



Rep. Michael J. Zalewski

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09700HB5190ham001

LRB097 16765 WGH 67509 a

1 AMENDMENT TO HOUSE BILL 5190

2 AMENDMENT NO. _____. Amend House Bill 5190 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Uniform Commercial Code is amended by
5 changing Sections 9-510 and 9-516 and by adding Section 9-501.1
6 as follows:

7 (810 ILCS 5/9-501.1 new)

8 Sec. 9-501.1. Fraudulent records.

9 (a) No person shall cause to be communicated to the filing
10 office for filing a false record the person knows or reasonably
11 should know:

12 (1) is not authorized or permitted under Section 9-509,
13 9-708, or 9-808 of this Article;

14 (2) is not related to a valid existing or potential
15 commercial or financial transaction, an existing
16 agricultural or other lien, or a judgment of a court of

1 competent jurisdiction; and

2 (3) is filed with the intent to harass or defraud the
3 person identified as debtor in the record or any other
4 person.

5 (b) A person who violates subsection (a) is guilty of a
6 Class A misdemeanor for a first offense and a Class 4 felony
7 for a second or subsequent offense.

8 (c) A person who violates subsection (a) shall be liable in
9 a civil action to each injured person for:

10 (1) the greater of the actual damages caused by the
11 violation or up to \$10,000 in lieu of actual damages;

12 (2) reasonable attorney's fees;

13 (3) court costs and other related expenses of bringing
14 an action, including reasonable investigative expenses;
15 and

16 (4) in the discretion of the court, exemplary damages
17 in an amount determined by the court or jury.

18 (d) A person identified as debtor in a filed record the
19 person believes was caused to be communicated to the filing
20 office in violation of subsection (a) may, under penalty of
21 perjury, file with the Secretary of State an affidavit to that
22 effect. The Secretary of State shall adopt and make available a
23 form affidavit for use under this Section.

24 (e) Upon receipt of an affidavit filed under this Section,
25 or upon administrative action by the Secretary of State, the
26 Secretary of State shall communicate to the secured party of

1 record on the record to which the affidavit or administrative
2 action relates and to the person that communicated the record
3 to the filing office, if different and known to the office, a
4 request for additional documentation supporting the
5 effectiveness of the record. The Department of Business
6 Services of the Office of the Secretary of State and the Office
7 of the General Counsel shall review all such documentation
8 received within 30 days after the first request for additional
9 documentation is sent. The Secretary of State may terminate the
10 record effective 30 days after the first request for additional
11 documentation is sent if it has a reasonable basis for
12 concluding that the record was communicated to the filing
13 office in violation of subsection (a).

14 The Secretary of State may initiate an administrative
15 action under the first paragraph of this subsection (e) with
16 regard to a filed record if it has reason to believe, from
17 information contained in the record or obtained from the person
18 that communicated the record to the filing office, that the
19 record was communicated to the filing office in violation of
20 subsection (a). The Secretary of State may give heightened
21 scrutiny to a record that indicates that the debtor is a
22 transmitting utility or that indicates that the transaction to
23 which the record relates is a manufactured-home transaction or
24 a public-finance transaction.

25 (f) The Secretary of State shall not charge a fee to file
26 an affidavit under this Section and shall not return any fee

1 paid for filing a record terminated under this Section.

2 (g) The Secretary of State shall promptly communicate to
3 the secured party of record a notice of the termination of a
4 record under subsection (e). A secured party of record that
5 believes in good faith that the record was not communicated to
6 the filing office in violation of subsection (a) may file an
7 action to require that the record be reinstated by the filing
8 office. A person that communicated a record to the filing
9 office that the filing office rejected in reliance on Section
10 9-516(b) (3.5), who believes in good faith that the record was
11 not communicated to the filing office in violation of Section
12 9-516(b) (3.5), may file an action to require that the record be
13 accepted by the filing office.

14 (h) If a court or tribunal in an action under this Section
15 determines that a record terminated under this Section or
16 rejected in reliance on Section 9-516(b) (3.5) should be
17 reinstated or accepted, the court or tribunal shall provide a
18 copy of its order to that effect to the Secretary of State. On
19 receipt of an order reinstating a terminated record, the
20 Secretary of State shall refile the record along with a notice
21 indicating that the record was refiled pursuant to this Section
22 and its initial filing date. On receipt of an order requiring
23 that a rejected record be accepted, the Secretary of State
24 shall promptly file the record along with a notice indicating
25 that the record was filed pursuant to this Section and the date
26 on which it was communicated for filing. A rejected record that

1 is filed pursuant to an order of a court or tribunal shall have
2 the effect described in Section 9-516(d) for a record the
3 filing office refuses to accept for a reason other than one set
4 forth in Section 9-516(b).

5 (i) A terminated record that is refiled under subsection
6 (h) is effective as a filed record from the initial filing
7 date. If the period of effectiveness of a refiled record would
8 have lapsed during the period of termination, the secured party
9 may file a continuation statement within 30 days after the
10 record is refiled and the continuation statement shall have the
11 same effect as if it had been filed during the 6-month period
12 described in Section 9-515(d). A refiled record shall be
13 considered never to have been ineffective against all persons
14 and for all purposes except that it shall not be effective as
15 against a purchaser of the collateral that gave value in
16 reasonable reliance on the absence of the record from the
17 files.

