

Overview of revisions to Missouri's UCC Articles 4A and 9

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On April 30, 2013, HB 212 (the "bill") was passed by the Missouri Senate (it had

already been approved by the Missouri House of Representatives) and will be presented to Gov. Nixon to be signed into law.

The bill replaces various sections of Missouri's Uniform Commercial Code

("UCC") Article 4A and Article 9. The revisions to the UCC adopt changes in the law of secured transactions that were proposed in the Uniform Law Commission's 2010 Amendments and are currently out for adoption in all states (as of May 9, 2013, 37 states and Puerto Rico had enacted a version of these revisions). The bill's main provisions are summarized as follows:

- The definition of "public organic record" was added and includes records that are filed with or issued by a state or the United States to form an organization or amend such initial filing (e.g., articles of incorporation/organization).
- A "registered organization" now includes organizations formed or organized by the filing or issuance of a public organic record, or the enactment of legislation by the state or the United States (e.g., corporation, L.L.C., L.P., Massachusetts Business Trust, etc.).
- If a debtor moves to another jurisdiction, or if

a financing statement that names a debtor becomes effective against a new debtor that is located in another jurisdiction, a financing statement filed against the original debtor in the original jurisdiction will perfect a security interest in collateral acquired by the original or new debtor within four months after the change; to continue perfection beyond the four month period, the secured party must perfect its interest under the new jurisdiction's laws.

- A Missouri financing statement sufficiently provides the name of an individual debtor who has an unexpired Missouri driver's license if the individual debtor's name on the financing statement matches the name on his or her driver's license.
- A secured party of record may file an information statement (formerly called a "correction statement") if it believes that a record relating to a financing statement of the secured party of record was filed by a person who was

not entitled to do so. Currently, only a debtor can file a correction statement.

The bill's most significant provision is arguably its elaboration of when a financing statement sufficiently provides the name of an individual debtor. Under the bill, RSMo. § 400.9-503(a)(4) provides that if an individual debtor has an unexpired Missouri driver's license, a financing statement filed in Missouri sufficiently provides the name of the individual debtor *only* if the financing statement lists the name of the individual as indicated on his driver's license.

If an individual debtor does not have an unexpired driver's license, the financing statement will be sufficient only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor, which the secured party may obtain from other sources (e.g., passport, birth certificate, etc.).

These revisions were intended to solve the uncertainties relating to perfecting

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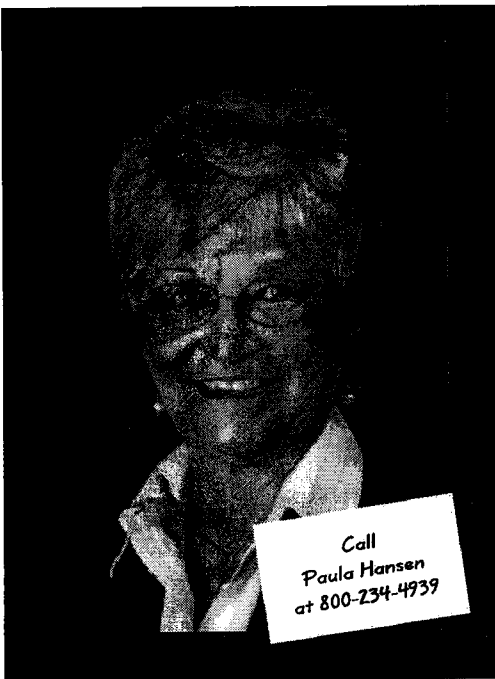
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a security interest held against an individual debtor. However, the safe harbor that allows a secured party to rely on a driver's license raises some issues that require further consideration.

First, consideration must be given to UCC filings prior to the bill's effective date. This issue raises particular concern in Missouri because the bill's proposed effective date is Aug. 28, 2013, which is inconsistent with the effective date prescribed in the model amendments (July 1, 2013).

The bill provides transitional rules for applying the new laws, which should not be impacted by the delayed effective date. The concern is that a financing statement for an individual debtor that was filed prior to the bill's effective date will become seriously

misleading if the debtor's name provided on the financing statement is not the same as indicated on his or her driver's license.

Under RSMo. § 9-805(b) (1), however, as long as a financing statement that is filed prior to the effective date is otherwise effective, such financing statement will not become seriously misleading if the debtor's name on the financing statement is inconsistent with his driver's license, until the financing statement's lapse date.

It may be good practice prior to the effective date for lenders to use the debtor's name as stated on his driver's license; however, at a minimum, when a financing statement that was filed prior to the effective date is continued (within 5 years of its filing

date), the secured party must compare the debtor's name on the financing statement to the name on his driver's license, and if such names are not the same, the financing statement must be amended.

Second, it is not uncommon for an individual to change the name on his or her driver's license (e.g., after getting married). This raises the concern that if the individual debtor changes the name listed on his or her driver's license, a previous UCC filing may become seriously misleading if not amended to reflect the new name.

Furthermore, if the individual debtor receives an additional driver's license with a different name on it, RSMo. § 100.9- 503(g) now states that the most recently issued

driver's license should be used for purposes of Article 9. Again, the concern is that a previous UCC filing will become seriously misleading if the secured party does not know that a new license was issued.

This may create additional compliance costs for the secured party if it must continually verify that the debtor's name on the financing statement matches the name on his or her driver's license.

Overall, the bill should provide much needed clarity regarding an individual debtor's name. In light of these new rules, secured parties should revisit their compliance procedures to ensure that an individual debtor's name listed on a financing statement matches the name on his or her driver's license,

either when filing a new financing statement or when continuing a financing statement that was filed prior to the bill's effective date.

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