

THE PUBLIC RECORD

Equally accessible platform for public examination, or lobbyist bargaining tool and government cash cow?

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There are predominately two groups of people reliant on the existence of an accessible public record. Those that depend on obtaining information relating to an organization or individual in an effort to make sound business decisions, and those abstractors with an expertise in accessing multiple public record platforms in order to present a coherent and accurate summation of an individual or entity's status. Lately, there has been a palpable change within this industry that will ultimately affect both of these parties' pocket books.

In several states, there has been an effort to limit public record access to licensed individuals and organizations. Local abstractors that have built businesses based on their expertise and experience in the record research of their specialty jurisdiction are being forced out of the very industry they helped to create.

*Pending legislation in Texas may, among other things, require that a UCC search be conducted by an attorney. While this may seem a protective measure – I would submit that there are probably very few attorneys in the commercial finance industry that have had any experience self-searching. Most of these professionals have historically relied on the expertise of a local service provider to abstract and prepare UCC search results. Additionally, those parties ultimately requesting the UCC search information for due diligence purposes could now be subjected to attorney's hourly fees rather than the accustomed service company pricing structure.

Private Investigator licensing statutes are also becoming a roadblock for search firms. Dependent on any given state's definition of "Private Investigator," a member of the public searching a public record index could, and have been known to, face legal implications and heavy fines for 'practicing' without a license. While this may strengthen the P.I. industry, it forces commercial research and retrieval companies to walk a tightrope at the recorders' offices and courthouses.

Licensing requirements are only one factor impacting public records access – state imposed fees and taxes are beginning to join the fray. The state of Illinois has, quite suddenly, put a very high price tag on what used to be free, direct access to their searchable database. While large, national search companies may be able to absorb these fees with little disruption; smaller, local abstractors will again be faced with elimination or will impose their own rate hikes in an effort to foot the bill.

Astonishingly, even with the higher fees, taxes, and licensing limitations, neither the state, the county, the courthouse, nor the P.I. firm insures the accuracy of their results. Errors run rampant in public record data – even the most experienced searcher cannot hope to have a flawless track record. Consider First American’s affordable, insured searches as an alternative to self-searching and a built-in risk management tool.

*S.B. No. 687, (§2501.005(a)(3))