

AMENDED IN ASSEMBLY MAY 19, 2014

AMENDED IN ASSEMBLY MAY 13, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1858

Introduced by Assembly Member Perea

February 19, 2014

An act to amend Section 9503 of, and to add Section 9503.5 to, the Commercial Code, relating to secured transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, as amended, Perea. Commercial law: secured transactions.

The Uniform Commercial Code - Secured Transactions governs security interests in collateral, including personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. That code, among other things, specifies requirements and procedures regarding perfecting a security interest, including the filing of a financing statement with the Secretary of State. Existing law specifies that a financing statement sufficiently provides the name of a debtor, where the debtor is an individual, if it provides the individual name of the debtor or the surname and first personal name of the debtor.

This bill would revise the manner in which a financing statement sufficiently provides the name of the debtor, where that debtor is an individual, to provide that, where the Department of Motor Vehicles has issued a driver's license that has not expired or identification card that has not expired to the individual, the statement sufficiently provides the name of the debtor only if the statement provides the name of the individual indicated on the license or card and, if the individual has not been issued a driver's license or identification card, the statement

sufficiently provides the name of the debtor if it provides the individual name of the debtor or the surname and first personal name of the debtor.

Existing provisions of the Unruh Civil Rights Act, with certain exceptions, prohibit various forms of arbitrary discrimination by business establishments.

This bill would make it a violation of the Unruh Civil Rights Act for a secured party or proposed secured party to decline to provide credit to a debtor or proposed debtor, or offer to make the terms and conditions of such credit less favorable to the debtor or proposed debtor, ~~because the debtor or proposed debtor does not hold or present a valid driver's license or identification card issued by the Department of Motor Vehicles, as provided.~~ *if that decision was based on the fact that the debtor's name to be included on the financing statement is or would be that provided by a debtor to whom the Department of Motor Vehicles has not issued a driver's license that has not expired or an identification card that has not expired and all elements that would be required to establish a claim for violation of the Unruh Civil Rights Act are established.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9503 of the Commercial Code, as
2 amended by Section 16 of Chapter 531 of the Statutes of 2013, is
3 amended to read:

4 9503. (a) A financing statement sufficiently provides the name
5 of the debtor only if it does so in accordance with the following
6 rules:

7 (1) Except as otherwise provided in paragraph (3), if the debtor
8 is a registered organization or the collateral is held in a trust that
9 is a registered organization, only if the financing statement provides
10 the name that is stated to be the registered organization's name on
11 the public organic record most recently filed with or issued or
12 enacted by the registered organization's jurisdiction of organization
13 which purports to state, amend, or restate the registered
14 organization's name.

15 (2) Subject to subdivision (f), if the collateral is being
16 administered by the personal representative of a decedent, only if
17 the financing statement provides, as the name of the debtor, the

1 name of the decedent and, in a separate part of the financing
2 statement, indicates that the collateral is being administered by a
3 personal representative.

4 (3) If the collateral is held in a trust that is not a registered
5 organization, only if the financing statement satisfies both of the
6 following conditions:

7 (A) Provides, as the name of the debtor, either of the following:

8 (i) If the organic record of the trust specifies a name for the
9 trust, the name specified.

10 (ii) If the organic record of the trust does not specify a name
11 for the trust, the name of the settlor or testator.

12 (B) In a separate part of the financing statement, the following
13 information is provided, as applicable:

14 (i) If the name is provided in accordance with clause (i) of
15 subparagraph (A), the financing statement indicates that the
16 collateral is held in a trust.

17 (ii) If the name is provided in accordance with clause (ii) of
18 subparagraph (A), the financing statement provides additional
19 information sufficient to distinguish the trust from other trusts
20 having one or more of the same settlors or the same testator and
21 indicates that the collateral is held in a trust, unless the additional
22 information so indicates.

23 (4) Subject to subdivision (g), if the debtor is an individual to
24 whom the Department of Motor Vehicles has issued a driver's
25 license that has not expired or an identification card that has not
26 expired, only if the financing statement provides the name of the
27 individual indicated on that driver's license or identification card.

