



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SECURITY FILINGS WITH SEC. OF STATE

House Bill 4828 as enrolled
Third Analysis (1-11-90)

RECEIVED

Sponsor: Rep. Lyn Banks
House Committee: Corporations & Finance
Senate Committee: Commerce & Technology

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THE APPARENT PROBLEM:

The Uniform Commercial Code (UCC) was amended by Public Act 130 of 1988 to require persons who must file information relative to original security interests to submit a unique identification numbers, such as a social security or federal employer tax identification number, beginning September 1, 1988 in order to facilitate better recordkeeping and information retrieval by the secretary of state. The act, however, exempts "non-original" (i.e. copies) and certain other types of security agreements or financing statements from the ID number requirement, and authorizes the secretary of state to accept these exempt statements for filing. Since its implementation, the act's tax ID number provisions have been subject to varying interpretations by attorneys representing private companies. Some feel the tax ID numbers are optional in all cases, while others argue that an additional \$3 fee will be added to a financing statement filing fee if no ID number is included. In fact, the Department of State is currently being sued by one company because the department did not report information relative to the existence of security interests of another company. The case is being appealed to the state supreme court, and if it loses the appeal the state could be liable for over \$90,000. Apparently, the department feels such errors, and potential lawsuits, could be avoided if the act were amended to clarify that the tax ID number is only required on original security interest filings.

THE CONTENT OF THE BILL:

Public Act 130 of 1988 requires businesses operating under the Uniform Commercial Code to file information relative to original security interests, and to include with this information a unique identification number, such as a social security or federal employer tax identification number. The act exempts "non-original" (i.e. copies) and certain other types of security agreements or financing statements from the ID number requirement, and authorizes the secretary of state to accept these exempt statements for filing. The bill would delete the provision which allows the secretary of state to determine whether the tax ID number was needed, and would require each debtor's tax ID number to be included on all original filings, except as exempted, beginning April 1, 1990. If an original filing of a security agreement or financing statement failed to contain each debtor's tax ID number and was not exempt from the act, the secretary of state could not accept it for filing and would return it to the secured party or other person who submitted it.

The act also specifies that the validity or effectiveness of a filed financing statement is not impaired by the failure of the statement to contain the debtor's tax ID number or by the inclusion of an incorrect tax ID number, regardless of whether the secretary of state could have refused the statement for filing. The bill would delete this provision, and would specify instead that if the secretary of state filed

a nonoriginal financing statement that did not contain, or incorrectly stated, the debtor's tax ID number, and if the statement otherwise complied with applicable requirements, it would be considered sufficient, valid, and effective.

MCL 440.9402 and 440.9406.

FISCAL IMPLICATIONS:

According to the Department of State, the bill would have no administrative fiscal implications, but should help prevent future lawsuits (and their potential fiscal impact to the state) similar to the case now pending in which the state could be liable for over \$90,000. (5-25-89)

ARGUMENTS:

For:

The bill would clarify the intent of Public Act 130 of 1988 which requires the tax ID number to be submitted on all original security interest filings, but exempts certain other types of financial statements from this requirement. Apparently, some feel the act makes the ID number optional in all cases, while others interpret the act to mean a person can pay an additional \$3 filing fee to forgo giving the number. The information is required to help the department keep more accurate and up-to-date records on a company's filings, and aids the department in retrieving this information quickly and efficiently upon request through the use of an automated computer index. Before last year's legislation the department stored the information in paper files and was more prone to err when retrieving information. In addition, having a unique ID number helps to differentiate between companies with similar names or related corporate histories. Clarifying the intent of the act would ensure that all UCC records contained tax ID numbers to serve as unique identifiers, which could help protect the state against future lawsuits.

H.B. 4828 (1-11-90)