



CORPORATION SERVICE COMPANY™

Non-Uniform UCC Legislation ***2008 Laws & Bills***

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Enacted Legislation

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Texas Senate Bill 1540

- Amends § 9-503(a)(1) for registered organization names.
 - *A registered organization name is sufficient only if the financing statement provides the name indicated on the **formation documents filed of public record.***
- **Effect**
 - *Should have no effect on due diligence practices for filers that already look to the articles or equivalent formation documents as the source of a registered organization name.*
 - Legislation is merely a clarification of existing law.
- **Background**
 - *Advanced by State Bar of Texas UCC Committee & State Bankers.*
 - Intent was to clarify definition of “public record.”
 - *Took effect on June 16, 2007.*



Texas Senate Bill 1540

- **Amends § 9-503(a) for individual debtor names.**
 - *A individual name is sufficient if the financing statement provides the name indicated on the individual's driver's license.*
- **Effect**
 - *Filer has a safe harbor for the name on the debtor's driver's license.*
 - Does not invalidate other names that are effective under § 9-503(a).
- **Background**
 - *Advanced by State Bar of Texas UCC Committee & State Bankers.*
 - Intent was to create greater certainty for filers without substantially increasing the due diligence burden on other parties.
 - Relied in part on strict regulations in Texas for how a person's name must be documented and listed on a driver's license.
 - *Took effect on June 16, 2007.*



Tennessee Senate Bill 3732

- Amends § 9-503(a)(1) for registered organization names.
 - *A registered organization name is sufficient only if the financing statement provides the name indicated on the **formation documents filed of public record.***
- **Effect**
 - *Should have no effect on due diligence practices for filers that already look to the articles or equivalent formation documents as the source of a registered organization name.*
 - Legislation is merely a clarification of existing law.
- **Background**
 - *Advanced by Tennessee Banker's Association*
 - Copied Texas SB 1540 verbatim.
 - *Effective May 1, 2008.*



Tennessee Senate Bill 3732

- Amends § 9-503(a)(4) for individual names.
 - *A individual name is sufficient if the financing statement provides the name indicated on one of the following documents:*

Driver's License	State-Issued ID
Social Security Card	Birth Certificate
Passport	Military ID
- Effect
 - *Filers have multiple safe harbors, but it substantially increases due diligence burden for interested parties.*
 - Searchers must check each safe harbor document and search accordingly.
- Background
 - *Advanced by Tennessee Banker's Association*
 - Intent was to create a broad safe harbor for individual names.
 - *Tennessee Bar Assn was not even aware of it.*
 - *Effective May 1, 2008.*



Tennessee Senate Bill 372

- **Amends Public Chapter 648 (SB 3732)**

- ***Scales back safe harbor to:***

Driver's License

State-Issued ID

- **Adverse Effect**

- ***Records filed on or after May 1 may not sufficiently provide the name of an individual debtor.***

- **If the name came from the Social Security Card, Passport, Birth Certificate or Military ID and differs from the state-issued document.**

- **Legislative Solution**

- ***60-Day Transition Period!***

- **Secured parties have 60 days to amend financing statements filed after May 1, 2008 and before the effective date of SB 372.**



Nebraska Legislative Bill 851

- **Amends § 9-506(c)**
 - *A financing statement is not seriously misleading if a search of the debtor's last name would disclose the record.*
- **Effect**
 - *Filer has no incentive to determine the correct first and middle names of an individual debtor.*
 - Any first name could be effective, including nicknames and typos.
 - *Interested parties must conduct a search on only the last name or it will be incomplete.*
 - NE system does allow a search exclusively by last name.
- **Background**
 - *Advanced by Nebraska Banker's Association*
 - Intent was to minimize impact of first name errors.
 - *Nebraska Bar Assn provided no input.*
 - *Secretary of State took a neutral position on the bill.*
 - *Scheduled to take effect in July 2008.*



