



LIEN FILING: USE ~~USC~~ ~~SC~~ ~~SEE~~ ~~NO.~~ ~~LIBRARY~~

Sponsor: Rep. John Bennett
Committee: Corporations and Finance

The Secretary of State suggests that recordkeeping for filings of security interests made under the Uniform Commercial Code (UCC) would be improved if unique identification numbers, such as social security numbers or federal employer tax identification numbers², were submitted along with the information the act requires in order for a person to perfect a security interest or to check for liens on property. Use of permanent individual numbers, rather than occasionally duplicative or misspelled names, would enable the Secretary of State and county registers of deeds to more accurately file and retrieve information by computer. It would allow the Secretary of State in particular to make full use of an automated index system the department is in the process of acquiring (appropriations have already been made) and expects to have in operation by July.

Filings of security interests and requests for lien searches are governed by Article 9 of the Uniform Commercial Code (UCC). In order to perfect a security interest or obtain lien information on a debtor, one must provide identifying and descriptive information specified by the code. Nonstandard filings and requests for information are subject to higher fees than are charged when the standard form is used. The bill would encourage, but not require, people to provide the debtor's social security number or federal employer tax identification number when filing a security interest with the Secretary of State or requesting a lien search. It would do this by making filings and requests that did not include either number subject to the higher fee applicable to nonstandard filings and requests, and by providing for the inclusion of the number in the standard form.

The bill also would revise the fee schedule for timber, mineral, or fixture filings made with registers of deeds. Those filings now cost \$6 if in the standard form, or if not, \$6 plus \$2 per page for each page over two. The bill would make the fee for timber, mineral, or fixture filings that were in the standard form \$5 for the first page and \$2 for each additional page; the fee for those in a nonstandard form would be \$3 (see Suggested Amendments) (MCL 440.9402 et al).

The bill would, apparently inadvertently, decrease the fee for timber, mineral, and fixture filings that were not in the standard form. At present, such filings are \$6 plus \$2 per page for each page over two (a multiple-page filing is considered nonstandard). Under the bill, the fee would be \$3, the figure that now applies to register filings other than timber, mineral, and fixture filings. This fee for nonstandard fixture filings would be less than the fee that the bill proposes for fixture filings in the standard form.

The Secretary of State says that the bill would have minimal fiscal implications for the department (1-28-87).

Identifying security interest filings by commonly used but unique numbers would improve filing officials' ability to organize, maintain, and recover information and minimize error in meeting requests for information on existing liens. Names are occasionally duplicative or misspelled, are sometimes used inconsistently (e.g., using varying combinations of names and initials), are not necessarily as permanent as the federal identification numbers, and are not as easily accommodated by computers as numbers. Use of the numbers would enable the Secretary of State to make full use of a new automated indexing system it is acquiring. Further, the bill is consistent with recent changes in federal law which require a lender to, among other things, provide an identification number to a central statewide recordkeeping agency in order to have a lien on farm products follow those products after sale. (With certain exceptions, such as farm products, a buyer in the ordinary course of business is not obligated to honor any pre-existing liens on the goods in question).

The bill can increase recordkeeping efficiency and accuracy only to the degree that the federal identification numbers are actually used. There is nothing now that prevents those who wish to include the numbers with their filings and their lien search requests. By failing to require that the numbers be included, the bill does little to change matters. For maximum effect, the bill should require that the numbers be used.

It is expected that most people will provide the identification numbers, and not only because a higher fee will be charged for failure to include the number. Lenders routinely obtain this information as part of their loan application process, and it will be to one's advantage to provide the number with lien search requests. Further, if the bill required the numbers to be provided, it likely would have an effect broader than improving recordkeeping efficiency and accuracy. If a federal identification number was necessary for a financing statement to be sufficient,

H.B. 4002 (2-12-87)

then a missing or erroneous number could result in a lender losing the perfection of the security interest and thus the higher priority that perfected interests have over unperfected interests.

For:

The proposed fee schedule for timber, mineral, and fixture filings restores a structure that used to exist in the law. These filings traditionally were charged at the same rate as mortgage filings, as in other states. The bill proposes the same fee schedule (\$5 for the first page, \$2 for each additional page) that exists for mortgage filings.

Against:

Registers of deeds point out that although the bill would impose a higher fee on filings lacking an identifying number that were filed with the Secretary of State, it would not provide this incentive regarding filings with registers of deeds. To be consistent, to minimize confusion for the public, and to improve efficiency for local officials, the bill should contain fee language like that applying to the Secretary of State filings.

In addition, argue local officials, the bill should do more toward compensating them for their costs by authorizing additional charges for each lien entry in excess of three found upon completion of a lien search. Although the time spent searching is not affected by the number of liens found, the time spent on post-search paperwork and verification is.

Against:

The bill would amend a uniform state law, a type of law that virtually all states have enacted to ensure uniformity of regulation nationwide. The National Conference of Commissioners on Uniform State Laws oversees uniform laws and occasionally recommends changes that subsequently are adopted across the country. The bill's proposals for using federal identification numbers are non-uniform; only a few states have amended their UCC to require or request federal identification numbers with security interest filings. While the changes proposed by the bill do not appear to be fundamental, Michigan should be cautious about abridging the uniformity of the UCC.

Response:

The UCC is not very uniform across the country. It is commonplace for states to enact their own changes to the code.

POSITIONS:

The Department of State supports the bill (2-11-87).

The Michigan Association of Registers of Deeds would support the bill with an amendment that required that they receive higher filing fees for nonstandard filings or those lacking social security numbers in the same manner provided for the Secretary of State. In addition, the association recommends an amendment to establish a per-entry fee for lien search entries in excess of three (2-11-87).

The Michigan Bankers Association supports the bill (2-11-87).