



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

The Uniform Commercial Code (UCC) was amended by Public Act 130 of 1988 in an effort to require people who must file information relative to original security interests (such as liens and mortgages) to submit a unique identification number, such as a social security or federal employer tax identification number, beginning September 1, 1988, in order to improve recordkeeping and information retrieval by the secretary of state. The act, however, exempts non-original (i.e. copies) documents 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. The importance of accurately identifying the existence of security interests is demonstrated by a recent lawsuit against the state. The Department of State has been sued by one company because the department did not report certain security interest information for another company that the first company has requested (because the information had been filed using a somewhat different description of the company than that used in the request for information). The case is being appealed to the state supreme court; loss of the appeal could cost the state over \$90,000. Apparently, the department feels such errors, and potential lawsuits, could be avoided if the act were amended to make it clear that the tax ID number is required on original security interest filings.

THE CONTENT OF THE BILL:

The bill would amend the section of the Uniform Commercial Code dealing with the filing of security interest information to specify that, beginning April 1, 1990, all original filings of a financing statement or security agreement with the secretary of state must contain the tax identification number of each debtor, with certain exceptions. 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. (The bill would remove a provision that allows the secretary of state to determine whether a tax ID number was necessary and would remove language that appears to make tax ID numbers optional for financing statements.) The bill also specifies that, beginning April 1, 1990, all original filings with a register of deeds would have to contain the tax ID number of each debtor, except as exempted. The register of deeds would have to index various financial information under a debtor's tax ID number, as well as under the debtor's name.

The bill specifies that beginning April 1, 1990, the following would continue to be exempt from the tax ID requirement for filings with the secretary of state and would be exempt for filings with registers of deeds:

SECURITY INTEREST FILINGS RECEIVED

House Bill 4828 as passed by the House
Second Analysis (9-8-89)

OCT 19 1989

Sponsor: Rep. Lyn Bankes

House Committee: Corporations and Finance

- a reproduction of a security agreement or financing statement that was a legible carbon, photographic, or other reproduction if the security agreement permits this or if the original security agreement or financing statement was filed in the state or entered into before April 1, 1990;
- a financing statement signed by the secured party instead of the debtor if it was filed to perfect a security interest in certain kinds of filings;
- a financing statement accompanied by a certificate prescribed by the secretary of state which was signed by the debtor stating that the debtor did not have a tax ID number.

Currently, 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. (8-22-89)

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 lawsuits.

POSITIONS:

The Department of State supports the bill. (8-22-89)

H.B. 4828 (9-8-89)