

To: House Business and Labor Committee

From: Oregon Law Commission Chair, Lane Shetterly and
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**Reasons for Selection of Alternative B (Individual Debtor Name)
for UCC Art. 9-503 (ORS 79.0503)**

HB 4035, section 12

The 2010 amendments to Article 9 of the Uniform Commercial Code, as approved by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) and the American Law Institute, offered states two alternatives for addressing the requirements of an individual debtor's name, for the purpose of filing (and searching for) a financing statement. Alternative A requires that the debtor's name be the name as it appears on the debtor's most recently issued valid driver's license, if the debtor has a driver's license. Alternative B is broader in what it permits, including the debtor's "individual name," the debtor's surname and first personal name, or the debtor's name as it appears on the most recently issued driver's license. The Article 9 Work Group of the Oregon Law Commission recommended adoption of Alternative B for Oregon, as reflected in section 12 of HB 4035.

The reasons the Work Group recommended Alternative B are addressed in the Work Group report that accompanied HB 4035 at pages 7-8. Those reasons are explained further, below, and reasons in addition to those reflected in the report are provided.

1. Alternative B protects unsophisticated filers and also sophisticated attorneys from filing "invalid" financing statements and perhaps committing malpractice. The name requirement is a substantive requirement in the law, and Alternative B provides more flexibility. If Alternative A is chosen, the workgroup was concerned that filers would be more prone to make mistakes by either not using the driver's license name always or not copying it exactly.
 - For example if the debtor's driver's license says "Jones, Cynthia Allison," under Alternative A, if the filer omits the "Allison" they will not have complied with the debtor's name requirements for the filing statement. If the debtor goes by Cindy Jones and the filer puts "Cindy Jones" on the statement, the filer will also not have complied with the requirements of Alternative A. In both instances, the statement would most likely be held sufficient under Alternative B.
2. Alternative B keeps present law (see Section 12 (1)(d)(A)) and then also adds two other ways to name the debtor (i.e., by driver's license or by surname and first personal name). No training or change in practice is required to maintain status quo for valid financing statements in Oregon.
3. Whether A or B is chosen, searchers will continue to need to search for more than just a driver's license name in order to check for prior secured transactions because 1) financing statements are good for five years and thus valid statements will have been filed under other name variances (prior to this new law); 2) federal tax liens do not use the driver's license name (they use social security names generally); 3) people change their driver's license name over time; and 4) some people do not have a driver's license. Thus, the work group was not persuaded by the argument often advanced for Alternative A, that it provides "certainty" or makes it easier for searchers.

4. The requirement in Alternative A that if an individual has a state issued driver's license or identification card, that name must be used, could place debtors who do not have a license or card in a position of having to prove a negative to get financing. There was concern expressed to the work group that individuals who do not have such identification will not be able to get financing, or at least have a harder time doing so. Additionally, lenders may begin requiring such identification, thereby making one's driver's license name his or her "official name," and elevating the role of a driver's license beyond that which is intended in the driver's licensing laws.
5. Crop lien claims generally use the same financing forms as Article 9, and are foreclosed using the procedures in ORS Chapter 79 as well. Providing the flexible name requirement of B will protect unsophisticated property owners and farmers who lease their land from costly mistakes that would subject their lien to loss of priority or make it potentially invalid.
6. Oregon has a sophisticated and free UCC database through the Oregon Secretary of State's office. According to Tom Wrosch, the Director of UCC filings at the Oregon Secretary of State's office, Oregon searchers use the "Extended UCC search option online, to find out all the possible names, and then - if necessary - do a UCC search logic search. Nationally states don't always offer that option, but Oregon has always offered it and will always continue to." In short, Oregon does not have a searcher problem. The Work Group felt that neither Alternative A nor B should be preferred for the purpose of searching debtors' names, as searchers should search the same way with either version.
7. Oregon does have a DMV search problem because Oregon does not allow public or professional access to DMV driver's license records. Thus, filers cannot verify a driver's license in Oregon, which Alternative A would presumably require (at least for careful filers). Unless and until the DMV statutes are amended to make driver's license information easily accessible, via on-line searches to verify existing DMV licenses, the Work Group concluded that Alternative A could be a trap for filers that might result in an increase in improper filings and related uncertainty. It is important to note that, of the seven states that have so far adopted Alternative A, six of them have public DMV databases for filers to verify a driver's license. (See attachment with links to driver license verification web databases. Note that Washington also has a searchable DMV database.)
8. Alternative B still allows for use of a driver's license name as a sufficient name of the debtor. In fact, the use of a debtor's name on an unexpired valid driver's license provides filers a "safe harbor," so they can know the driver's license name will meet the name requirement of ORS 79.0502. The difference is that Alternative B *permits* the driver's license name and Alternative A *requires* it and only it.
9. The work group felt that Alternative B is more logical to users in the circumstances of a name change or married name. If a lender knows that an individual has recently married or changed names, it will seem logical to use this new name. However, use of such name could be invalid if Alternative A is chosen, as only the *driver's license name* would be sufficient, even if the debtor's *common name* has changed (and the license has not).
10. One argument advanced for Alternative A is that of "uniformity:" that is, that Oregon should adopt the alternative chosen by most other states. At this early point in the nationwide adoption process of the 2010 amendments, it is too soon to say with any certainty what the majority of states will choose to do. If Oregon adopts *Alternative B*, but the great majority of states choose *Alternative A*, it may be necessary for Oregon to at least re-evaluate its choice. At this stage in the adoption process, however, the Work Group felt it was preferable to choose the option that best meets the needs and interests of debtors and filers which, for the above reasons, the work group determined was Alternative B.

Of the seven states that have chosen Alternative A, all but Nevada have searchable DMV databases where driver's licenses can be verified. Below is a list of the DMV searchable websites from the respective states.

INDIANA

The Bureau of Motor Vehicles houses a great deal of pertinent information for companies and individuals all around Indiana. For a yearly subscription fee of \$95 for 10 user names and passwords, an individual or company can access the BMV's driver's license records, registration records, and title and lien records. Subscribers must also pay online fees of \$7.50 per driver's license record, \$5 per title and lien record, and \$5 per registration record.

Ready to get started?

[Start a driver's license records search](#)

[Start a title and lien records search](#)

[Start a registration records search](#)

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[Learn more about obtaining an IN.gov subscription](#)

If you would like to access or update your own records, please create a myBMV account. Your personal myBMV account is a virtual license branch that gives you more information about your records as well as the ability to securely access many services online. Through myBMV you may view and download your driving record.

<http://www.in.gov/bmv/5274.htm>

MINNESOTA

<https://dps.mn.gov/divisions/dvs/online-self-services/Pages/default.aspx>

Check Driver's License Status

NEBRASKA

<http://www.clickdmv.ne.gov/>

NORTH DAKOTA

<https://secure.apps.state.nd.us/dot/dlts/dlos/requeststatus.htm>

RHODE ISLAND

<https://www.ri.gov/DMV/mvr/citizen/sample.php>

TEXAS

<http://www.txdps.state.tx.us/DriverLicense/driverrecords.htm>

NOTE: Washington has opted for Alternative B, but members have heard they may change to A.

WASHINGTON

<http://www.dol.wa.gov/driverslicense/checkstatus.html>

