

**Testimony of Walter R. Gowell Before  
House Committee On Business And Labor  
Regarding Senate Bill 462  
May 6, 2015**

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 "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;

1. **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 should always be an important goal of the law.**
2. **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 business 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.
3. **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.

4. Finally, I think it helpful 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 I 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

## General Information

Entities who [qualify](#) to receive personal information may be eligible for a DMV Record Inquiry Account. If an organization's application is approved an account is established and they are pre-qualified to receive record information. Established account holders may request records via DMV's [Interactive Voice Response \(IVR\) system](#) or by ordering them [online](#). Records ordered via the IVR system or online are returned by fax or mail. Account holders may also participate in DMV's [Automated Reporting Service](#). Account holders are billed for DMV services on a monthly basis.

## To Qualify/Apply

Under Oregon law ([ORS 802.175 - 802.191](#)), only certain entities qualify to receive personal information from DMV records. These include entities such as:

- Attorneys
- Legitimate businesses
- Insurance companies
- Police
- Other government agencies

Please refer to Oregon law ([ORS 802.175-802.191](#)) and [Oregon Administrative Rule 735-010-0200 through 0230](#) for the complete list of the entities that may qualify for personal information and the valid uses of the information.

To establish a [DMV Record Inquiry Account](#) you must:

Complete a [Record Inquiry Account Application](#) (Form 735-6037);

1. Submit documents listed on the application to prove you qualify to receive personal information;
2. Submit a \$70 non-refundable application fee; and
3. Mail the application, documentation and non-refundable fee to:

*Oregon DMV  
Attn: Records Policy  
1905 Lana Ave.NE  
Salem, OR 97314*

For More Information: Contact Record Inquiry Accounts at (503) 945-7950.

## 735-010-0200

### General Qualifications for Obtaining Personal Information

(1) A person may qualify to receive personal information from a motor vehicle record under more than one subsection of ORS 802.179.

(2) Personal information obtained under any subsection of ORS 802.179 shall only be used for the purpose authorized in the specific statutory subsection(s) under which the personal information was obtained and if applicable, shall only be used for the purpose authorized by administrative rule.

(3) Only personal information contained in a records list, obtained under ORS 802.179(11), shall be used for bulk distribution purposes.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 192.440, ORS 802.179 & ORS 802.183

Stats. Implemented: ORS 802.175 - ORS 802.179

Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98

**735-010-0210**

**Requests for Personal Information by a Legitimate Business**

(1) In order for DMV to make a determination of whether a business is legitimate under ORS 802.179(3), the business must provide evidence to DMV's satisfaction which includes:

(a) One of the following:

(A) A current and valid business, professional, occupational or commercial license issued by a governmental body that regulates that type of business, profession, trade or commercial activity;

(B) A Certificate of Existence or Authorization issued by the Secretary of State under ORS 60.027, 62.065, 63.027, or 65.027;

(C) A current copy of the Articles of Incorporation or Articles of Organization, including proof that they have been filed with the Secretary of State, or if a foreign corporation or foreign limited liability company, proof that it has been authorized by the Secretary of State to transact business in Oregon or that it has been formed in accordance with the laws of the jurisdiction in which it is incorporated or organized;

(D) A current copy of the business Partnership Agreement;

(E) A copy of the business income tax form filed for the latest tax period for which filing was required;

(F) A certification from the Office of Minority, Women and Emerging Small Businesses or similar governmental organization; or

(b) At least two of the following:

(A) A business invoice issued by the business within the last three months showing the sale of a product or service the business provides;

(B) A current business card;

(C) A resume of work completed or products sold within the last three months, with names and phone numbers of customers who may be contacted for verification;

(D) A copy of a signed contract for work performed within the last six months;

(E) A copy of a current rental, lease or purchase agreement for the business premises, or proof of ownership of the business premises;

(F) A copy of a current rental or lease agreement for business equipment or a receipt or purchase agreement showing the purchase of business equipment. "Business equipment" means equipment necessary for the business to

manufacture or provide a product or deliver a service and includes such things as a computer, photocopier, business vehicle, cash register, etc;

(G) A copy of a business related loan agreement;

(H) A copy of or reference to a current business advertisement, including but not limited to the yellow pages, newspaper, television or other media of general circulation. If from a reference DMV is unable to verify the advertisement, documentation of the advertisement may be required.

(2) Personal information obtained from DMV by a legitimate business may be used for the purposes specified in ORS 802.179(3).

(3) Only an individual who is an employee or owner of the business may obtain personal information from DMV. No other business or individual may act as a third party to obtain personal information on behalf of a legitimate business.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179 & 802.183

Stats. Implemented: ORS 802.179

Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179 & 802.183

Stats. Implemented: ORS 802.179

Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

#### **735-010-0240**

##### **Authorization by DMV to Resell or Rediscover Personal Information**

(1) A person or government agency authorized under ORS 802.179 to receive personal information from motor vehicle records may only resell or rediscover personal information to a person or government agency authorized by DMV to receive the information. To be authorized by DMV, a person must provide evidence to DMV sufficient to establish that the person is qualified to obtain personal information under ORS 802.179.

(2) A government agency that uses personal information for a governmental purpose is authorized by DMV and does not need to establish that it is qualified to obtain personal information.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 192.440, 802.179 & 802.183

Stats. Implemented: ORS 802.179

Hist.: DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06