



**House
Legislative
Analysis
Section**

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House Bill 4002 as enrolled
Third Analysis (8-3-88)

Sponsor: Rep. John Bennett

House Committee: Corporations & Finance Law Library
Senate Committee: Commerce & Technology

THE APPARENT PROBLEM:

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 numbers, 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 has acquired.

THE CONTENT OF THE BILL:

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 provide for the inclusion of a "tax identification number" (the debtor's social security number or federal employer tax identification number) in security interest filings and related paperwork, subject certain filings and requests that did not include the number to higher fees, and provide for inclusion of the number in the standard form.

Identification number requirements. Unless otherwise determined by the secretary of state, original filings of security agreements and financing statements generally would have to contain the debtors' tax identification numbers, beginning September 1, 1988. However, certain exceptions would be made. The requirement would not apply to: a reproduction of a security agreement entered into or financing statement filed before September 1, 1988; a financing statement signed by the secured party instead of the debtor under any of the several circumstances in which this may be done; a financing statement accompanied by a certificate, prescribed by the secretary of state and signed by the debtor, stating that the debtor did not have a tax identification number.

However, the validity or effectiveness of a filed financing statement would not be impaired by the absence of the tax identification number or by an error in the number. In addition, the bill would state that a financing statement could, but would not have to, give the debtor's tax identification number.

The debtor's tax identification number could be included, but would not be required, on an amendment to a financing statement, a continuation statement, a termination statement, and an assignment of rights under a financing statement.

If the secretary of state's records indicated an error in the debtor's tax identification number on a financing statement

received for filing, the secretary of state would nonetheless have to accept and file the statement. The secretary of state could ask whomever submitted the financing statement to file an amendment giving the correct number; the debtor's signature would not be necessary for that amendment to the financing statement.

Filing fees. The UCC imposes a \$3 fee for filings and requests that are in the standard statutory form, for nonstandard filings and requests, the fee is \$6. The bill would retain this fee structure and apply the higher fee to filings that did not include the tax identification numbers. The bill also would apply these fees to filings with registers of deeds.

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 no . \$6 plus \$2 per page for each page over two. The bill would make the fee for timber, mineral, or fixture filings \$5 for the first page and \$2 for each additional page.

Computer-assisted searches. The secretary of state would have to adopt and use computer-assisted procedures to provide information to someone requesting information on a financing statement or an assignment of rights under a financing statement. The information would have to be as accurate and complete as that which would have been provided under the procedures used prior to computer-assisted searches.

MCL 440.9105 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that according to the secretary of state, the bill would have minimal fiscal implications. (4-19-88)

ARGUMENTS:

For:

Identifying security interest filings by commonly used but unique numbers would improve filing officials' ability to organize, maintain, and recover information and would 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 its new automated indexing system.

Against:

The bill could increase recordkeeping efficiency and accuracy only to the degree that the federal identification numbers were 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 strictly

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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

Instead, the bill is ambiguous as to whether tax identification numbers would have to be included on security interest filings. It would say that a debtor's tax identification number must be included on original filings of a financing statement, but it would also say that a financing statement could, but would not have to provide that number.

Response: 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. The important thing is that a security interest will be perfected with or without the debtor's tax identification number.

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:

The bill should do more toward compensating local registers of deeds 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.