bill 2 Substitute Amendment

Dear Senator Schultz:

I write to highlight some concerns of the Department of Justice (DOJ) related to Assembly Bill 2 and the proposed substitute amendment that the committee may wish to consider. As Attorney General, I have a primary responsibility to enforce wage liens and recover wages due employees under various state statutes impacted by this legislation.

Wisconsin has a long history, dating back well over 100 years, of protecting an employee's right to a lien for wages. In fact our strong tradition, until only recently, provided that an employee's right to a lien for wages was always paramount to other financial creditors. This pro-worker tradition has been largely unparalleled in the nation. Despite changes in recent years to Wisconsin law that reprioritized wage liens, I am proud of the many successes of DOJ in recovering wages owed to workers.

The substitute amendment under consideration by the committee ostensibly offers the wage lien a benefit beyond current law under Wis. Stat. § 109.09(2) by establishing a superpriority wage lien, relative to a bank, of \$3,000. While employees would remain eligible to recover amounts they are owed in excess of \$3,000, based upon the experience of the Department, such recoveries without the benefit of a superpriority lien are unlikely.

The wages owed to an employee under this legislation which would be subject to the \$3,000 limit, include: unpaid wages, health care claims, un-reimbursed expenses advanced by the employee, and vacation pay. In recent cases involving DOJ, some individual employees have quickly exceeded the \$3,000 level proposed in this legislation. In one case, a few individual employees were owed hundreds of thousands of dollars from an unfunded Deferred Compensation Program. In another, tens of thousands of dollars in catastrophic health care costs were owed individual workers from a self-funded company health plan. The committee should consider these potentially devastating costs for individual workers when determining the appropriate level for the superpriority wage lien.

In addition to the proposed \$3,000 wage lien, this legislation makes several other changes to current law of which the committee should be aware. Among these changes are the following:

- The proposal expands the definition of "financial institution" from simply including regulated banks to any "commercial lending institution." In the Department's experience, employers on the edge of insolvency often do their borrowing with non-bank lenders. Current state law provides an unlimited superpriority lien relative to the lender and can often satisfy the wage lien in full. Under the substitute amendment, these recoveries would be subject to the \$3,000 superpriority lien.
- Any currently existing lien of a bank will not be subject to the new \$3,000 superpriority wage lien under the proposal. Non-bank lenders, however, receive immediate benefit from the legislation's effective date.
- The proposal also narrows the definition of "employee." The proposal would exclude officers, directors, managers, professionals, commissioned salesmen, and those "privity to confidential matters involving the employer-employee relationship." Notably, this definitional change will exclude these groups not just from the wage lien, but from all of the other rights and protections afforded by Ch. 109.

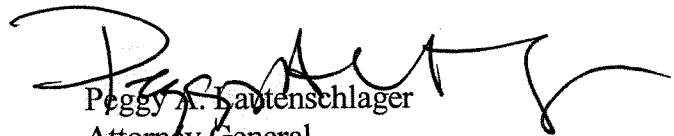
As the state's top law enforcement officer whose ultimate responsibility it is to enforce wage liens and recover wages owed workers, I am concerned that this legislation provide strong incentives to insolvent employers and their lenders to comply with state plant closing (Wis. Stat. § 109.07) and health care cessation (Wis. Stat. § 109.075) laws. The committee may wish to consider an amendment to increase the proposed level of the superpriority lien under the bill to include any liability for wages under either of these statutes.

Given the trends in litigation surrounding wage liens in Wisconsin, I would also recommend minor changes to the statute that would provide this area of law with more stability. In several cases in which DOJ is currently involved, lenders are now arguing that the wage lien is not perfectable (and thus non-enforceable) in bankruptcy. The ability to perfect the lien during bankruptcy is crucial because, often, an employer will file for bankruptcy even the same day employees learn that they will be laid off without pay. Often the reason for filing bankruptcy is that the employer cannot make payroll. The employees, and the State on their behalf, thus do not have time before the bankruptcy begins to perfect a lien under Wis. Stat. Ch. 109. Without some clarification, courts may continue to grapple with this area of law. In recent cases, some have argued that the State may not perfect the wage lien by filing a lien after bankruptcy either because (1) the statute does not relate the wage lien back temporally to a specific point in time; or (2) because the wage lien is not created until the State sues the employer. DOJ believes the courts will reject this reasoning, but the bill would be enhanced by squarely addressing the issue. I have forwarded to you, under separate cover, suggested language that would help to accomplish this goal.

