

SENATE BILL REPORT

ESB 5183

As Passed Senate, March 11, 2013

Title: An act relating to financing statements to perfect security interests.

Brief Description: Concerning financing statements to perfect security interests.

Sponsors: Senators Padden and Kline.

Brief History:

Committee Activity: Law & Justice: 2/01/13, 2/08/13 [DP].

Passed Senate: 3/11/13, 49-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; Carrell, Vice Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Sharon Swanson (786-7447)

Background: The Uniform Commercial Code (UCC), organized into 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws for the purpose of providing a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

Article 9 of the UCC governs the creating and operation of security interests in various types of personal property and fixtures. A security interest is the interest of a creditor in the property of a debtor, used to secure payment of a debt. Article 9 provides methods for creating a security interest and the manner in which a security may be perfected. Perfection of a security interest is the means by which a secured creditor obtains priority over other creditors who have a security interest in the same collateral. There are different mechanisms for perfecting a security interest depending on the type of collateral involved. One common method of perfection is by the filing of a financial statement that indicates the debtor, the secured party, and the property subject to the security interest. Article 9 also provides remedies and procedures in the event that a debtor defaults on an obligation.

Summary of Engrossed Bill: To satisfy the requirements for a financing statement, a record need not indicate that it must be filed in the real property records. The record sufficiently

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provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and personal name of the debtor.

A financing statement sufficiently provides the name of the debtor if the debtor is an individual to whom this state issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on a driver's license or identification card.

When the debtor is an individual who does not have a driver's license or identification card issued by this state, the financing statement sufficiently provides the name of the debtor only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2013.

Staff Summary of Public Testimony: PRO: Historically the UCC has been ambiguous with regard to identifying a debtor on a financing statement. This meant that there was risk for error and an undue burden on creditors. It became clear that states need to identify clearly who the debtor is. Option A is the only if option, which requires that the name of the debtor on the financing statement also match the name on a driver's license. Option B is the safe harbor approach which allows other means of identification to be used including a passport, birth certificate, etc. We are here today to ask that Washington pass Option A, and not Option B. Option A is the most consistent, reliable, and cost-effective option to enact. Currently, 24 states have passed Option A and nine states have bills pending to pass Option A. We need reliable commercial laws across the nation and the majority of jurisdictions have passed Option A. Washington had previously adopted Option B. In the two years since, most other states have gone with Option A.

Persons Testifying: PRO: Jessica Fortescue, Peter Mucklestone, WA Bankers Assn.