

Assembly Bill No. 1858

Passed the Assembly August 11, 2014

Chief Clerk of the Assembly

Passed the Senate August 7, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 9503 of, and to add Chapter 9 (commencing with Section 9901) to Division 9 of, the Commercial Code, relating to secured transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, 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. The bill would also implement transitional rules for carrying out these provisions.

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, 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.

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

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

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

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

(2) Subject to subdivision (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Subject to the following sentence of this paragraph, it is a violation of Section 51 of the Civil Code 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 the credit less favorable to the debtor or proposed debtor if (A) 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 under paragraph (5) rather than under paragraph (4), and (B) all elements that would be required to establish a claim for violation of Section 51 of the Civil Code are established. Any affirmative defenses that would be available to a claim under Section 51 of the Civil Code would be affirmative defenses to a claim under this paragraph. Nothing in this paragraph shall be construed to alter, expand, limit, or negate any other rights, defenses, or remedies under Section 51 of the Civil Code.

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

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

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

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

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

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

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

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

(h) For purposes of this section:

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

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

(A) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name.

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

SEC. 2. Chapter 9 (commencing with Section 9901) is added to Division 9 of the Commercial Code, to read:

CHAPTER 9. TRANSITION PROVISIONS FOR 2014 AMENDMENTS

9901. (a) The changes to this division made by the act adding this chapter become operative on January 1, 2015.

(b) This chapter applies to a security interest only to the extent that, with respect to such security interest, both of the following apply:

(1) A debtor is an individual.

(2) A financing statement filed before January 1, 2015, provides the name of an individual as a debtor.

(c) If a security interest is within the scope of Chapter 8 (commencing with Section 9801), that chapter continues to apply. To the extent there is a conflict between Chapter 8 (commencing with Section 9801) and this chapter, this chapter governs.

9902. (a) Except as otherwise provided in this chapter, the changes to this division made by the act adding this chapter apply to a transaction or lien within its scope, even if the transaction or lien was entered into or created before January 1, 2015.

(b) The changes to this division made by the act adding this chapter do not affect an action, case, or proceeding commenced before January 1, 2015.

9903. A security interest that is a perfected security interest immediately before January 1, 2015, is a perfected security interest under this division as amended by this act if, as of January 1, 2015, the applicable requirements for attachment and perfection under this division as of that date are satisfied without further action.

9904. A security interest that is an unperfected security interest immediately before January 1, 2015, becomes a perfected security interest as follows:

(a) Without further action, on January 1, 2015, if the applicable requirements for perfection under this division as amended by this act are satisfied before or at that time.

(b) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

9905. (a) The filing of a financing statement before January 1, 2015, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this division as amended by this act.

(b) The changes to this division made by the act adding this chapter do not render ineffective an effective financing statement

that, before January 1, 2015, is filed and satisfies the applicable requirements for perfection under this division (including giving effect to Chapter 8 (commencing with Section 9801)) as it existed before giving effect to the changes to this division made by the act adding this chapter. However, except as otherwise provided in subdivision (c), the financing statement ceases to be effective at the time the financing statement would have ceased to be effective had the changes to this division made by the act adding this chapter not become effective and operative.

(c) The timely filing of a continuation statement on or after January 1, 2015, continues the effectiveness of a financing statement filed before January 1, 2015, if the financing statement (including any amendments) contains the name of the debtor in accordance with the requirements of Chapter 5 (commencing with Section 9501) as amended by the act adding this chapter for an initial financing statement.

(d) A financing statement (including any amendments) that includes a financing statement filed before January 1, 2015, and a continuation statement filed after January 1, 2015, is effective only to the extent that they satisfy the requirements of Chapter 5 (commencing with Section 9501) as amended by the act adding this chapter for an initial financing statement.

9906. A person may file an initial financing statement or a continuation statement under this chapter if the following conditions are satisfied:

(a) The secured party of record authorizes the filing.

(b) The filing is necessary under this division to accomplish either of the following:

(1) To continue the effectiveness of a financing statement filed before January 1, 2015.

(2) To perfect or continue the perfection of a security interest.

9907. The changes to this division made by the act adding this chapter determine the priority of conflicting claims to the collateral. However, if the relative priorities of the claims were established before those changes become effective and operative on January 1, 2015, this division as it existed before those changes become effective and operative determines priority.

Approved _____, 2014

Governor