Providing more certainty, as envisioned by this bill, may allow lenders to better protect themselves through underwriting standards, reserves and reporting requirements. At the same time that we work towards this goal, we must also remain vigilant in our efforts to protect workers and the strong tradition in Wisconsin law to ensure that wages are paid.

I would respectfully request the committee consider these concerns when considering this legislation. As always, please feel free to give me a call if you have any questions or concerns about this or any other justice-related matter.

Very truly yours,



Peggy A. Lautenschlager
Attorney General

PAL: vlv

Draft

Memorandum Of Understanding

(Revised)
April 30, 2003

1. The parties agree to the language set forth in 2003 Assembly Bill 2 as passed by the Wisconsin State Assembly with regard to credit unions.
2. The parties agree to the language set forth in 2003 Assembly Bill 2 as passed by the Wisconsin State Assembly regarding the creation of a new type of financial institutions.
3. The parties agree to the language set forth in 2003 Assembly Bill 2 as originally introduced by the Wisconsin State Assembly, deleting the exception to give priority to subordinate liens held by this state or local government units under the Uniform Commercial Code.
4. The parties agree as follows regarding Wis. Stats. s. 109 regarding wage lien claims:
 - A. "Wage" or "wages" shall mean remuneration payable to an employee for personal services, including salaries, commissions, holiday and vacation pay, overtime pay, severance pay or dismissal pay, supplemental unemployment benefit plan payments when required under a binding collective bargaining agreement, bonuses and any other similar advantages agreed upon between the employer and the employee or provided by the employer to the employees as an established policy. [Current law]
 - B. "Employee" means any person employed by an employer, except that "employee" does not include an independent contractor, a person working for another for hire in the state of Wisconsin in a confidential, managerial, executive or commissioned sales capacity, an officer or director of a corporation, a member or manager of a limited liability company, a partner or a partnership or a joint venture or the owner of a sole proprietorship. [New provision underlined].
 - C. A new section of under Wis. Stats. s. 109 would be created which would provide for a first priority wage lien with a maximum established amount of \$3,000 per employee. All wage lien claims in excess of the \$3,000 limit would continue to have the same priority under current law. [New provision].

- D. Change Wis. Stats. s. 109.09(1) from "no later than 2 years after the date the wages are due" to "no later than six (6) months after the date the wages are due" [Revised provision]. The Department of Workforce Development would continue to have two (2) years from the time a wage claim is filed to investigate and initiate action. [Current law].
- E. The changes reflected in section 4C and 4D of this Memorandum of Understanding apply to any wage lien filed after the enactment of this statute. All liens currently on file will maintain their respective priority status as reflected in Wis. Stats. s. 109 and under the Uniform Commercial Code. None of these proposed changes will have retroactive application, nor will they affect the priority of any current lien on file. [New provision].
- F. No provision in Wis. Stats. s. 109 shall prohibit or infringe on an employee's right under either federal or state plant closing statutes. [Current law].
- G. The definition of "financial institution" in Wis. Stats. s. 109.09 (2)(c) would be expanded to include all commercial lending, including but not limited to non-bank lenders. [New provision].
- H. The above described revisions to Wis. Stats. s. 109 would become effective one month after enactment. [Non-statutory language].

All parties agree to the above terms and agree these changes shall be drafted and introduced as a substitute amendment to 2003 Assembly Bill 2.

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

JUN 0 8 2003

Date: _____

Moved by: _____

Seconded by: _____

AB 2 _____

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

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 Adoption Confirmation Concurrence Indefinite Postponement
- Introduction Rejection Tabling Nonconcurrency

Committee Member

Aye

No

Absent

Not Voting

Senator Dale Schultz

Senator Ronald Brown

Senator Neal Kedzie

Senator David Hansen

Senator Julie Lassa

Totals:

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman
Committee Clerk. John O'Brien

Committee Ballot

June 16, 2003

The Senate Committee on Agriculture Financial Institutions and Insurance held a public hearing on the bill/amendments listed below on June 3rd, 2003.