28 (5) If debtor is an individual to whom paragraph (4) does not
29 apply, only if the financing statement provides the individual name
30 of the debtor or the surname and first personal name of the debtor.

31 (6) In other cases, according to the following rules:

32 (A) If the debtor has a name, only if the financing statement
33 provides the organizational name of the debtor.

34 (B) If the debtor does not have a name, only if the financing
35 statement provides the names of the partners, members, associates,
36 or other persons comprising the debtor, in a manner that each name
37 provided would be sufficient if the person named were the debtor.

38 (7) *Subject to the last sentence of this paragraph, it is a violation*
39 *of Section 51 of the Civil Code for a secured party or proposed*
40 *secured party to decline to provide credit to a debtor or proposed*

1 *debtor, or offer to make the terms and conditions of the credit less*
2 *favorable to the debtor or proposed debtor if (A) that decision was*
3 *based on the fact that the debtor's name to be included on the*
4 *financing statement is or would be that provided under paragraph*
5 *(5) rather than under paragraph (4), and (B) all elements that*
6 *would be required to establish a claim for violation of Section 51*
7 *(including any elements relating to motivation or state of mind)*
8 *are established. Any affirmative defenses that would be available*
9 *to a claim under Section 51 would be affirmative defenses to a*
10 *claim under this paragraph.*

11 (b) A financing statement that provides the name of the debtor
12 in accordance with subdivision (a) is not rendered ineffective by
13 the absence of either of the following:

14 (1) A trade name or other name of the debtor.

15 (2) Unless required under subparagraph (B) of paragraph (6) of
16 subdivision (a), names of partners, members, associates, or other
17 persons comprising the debtor.

18 (c) A financing statement that provides only the debtor's trade
19 name does not sufficiently provide the name of the debtor.

20 (d) Failure to indicate the representative capacity of a secured
21 party or representative of a secured party does not affect the
22 sufficiency of a financing statement.

23 (e) A financing statement may provide the name of more than
24 one debtor and the name of more than one secured party.

25 (f) The name of the decedent indicated on the order appointing
26 the personal representative of the decedent issued by the court
27 having jurisdiction over the collateral is sufficient as the "name
28 of the decedent" under paragraph (2) of subdivision (a).

29 (g) If the Department of Motor Vehicles has issued to an
30 individual more than one driver's licenses or identification cards
31 of a kind described in paragraph (4) of subdivision (a), paragraph
32 (4) of subdivision (a) refers to the most recently issued license or
33 card.

34 (h) For purposes of this section:

35 (1) "Driver's license" includes a driver's license issued pursuant
36 to subdivision (a) of Section 12801.9 of the Vehicle Code.

37 (2) "Name of the settlor or testator" means either of the
38 following:

39 (A) If the settlor is a registered organization, the name that is
40 stated to be the settlor's name on the public organic record most

1 recently filed with or issued or enacted by the settlor’s jurisdiction
2 of organization which purports to state, amend, or restate the
3 settlor’s name.

4 (B) In other cases, the name of the settlor or testator indicated
5 in the trust’s organic record.

6 ~~SEC. 2.— Section 9503.5 is added to the Commercial Code, to~~
7 ~~read:~~

8 ~~9503.5.— Section 51 of the Civil Code shall be construed to~~
9 ~~prohibit a secured party or proposed secured party from declining~~
10 ~~to provide credit to a debtor or proposed debtor, or offer to make~~
11 ~~the terms and conditions of such credit less favorable to the debtor~~
12 ~~or proposed debtor, because the debtor or proposed debtor does~~
13 ~~not hold or present a valid driver’s license or identification card~~
14 ~~issued by the Department of Motor Vehicles. All elements of a~~
15 ~~claim under Section 51 of the Civil Code and any affirmative~~
16 ~~defenses available under Section 51 of the Civil Code apply to a~~
17 ~~claim under this section.~~