



Rep. Kenneth Dunkin

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09700SB1692ham001

LRB097 06688 AEK 54554 a

1 AMENDMENT TO SENATE BILL 1692

2 AMENDMENT NO. _____. Amend Senate Bill 1692 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Uniform Commercial Code is amended by
5 changing Section 9-510 and by adding Section 9-513A as follows:

6 (810 ILCS 5/9-510)

7 Sec. 9-510. Effectiveness of filed record.

8 (a) Filed record effective if authorized. A filed record is
9 effective only to the extent that it was filed by a person that
10 may file it under Section 9-509 or by the filing office under
11 Section 9-513A.

12 (b) Authorization by one secured party of record. A record
13 authorized by one secured party of record does not affect the
14 financing statement with respect to another secured party of
15 record.

16 (c) Continuation statement not timely filed. A

1 continuation statement that is not filed within the six-month
2 period prescribed by Section 9-515(d) is ineffective.

3 (Source: P.A. 91-893, eff. 7-1-01.)

4 (810 ILCS 5/9-513A new)

5 Sec. 9-513A. Termination of wrongfully filed financing
6 statement; reinstatement.

7 (a) Qualified person. In this Section, the term "qualified
8 person" means an individual who, at the time the financing
9 statement referred to in subsection (b) was filed or within
10 five years prior to the time of filing, either held a judicial
11 or prosecutorial office in this State or was an elected or
12 appointed official of this State.

13 (b) Application of this Section. This Section applies only
14 with respect to a filed financing statement that (i) indicates
15 that all secured parties of record are individuals, (ii)
16 identifies as a debtor a qualified person, and (iii) was filed
17 by an individual not entitled to do so under Section 9-509(a).
18 If the financing statement identifies more than one debtor, the
19 provisions of this Section apply only with respect to those
20 debtors who are qualified persons.

21 (c) Affidavit of wrongful filing. A qualified person may
22 file in the filing office a notarized affidavit, signed under
23 penalty of perjury, that identifies a filed financing statement
24 that indicates that all secured parties of record are
25 individuals and states that (i) the affiant held a judicial or

1 prosecutorial office in this State or was an elected or
2 appointed official of this State at, or within five years prior
3 to, the time the financing statement was filed, and (ii) the
4 financing statement was filed by an individual not entitled to
5 do so under Section 9-509(a). The Secretary of State shall
6 adopt a form of affidavit for use under this Section.

7 (d) Termination statement by filing office. If an affidavit
8 is filed under subsection (c), the filing office shall promptly
9 file a termination statement with respect to the financing
10 statement identified in the affidavit. The termination
11 statement must indicate that it was filed pursuant to this
12 Section. Except as provided in subsection (h) or (i), a
13 termination statement filed under this subsection shall take
14 effect 30 days after it is filed.

15 (e) No fee charged or refunded. The filing office shall not
16 charge a fee for the filing of an affidavit under subsection
17 (c) or a termination statement under subsection (d). The filing
18 office shall not return any fee paid for filing the financing
19 statement identified in the affidavit, whether or not the
20 financing statement is reinstated under subsection (i).

21 (f) Notice of termination statement. On the same day that a
22 filing office files a termination statement under subsection
23 (d), it shall send to each secured party of record for the
24 financing statement a notice advising the secured party of
25 record that the termination statement has been filed. The
26 notice shall be sent by certified mail, return receipt

1 requested, to the address provided for the secured party in the
2 financing statement.

3 (g) Action by secured party of record. An individual
4 indicated as secured party of record on a financing statement
5 as to which a termination statement has been filed under
6 subsection (d) may, before or after the termination statement
7 takes effect, bring an action against the individual who filed
8 the affidavit under subsection (c) seeking a determination that
9 the financing statement was filed by a person entitled to do so
10 under Section 9-509(a). An action under this subsection shall
11 have priority on the court's calendar and shall proceed by
12 expedited hearing. If the individual who filed the affidavit
13 resides in this State, the exclusive venue in this State for
14 the action shall be in the circuit court for the county where
15 the individual principally resides in this State. If the
16 individual who filed the affidavit does not reside in this
17 State, the exclusive venue in this State shall be in the
18 circuit court for the county where the filing office in which
19 the financing statement was filed is located.

20 (h) Preliminary relief. In an action brought pursuant to
21 subsection (g), a court may, in appropriate circumstances,
22 order preliminary relief, including but not limited to an order
23 precluding the termination statement from taking effect or
24 directing a party to take action to prevent the termination
25 statement from taking effect. If the court issues such an order
26 and the filing office receives a certified copy of the order

1 before the termination statement takes effect as provided in
2 subsection (d), the termination statement shall not take effect
3 and the filing office shall promptly file an amendment to the
4 financing statement that indicates that an order has prevented
5 the termination statement from taking effect. If such an order
6 ceases to be effective by reason of a subsequent order or a
7 final judgment of that court or by an order issued by another
8 court, and the filing office receives a certified copy of the
9 subsequent judgment or order, the termination statement shall
10 immediately be effective and the filing office shall file an
11 amendment to the financing statement indicating that the
12 termination statement is effective.

13 (i) Final judgment or order. If, in an action under
14 subsection (g), the court determines that the financing
15 statement was filed by a person entitled to do so under Section
16 9-509(a) and the filing office receives a certified copy of the
17 court's final judgment or order before the termination
18 statement takes effect, the termination statement shall not
19 take effect and the filing office shall remove the termination
20 statement and any amendments filed under subsection (h) from
21 the files. If the filing office receives the certified copy
22 after the termination statement takes effect and within 30 days
23 after the final judgment or order was entered, the filing
24 office shall promptly file an amendment to the financing
25 statement that indicates that the financing statement has been
26 reinstated.

1 (j) Effect of reinstatement. Except as provided in
2 subsection (k), upon the filing of an amendment reinstating a
3 financing statement under subsection (i) the effectiveness of
4 the financing statement is retroactively reinstated and the
5 financing statement shall be considered never to have been
6 ineffective against all persons and for all purposes.

7 (k) Exception to subsection (i). A financing statement
8 whose effectiveness is reinstated under subsection (i) shall
9 not be effective as against a person that purchased the
10 collateral in good faith to the extent the person gave new
11 value, in reliance on the termination statement, between the
12 time the termination statement was filed and the time of the
13 filing of the record reinstating the financing statement.

14 (l) Liability for wrongful filing. If, in an action under
15 subsection (g), the court declares that the financing statement
16 was not filed by a person entitled to do so under Section
17 9-509(a), the qualified person may recover from the individual
18 who brought the action the costs and expenses, including
19 reasonable attorneys' fees, that the qualified person incurred
20 in the action. This recovery is in addition to any recovery to
21 which the qualified person is entitled under Section 9-625 or
22 under law other than this Article.

23 (m) Action to compel removal of termination statement not
24 precluded. This Section does not preclude an individual
25 wrongfully identified as a debtor on a financing statement or
26 an individual secured party of record from bringing an action

1 under law other than this Act seeking appropriate relief.".