Base on the testimony given at that Public Hearing on:

**SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 2. (FINANCIAL MODERNIZATION)
INCLUDING SENATE AMENDMENTS TO SENATE SUBSITUTE AMENDMENT LRB'S 0567/2 AND
LRB 0581/2**

An Act to repeal 186.235 (16) (b), 186.41 (1) (d), 186.41 (6) (b) and 186.41 (8); to renumber 186.41 (6) (a); to renumber and amend 186.02 (2) (d), 186.11 (4) (a), 186.113 (11), 186.235 (16) (a), 186.41 (1) (a) and 186.41 (1) (c); to amend 93.01 (1m), 186.01 (2), 186.02 (2) (a) 1., 186.02 (2) (b) 2., 186.02 (2) (c), 186.06 (4), 186.11 (4) (title), 186.11 (4) (c), 186.113 (1), 186.113 (1m) (a) (intro.), 186.113 (6) (b) and (c), 186.22 (12m), 186.235 (7) (a) (intro.), 186.36, 186.41 (title), 186.41 (2) and (3), 186.41 (4) (intro.), (a) to (d) and (f), 186.41 (5) (a), (b), (c) and (cr), 220.04 (9) (a) 2. and 409.617 (1) (c); to repeal and recreate 186.11 (4) (b) and 186.17 (1); and to create 186.02 (2) (b) 2m., 186.02 (2) (d) 2., 186.07 (3m), 186.11 (4) (a) 1., 186.11 (4) (bd) and (bh), 186.113 (11) (b), 186.113 (24), 186.113 (25), 186.20, 186.235 (7) (c), 186.235 (7m), 186.235 (16m), 186.45, 186.80, 220.14 (5) and chapter 222 of the statutes; relating to: credit union membership, powers, operation, and regulation; the application of agriculture, trade, and consumer protection statutes to credit unions; the creation of a new type of financial institution; the powers of and requirements applicable to the new type of financial institution; the discharge of governmental liens under the Uniform Commercial Code; providing an exemption from emergency rule procedures; granting rule-making authority; and providing a penalty.

Request you as a committee member indicate your vote on this Bill and Amendments.

SENATOR RON BROWN

Introduction and Adoption of Senate Amendments LRB 0567/2 and 0581/2,

YES *R* NO _____

Introduction and Adoption of Amended Senate Substitute Amendment 1 to Assembly Bill 2,

YES *R* NO _____

Passage of Assembly Bill 2 As Amended.

YES *R* NO _____

 Ronald W. Brown
State Senator Ron Brown
Committee Member

 6/16/03
Date

PLEASE RETURN THIS BALLOT TO SENATOR SCHULTZ'S OFFICE
ROOM 18 SOUTH
BY NOON TODAY

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman

Committee Clerk. John O'Brien

Committee Ballot

June 16, 2003

The Senate Committee on Agriculture Financial Institutions and Insurance held a public hearing on the bill/amendments listed below on June 3rd, 2003.

Base on the testimony given at that Public Hearing on:

SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 2. (FINANCIAL MODERNIZATION) INCLUDING SENATE AMENDMENTS TO SENATE SUBSITUTE AMENDMENT LRB'S 0567/2 AND LRB 0581/2

An Act to repeal 186.235 (16) (b), 186.41 (1) (d), 186.41 (6) (b) and 186.41 (8); to renumber 186.41 (6) (a); to renumber and amend 186.02 (2) (d), 186.11 (4) (a), 186.113 (11), 186.235 (16) (a), 186.41 (1) (a) and 186.41 (1) (c); to amend 93.01 (1m), 186.01 (2), 186.02 (2) (a) 1., 186.02 (2) (b) 2., 186.02 (2) (c), 186.06 (4), 186.11 (4) (title), 186.11 (4) (c), 186.113 (1), 186.113 (1m) (a) (intro.), 186.113 (6) (b) and (c), 186.22 (12m), 186.235 (7) (a) (intro.), 186.36, 186.41 (title), 186.41 (2) and (3), 186.41 (4) (intro.), (a) to (d) and (f), 186.41 (5) (a), (b), (c) and (cr), 220.04 (9) (a) 2. and 409.617 (1) (c); to repeal and recreate 186.11 (4) (b) and 186.17 (1); and to create 186.02 (2) (b) 2m., 186.02 (2) (d) 2., 186.07 (3m), 186.11 (4) (a) 1., 186.11 (4) (bd) and (bh), 186.113 (11) (b), 186.113 (24), 186.113 (25), 186.20, 186.235 (7) (c), 186.235 (7m), 186.235 (16m), 186.45, 186.80, 220.14 (5) and chapter 222 of the statutes; relating to: credit union membership, powers, operation, and regulation; the application of agriculture, trade, and consumer protection statutes to credit unions; the creation of a new type of financial institution; the powers of and requirements applicable to the new type of financial institution; the discharge of governmental liens under the Uniform Commercial Code; providing an exemption from emergency rule procedures; granting rule-making authority; and providing a penalty.

