

To: House Committee on Consumer Protection and Government Efficiency
From: Oregon Law Commission Chair, Lane Shetterly and
Oregon Law Commission Deputy Director and General Counsel, Wendy Johnson
Date: April 2, 2013
Re: HB 2600, U.C.C. Article 9 Amendments

10 Reasons for Keeping the Present Selection of the Alternative B Provision for the Individual Debtor Name Requirement for UCC Art. 9-503 (ORS 79.0503) and Rejecting Amendments Proposed by HB 2600

As background, 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. In 2012, a Work Group of the Oregon Law Commission recommended adoption of Alternative B for Oregon, as reflected in section 12 of HB 4035(2012) and to be codified at ORS 79.0503. The Work Group's recommendation was unanimously approved by the full Oregon Law Commission. HB 4035 (2012) passed the House and Senate unanimously and was signed by the Governor on March 5, 2012. HB 2600 has been introduced for the 2013 legislative session in an attempt to change the requirements of an individual debtor's name to Alternative A. The Oregon Law Commission opposes changing the law this session.

The reasons the Work Group recommended Alternative B are addressed in the Work Group report that accompanied HB 4035 (2012) at pages 7-8. Those reasons are explained further below:

1. The Alternative B provision 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 work group 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" the filer will not have complied with the debtor's name requirements for the filing statement, with the result being that the filer will not have a valid security interest. If the same debtor commonly 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 be sufficient under Alternative B.
2. Alternative B keeps present law 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 online access to DMV driver's license records. Thus, filers cannot easily verify a driver's license in Oregon-- which Alternative A would presumably require (at least for careful filers). While Oregon does allow limited telephonic verification of driver's licenses to legitimate businesses, it is not realistic for unsophisticated and infrequent filers to have filed the paperwork with DMV and set up a payment account prior to needing to verify a license. Unless and until the DMV statutes are amended to make driver's license information easily accessible, 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 states that have adopted Alternative A, most have public DMV databases for filers to verify a driver's license.
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, while Alternative A *requires* it and only it (if the debtor has a driver's license).
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 the debtor's new name. However, use of the debtor's new name would 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. Both alternatives, however, are accepted uniform provisions provided by the Uniform Law Commission. At this point, 26 states have adopted Alternative A and 6 states have adopted Alternative B. As long as any number of states have adopted Alternative B, it will be necessary for an out-of-state filer to check the law of the state in which they are filing a financing statement to see if the state in which the statement is to be filed has adopted Alternative A or B. As such, while Oregon may be in the minority of states that have adopted Alternative A, that does not have a substantial bearing on how the new Article 9 amendments will be used on a nationwide basis.