

**Testimony of Walter R. Gowell Before
Senate Judiciary Committee
In Opposition To Senate Bill 462
March 9, 2015**

Chairman Prozanski and members of the Senate Judiciary Committee:

My name is Walter Gowell: I am a small town attorney from McMinnville. I have numerous small business and agricultural clients. It has been my privilege to serve on both task forces assembled to advise the Legislature on Revised Article Nine proposed changes. I was asked by the Law Commission staff to appear at today's hearing to respond to proposed SB 462 which seeks to reverse the prior judgment of the Legislature, and to incorporate the so called "Alternative A" language relating to the identification of the Debtors on Oregon Financing Statements.

I have four short points I would like to make to the Committee;

First, HB 4035 which passed the Legislature during 2012, added a "safe harbor" to ORS 79.0503 when it amended the law to always recognize a debtors name as shown on his or her driver's license as being a sufficient identification. It did not, however, eliminate the ability to identify a debtor in any other fashion designed to clearly identify the debtor to those seeking information about such debtor. Common usage names, names with or without middle initials, names from other picture identifications and other unique name monikers can still be used, although they can be challenged as insufficient, as has always been the case under Oregon Law. HB 4035 made the preparation of a financing statement more, not less, user friendly, which ought to be one very important goal of the law.

Second, the bill before you limits the acceptable identification of the debtor on an Oregon Financing Statement to the debtor's name, solely as it appears in his or her most recent Driver's license. Never mind that the Oregon DMV does not allow an online search of its records to determine the validity and current status of a driver's license. The DMV had two representatives on the Law Commission who verified that current law prohibits digital searches which mirror the searches allowed for UCC

filings. Our Commission DMV representatives were not receptive to a change in this prohibition. Privacy laws in Oregon present a challenge to the bill before you. Without an easy method to verify the identity of drivers, using DMV online records, the careful Secured Creditor cannot be sure of the accuracy of the information on a driver's license being presented. The unsophisticated business man or farmer will simply get lost in the process.

Next, where is the problem that restrictive Alternative A is seeking to solve? If the digital demi-gods of "certainty" and "uniformity of laws" are the goals being sought, the question must be asked: Is this proposed bill the triumph of form over substance? In all my 34 years as a practicing attorney I have yet to confront or witness a challenge to the identification of a debtor on a financing statement. I believe that Alternative A is a *solution in search of a problem*. Perhaps this is why the National Uniform Laws suggested two alternatives for each state to consider. From my perspective, the Legislature's recent change made the filing of financing statements, more, not less user friendly, and was a practical solution favored by the overwhelming majority of the Law Commission. It also did not compromise the excellent UCC Extended Search service offered by the Secretary of State.

Finally, I think it is instructive to look at an actual example of how we often identify ourselves. In my wallet I have:

2 credit cards, a debit card and a Sears Card that identify me as **Walter R. Gowell**;

1 Home Depot card that identifies me as **Walt R. Gowell**;

1 Providence Medical Card and 1 Costco Card where I am **Walter Gowell**; and

1 Driver's License where I am shown as **Walter Raymond Gowell**.

Currently, an extended UCC search through the UCC Office would turn up any financing statement under any of these names in a single routine search. A search of "Gowell" would very likely do the trick... but an additional search of "Walt Gowell" or "Walter Gowell" would certainly turn up UCC filings made under any of the above variations. Why do we need to create a trap for the unwary. I urge the committee to take no further action on this bill.

Respectfully Submitted,


Walter R. Gowell