Request you as a committee member indicate your vote on this Bill and Amendments.

SENATOR NEAL KEDZIE

Introduction and Adoption of Senate Amendments LRB 0567/2 and 0581/2,

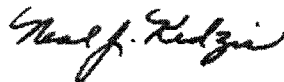
YES _____ NO _____

Introduction and Adoption of Amended Senate Substitute Amendment 1 to Assembly Bill 2,

YES _____ NO _____

Passage of Assembly Bill 2 As Amended.

YES _____ NO _____



State Senator Neal Kedzie

6/16/03
Date

PLEASE RETURN THIS BALLOT TO SENATOR SCHULTZ'S OFFICE
ROOM 18 SOUTH
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**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman
Committee Clerk. John O'Brien

Committee Ballot

June 16, 2003

The Senate Committee on Agriculture Financial Institutions and Insurance held a public hearing on the bill/amendments listed below on June 3rd, 2003.

Base on the testimony given at that Public Hearing on:

**SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 2. (FINANCIAL MODERNIZATION)
INCLUDING SENATE AMENDMENTS TO SENATE SUBSITUTE AMENDMENT LRB'S 0567/2 AND
LRB 0581/2**

An Act to repeal 186.235 (16) (b), 186.41 (1) (d), 186.41 (6) (b) and 186.41 (8); to renumber 186.41 (6) (a); to renumber and amend 186.02 (2) (d), 186.11 (4) (a), 186.113 (11), 186.235 (16) (a), 186.41 (1) (a) and 186.41 (1) (c); to amend 93.01 (1m), 186.01 (2), 186.02 (2) (a) 1., 186.02 (2) (b) 2., 186.02 (2) (c), 186.06 (4), 186.11 (4) (title), 186.11 (4) (c), 186.113 (1), 186.113 (1m) (a) (intro.), 186.113 (6) (b) and (c), 186.22 (12m), 186.235 (7) (a) (intro.), 186.36, 186.41 (title), 186.41 (2) and (3), 186.41 (4) (intro.), (a) to (d) and (f), 186.41 (5) (a), (b), (c) and (cr), 220.04 (9) (a) 2. and 409.617 (1) (c); to repeal and recreate 186.11 (4) (b) and 186.17 (1); and to create 186.02 (2) (b) 2m., 186.02 (2) (d) 2., 186.07 (3m), 186.11 (4) (a) 1., 186.11 (4) (bd) and (bh), 186.113 (11) (b), 186.113 (24), 186.113 (25), 186.20, 186.235 (7) (c), 186.235 (7m), 186.235 (16m), 186.45, 186.80, 220.14 (5) and chapter 222 of the statutes; relating to: credit union membership, powers, operation, and regulation; the application of agriculture, trade, and consumer protection statutes to credit unions; the creation of a new type of financial institution; the powers of and requirements applicable to the new type of financial institution; the discharge of governmental liens under the Uniform Commercial Code; providing an exemption from emergency rule procedures; granting rule-making authority; and providing a penalty.

Request you as a committee member indicate your vote on this Bill and Amendments.

Request you as a committee member indicate your vote on this Bill and Amendments.

SENATOR DAVE HANSEN

Introduction and Adoption of Senate Amendments LRB 0567/2 and 0581/2,

YES _____ NO X

Introduction and Adoption of Amended Senate Substitute Amendment 1 to Assembly Bill 2,

YES _____ NO X

Passage of Assembly Bill 2 As Amended.

YES _____ NO X



State Senator Dave Hansen

6/16/03
Date

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Request you as a committee member indicate your vote on this Bill and Amendments.

SENATOR JULIE LASSA

Introduction and Adoption of Senate Amendments LRB 0567/2 and 0581/2,

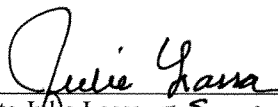
YES NO

Introduction and Adoption of Amended Senate Substitute Amendment 1 to Assembly Bill 2,

YES NO

Passage of Assembly Bill 2 As Amended.

YES NO



State Julie Lassa - Senator
Committee Member

6/16/03
Date

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Request you as a committee member indicate your vote on this Bill and Amendments.

SENATOR DALE SCHULTZ

Introduction and Adoption of Senate Amendments LRB 0567/2 and 0581/2,

YES NO

Introduction and Adoption of Amended Senate Substitute Amendment 1 to Assembly Bill 2,

YES NO

Passage of Assembly Bill 2 As Amended.

YES NO


State Dale Schultz
Committee Member

6/16/03
Date

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