

**OREGON STATE BAR**  
**Request for Authority to Oppose Legislation**  
**Part I – Legislative Summary**

**RE:** HB 2084  
(<http://www.leg.state.or.us/o9reg/measpdf/hb2000.dir/hb2084.intro.pdf>) would remove the requirement that the Secretary of State send notices regarding the expiration of UCC-1 financing statements. Work session and hearing set for 3 p.m. Monday, February 2, 2009.

**Submitted by:** Debtor-Creditor Section

**Legislative Contact(s):** David W. Hercher, Legislative Committee Chair

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**1. PROBLEM PRESENTED** (including level of severity):

[N.B.: Some language below is designed to be appropriate for written legislative testimony to a nonlawyer audience.]

The filing of a UCC-1 financing statement or effective financing statement with the secretary of state perfects security interests and agricultural liens. Financing statements automatically expire after five years unless continued within the six months before the expiration. Many secured installment payment obligations last more than five years. Loss of perfection can result in loss of priority vis-à-vis other secured parties or in some cases the entire loss of the ability to enforce the security interest and thus to collect the obligation. ORS 79.0515(8) requires the SOS to mail a renewal notice to the secured party not less than three months before expiration of a UCC-1 or EFS. The notice reminds the secured party that the secured party must continue a UCC-1 or EFS by filing a continuation statement or initial financing statement by the expiration date. Each continuation continues the effectiveness of the financing statement for an additional five years.

The SOS's written summary of the bill makes several points. First, the SOS states that "technology has evolved and become affordable to allow all secured parties to be able to track and manage their own financing statement expiration dates." Second, the SOS states that the SOS "receives frequent complaints from secured parties that "they believe the mailing of renewal notices to be a waste of resources by the state." Third, the SOS says the mailing costs \$22,500 biennially for postage, supplies, and returned notices. Finally, the SOS says it has a duty to harmonize Oregon law with uniform law.

Continuation reminders are extremely cheap insurance to prevent possibly catastrophic loss to a secured party from expiration of its financing

statement. Financing statements perfect security interests granted to all types of secured parties, not just a few very large and sophisticated (and probably out-of-state) secured parties who may be comfortable that they do not need to be reminded of continuation opportunities. Small Oregon businesses sell goods on credit, taking a security interest in the goods and perfecting the security interest by filing a financing statement. Small business owners who sell their businesses (possibly their only significant asset) on credit perfect a security interest in the business assets by filing a financing statement. Those businesses and many others, including smaller lenders, face possible loss of their ability to enforce their security interests if they neglect to file a timely continuation statement; the current reminders drastically reduce the risk of inadvertent failure to continue.

We seriously doubt that any significant number of Oregon secured parties have automated and foolproof systems to ensure timely financing statement continuations. Many Oregon secured parties—primarily small businesses or business owners whose sale of their businesses may be the only secured transaction they handle—undoubtedly have no such system. We also reject the notion that receiving continuation reminders is an undue burden on secured parties. Large secured parties who receive the most notices can simply recycle them if they do not wish to take advantage of them, but the vast majority of secured parties undoubtedly welcome them and in any case the one or few they receive are not burdensome. (A member of our committee who serves as in-house counsel for an Oregon-based bank confirms that.) The \$22,500 biennial cost of the reminders is a pittance compared to the potential losses to Oregon secured parties from missed financing statement continuations. Finally, the lack of “harmony” between Oregon law and the uniform version of the UCC is a red herring. Although not part of the UCC, Oregon’s reminder notices are entirely consistent with and further the purposes of the UCC. Other states have not shied away from adopting nonuniform commercial code provisions when they have determined as a matter of local policy that the nonuniform provision best serves the interests of their citizens, as does Oregon’s current reminder system. We are surprised that the SOS’s statement regarding the bill does not reflect any concern for or understanding of the benefit of the reminder notices for the majority of Oregon secured parties.

Accordingly, we oppose and urge the committee not to pass HB 2084.

2. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

All secured parties, but especially those who handle few transactions or do not have sophisticated software and personnel, should oppose the bill. It’s difficult to imagine anyone wanting to support the bill once they

understand the benefit of the continuation reminders and the constituency they serve.