Nebraska Legislative Bill 308A

- **Temporarily Repeals LB 851**
 - *Delays effective date to September 2, 2009.*
- **Rationale**
 - *Bill created national outcry from attorneys and lenders.*
 - **One national equipment finance company decided to stop lending activity in NE unless it could be secured with PMSI.**
 - *NE Bankers Assn temporarily deferred to NCCUSL/ALI concerns.*
 - **Bankers Assn is unrepentant and expressed intent to put law into effect in 2009 unless NCCUSL acts.**
- **Impact**
 - *NCCUSL may not be able to act in time to prevent implementation of LB 851.*



Colorado HB08-1266

- **Amends § 9-518**
 - *Clarifies that a debtor, secured party or person that filed the record can file a correction statement.*
- **Amends to § 9-523**
 - *Removes non-uniform references to tax liens being included in response to information requests.*
 - **Has no effect on current practices.**
- **Amends to § 9-525 and § 9-529**
 - *Removes statutory requirement that filing office accept paper UCC records.*
 - **Intent was to have the option to mandate electronic filing.**
- **Other**
 - *Corrects statutory references to the International Association of **Corporate** Administrators by substituting “COMMERCIAL.”*



California Assembly Bill 1168

- **Added New § 9526.5**
 - ***Creates concept of “Public Filing”.***
 - **A public filing is an exact copy of the filed document except that the SSN has been truncated.**
 - ***Filing office must create a public filing of any record filed with a SSN prior to August 1, 2007 and paper records with a SSN after that date.***
 - **Secretary of State must maintain original for disclosure under subpoena or court order.**
- **Required Secretary of State to Modify § 9521 Forms.**
 - ***Secretary shall not produce or make available forms that contain a space for the disclosure of a SSN.***
 - **Filing office shall provide forms described in § 9521 that do not provide a space for the SSN.**



Ohio House Bill 46

- **Section 111.241**

(A) The secretary of state shall not accept a document for filing or recording if the document includes any individual's social security number or federal tax identification number...

- **Other**

- ***Authorizes the secretary of state or the filer to immediately redact the SSN or FEIN.***



Kansas Senate Bill 449

- **Amends § 9-521**
 - ***Removes financing statement and amendment forms from statute.***
 - ***Requires filing office to accept forms “approved by the secretary of state.”***
 - **Eliminates safe harbor under § 9-521.**



Alaska House Bill 295

- **Amends § 9-516(b)**
 - ***Allows rejection if the record is not communicated on a form approved by filing office regulation.***
 - **No safe harbor under § 9-521.**



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2008 Pending Legislation

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Michigan Senate Bill 1236

- **Amends § 9-515 Duration and Effectiveness**
 - ***Only transmitting utilities that are organizations are effective until terminated.***
 - Effectively prohibits individual debtors from being a transmitting utility.
 - Transmitting utilities on file before the effective date cannot be continued if the debtor is an individual, or if the organization name field contains what the filing office determines is an individual name.
- **Amends § 9-516(b)**
 - ***Adds that filing office may reject for new reasons in 9520(5)***



Michigan Senate Bill 1236

- **Amends § 9-520**
 - ***Adds additional reasons for rejection.***
 - Record is not required or authorized to be filed with the filing office.
 - Record is filed for a purpose outside of Article 9.
 - Filing office has reason to believe the record is materially false or fraudulent.
 - Filing office believes the record is being filed for an improper purpose.
 - ***Filing office may exercise judgment and discretion in determining whether to reject.***
 - No duty to investigate.
 - Filing office may require proof of authority and purpose.
 - Secured party has recourse through the courts if rejected.
- **Amends § 9-521**
 - ***Eliminates forms from statute.***
 - Requires acceptance of forms in the current format prescribed by NCCUSL.



United States Senate Bill 2394

- **Creates National Tax Lien Registry**
 - *To be maintained by the Secretary of the Treasury.*
 - *Must be accessible to the public over the Internet.*
 - *There will be no charge to search the registry.*
 - *Effective for liens filed after December 31, 2008*



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Q & A

Thank you:

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