

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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MAY 05 1988

**House Bill 4002 (Substitute S-3 as reported)****Sponsor: Representative John Bennett****House Committee: Corporations and Finance****Senate Committee: Commerce and Technology****Date Completed: 4-19-88*****RATIONALE***

The Department of State has suggested that the record-keeping for filings of security interests under the Uniform Commercial Code (UCC) would be improved if unique identification numbers, such as Social Security numbers, were submitted along with the information the UCC currently requires for a person to perfect a security interest or to check for liens on property. Arguably, the use of permanent individual numbers, rather than occasionally duplicative or misspelled names, would enable the Department and county registers of deeds more accurately to file and retrieve information, and would enable the Department to make full use of a new computerized index system for which the Department has acquired the hardware.

***CONTENT***

The bill would amend Article 9 of the Uniform Commercial Code to require, beginning September 1, 1988, the inclusion of the debtor's "tax identification number" (Social Security number or Federal employer tax identification number) on all original filings of a security agreement or a financing statement filed with the Secretary of State. The bill also would:

- Create exceptions to this requirement for certain filings.
- Specify documents (including a financing statement) that could, but would not be required to contain the debtor's tax identification number.
- Provide for the validity of a financing statement that omitted the debtor's number.
- Require the Secretary of State to use computer-assisted search procedures to provide information to persons requesting a lien search.

The bill would take effect September 1, 1988.

**Tax Identification Number Requirements**

The bill specifies that the debtor's tax identification could be included, but would not be required on an amendment to a financing statement (unless the number were possibly wrong), a continuation statement, a termination statement, and an assignment of rights under a financing statement. (Note: Despite the proposed requirement that all original filings of a financing statement contain the debtor's tax identification number, the bill also provides that a financing statement could, but would not be required to contain that number.)

If the Secretary of State's records indicated that the debtor's tax identification number contained on a financing

statement received for filing was or could be incorrect, the Secretary of State would still have to accept and file the statement. The Secretary of State could request the secured party or other person who submitted the statement to file an amendment to it giving the debtor's correct tax identification number. The debtor's signature would not be required on an amendment that changed only the debtor's number.

The validity or effectiveness of a filed financing statement would not be impaired by the absence of the debtor's tax identification number or the inclusion of an incorrect number, regardless of whether the Secretary of State could have refused to accept the statement for filing because of the omission of the number.

**Filing**

The Code currently 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 would apply the higher fee to filings that did not include the information required under the Act. The bill also would apply these fees to filings with the register of deeds.

The bill would alter the filing fee for timber, mineral, or fixture filings with the register of deeds. These filings now cost \$6 if the standard form is used; if not, the fee is \$6 plus \$2 per page over page 2. Under the bill, the fee for all such filings would be \$5 for the first page and \$2 for each additional page.

**Computer-Assisted Search Procedures**

The Secretary of State would be required to adopt and use computer-assisted search procedures to enable the Secretary to provide information to a person requesting information about a debtor's financing statement or an assignment of rights under a financing statement. The information provided would have to be as accurate and complete as the information the person would have received if the same request had been processed under the search procedures followed by the Secretary of State immediately before the implementation of computer-assisted searches.

**Exceptions**

The debtor's tax identification number would not have to be included on the following filings:

- A reproduction of a security agreement or financing statement for which a reproduction may be filed if the

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agreement were entered into or the statement filed before September 1, 1988. (A carbon, photographic, or other reproduction of a security agreement or financing statement is sufficient as a financing statement if the agreement so provides or if the original has been filed in this State.)

- A financing statement filed to perfect a security interest in collateral already subject to a security interest in another jurisdiction when it is brought into this State or the debtor's location is changed to this State; proceeds received upon the sale, exchange, collection, or other disposition of collateral; collateral for which the filing has lapsed; and collateral acquired after a change of name, identity, or corporate structure of the debtor.
- A financing statement accompanied by a certificate prescribed by the Secretary of State and signed by the debtor stating that the debtor does not have a tax identification number.

MCL 440.9105 et al.

## **SENATE COMMITTEE ACTION**

The Senate Committee adopted a substitute that includes a requirement that all original filings of financing statements and security agreements contain the debtor's tax identification number; the House-passed bill would have merely made the use of the number permissive. The Senate substitute also specifies exceptions to the proposed requirement, provides for the validity of a financing statement filed without the debtor's number, adds an effective date of September 1, 1988, and proposes that the tax identification number provisions apply beginning on that date, rather than after July 1, 1987.

## **FISCAL IMPACT**

According to the Department of State, the bill would have minimal fiscal impact. The change in filing fees is estimated to have minimal revenue implications. The identification requirements are designed to facilitate computerization, which could reduce some costs. (A potential fiscal impact of the computerization is that revenue from "expedited service" fees could decrease due to faster response time for regular services.)

## **ARGUMENTS**

### ***Supporting Argument***

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), and are not as easily accommodated by computers as numbers are. Use of the numbers would enable the Secretary of State to make full use of its new automated indexing system. (The Department has acquired the hardware for this new system, but is awaiting the software program.)

### ***Supporting Argument***

The proposed fee schedule for timber, mineral, and fixture filings would restore 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 that exists for mortgage filings.

## ***Opposing Argument***

The bill could increase record-keeping efficiency and accuracy only to the degree that the Federal identification numbers actually were used. The Senate substitute is ambiguous, however, as to whether inclusion of the numbers would be mandatory or permissive. Because the bill would both require the debtor's tax identification on original filings of a financing statement, and provide that a financing statement could, but would not have to include that number, it is not clear whether omission of the number would constitute noncompliance with the Act's requirements and therefore subject the filing to the higher fee. Moreover, there is nothing in present law that prevents use of the numbers by those who wish to do so.

**Response:** It is expected that most people would provide the identification numbers, and not simply because a higher fee could be charged for their omission. Lenders routinely obtain this information as part of their loan application process, and it is to one's advantage to provide the number with lien search requests. In regard to the bill's ambiguity, according to a spokesperson for the Department of State, the Department would accept (and charge \$3) for filing original financing statements that did not include the number, but would then demand the number. The important thing is that a security interest would be perfected with or without the debtor's tax identification number.

## ***Opposing Argument***

The bill should do more toward compensating local registers of deeds for their costs, by authorizing additional charges for individual lien entries 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.