18 (j) Neither the filing office nor any of its employees
19 shall incur liability for the termination or failure to
20 terminate a record under this Section or for the refusal to
21 accept a record for filing in the lawful performance of the
22 duties of the office or employee.

23 (k) This Section does not apply to a record communicated to
24 the filing office by a regulated financial institution or by a
25 representative of a regulated financial institution except
26 that the Secretary of State may request from the secured party

1 of record on the record or from the person that communicated
2 the record to the filing office, if different and known to the
3 office, additional documentation supporting that the record
4 was communicated to the filing office by a regulated financial
5 institution or by a representative of a regulated financial
6 institution. The term "regulated financial institution" means
7 a financial institution subject to regulatory oversight or
8 examination by a State or federal agency and includes banks,
9 savings banks, savings associations, building and loan
10 associations, credit unions, consumer finance companies,
11 industrial banks, industrial loan companies, insurance
12 companies, investment companies, investment funds, installment
13 sellers, mortgage servicers, sales finance companies, and
14 leasing companies.

15 (1) If a record was communicated to the filing office for
16 filing before the effective date of this Section and its
17 communication would have constituted a violation of subsection
18 (a) if it had occurred on or after the effective date of the
19 Section: (i) subsections (b) and (c) are not applicable; and
20 (ii) the other subsections of this Section are applicable.

21 (810 ILCS 5/9-510)

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

23 (a) Filed record effective if authorized. A filed record is
24 effective only to the extent that it was filed by a person that
25 may file it under Section 9-509.

1 (b) Authorization by one secured party of record. A record
2 authorized by one secured party of record does not affect the
3 financing statement with respect to another secured party of
4 record.

5 (c) Continuation statement not timely filed. A
6 continuation statement that is not filed within the six-month
7 period prescribed by Section 9-515(d) is ineffective.

8 (d) A filed record ceases to be effective if the filing
9 office terminates the record pursuant to Section 9-501.1.

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

11 (810 ILCS 5/9-516)

12 Sec. 9-516. What constitutes filing; effectiveness of
13 filing.

14 (a) What constitutes filing. Except as otherwise provided
15 in subsection (b), communication of a record to a filing office
16 and tender of the filing fee or acceptance of the record by the
17 filing office constitutes filing.

18 (b) Refusal to accept record; filing does not occur. Filing
19 does not occur with respect to a record that a filing office
20 refuses to accept because:

21 (1) the record is not communicated by a method or
22 medium of communication authorized by the filing office;

23 (2) an amount equal to or greater than the applicable
24 filing fee is not tendered;

25 (3) the filing office is unable to index the record

1 because:

2 (A) in the case of an initial financing statement,
3 the record does not provide a name for the debtor;

4 (B) in the case of an amendment or correction
5 statement, the record:

6 (i) does not identify the initial financing
7 statement as required by Section 9-512 or 9-518, as
8 applicable; ~~or~~

9 (ii) identifies an initial financing statement
10 whose effectiveness has lapsed under Section
11 9-515; or

12 (iii) identifies an initial financing
13 statement which was terminated pursuant to Section
14 9-501.1;

15 (C) in the case of an initial financing statement
16 that provides the name of a debtor identified as an
17 individual or an amendment that provides a name of a
18 debtor identified as an individual which was not
19 previously provided in the financing statement to
20 which the record relates, the record does not identify
21 the debtor's last name;

22 (D) in the case of a record filed or recorded in
23 the filing office described in Section 9-501(a)(1),
24 the record does not provide a sufficient description of
25 the real property to which it relates; or

26 (E) in the case of a record submitted to the filing

1 office described in Section 9-501(a)(1), the filing
2 office has reason to believe, from information
3 contained in the record or from the person that
4 communicated the record to the office, that: (i) if the
5 record indicates that the debtor is a transmitting
6 utility, the debtor does not meet the definition of a
7 transmitting utility as described in Section
8 9-102(a)(81); (ii) if the record indicates that the
9 transaction relating to the record is a
10 manufactured-home transaction, the transaction does
11 not meet the definition of a manufactured-home
12 transaction as described in Section 9-102(a)(54); or
13 (iii) if the record indicates that the transaction
14 relating to the record is a public-finance
15 transaction, the transaction does not meet the
16 definition of a public-finance transaction as
17 described in Section 9-102(a)(67); ~~9-501(b), the~~
18 ~~debtor does not meet the definition of a transmitting~~
19 ~~utility as described in Section 9-102(a)(80);~~

20 (3.5) in the case of an initial financing statement or
21 an amendment, if the filing office believes in good faith
22 that the record was communicated to the filing office in
23 violation of Section 9-501.1(a); ~~a document submitted for~~
24 ~~filing is being filed for the purpose of defrauding any~~
25 ~~person or harassing any person in the performance of duties~~
26 ~~as a public servant;~~

1 (4) in the case of an initial financing statement or an
2 amendment that adds a secured party of record, the record
3 does not provide a name and mailing address for the secured
4 party of record;

5 (5) in the case of an initial financing statement or an
6 amendment that provides a name of a debtor which was not
7 previously provided in the financing statement to which the
8 amendment relates, the record does not:

9 (A) provide a mailing address for the debtor;

10 (B) indicate whether the debtor is an individual or
11 an organization; or

12 (C) if the financing statement indicates that the
13 debtor is an organization, provide:

14 (i) a type of organization for the debtor;

15 (ii) a jurisdiction of organization for the
16 debtor; or

17 (iii) an organizational identification number
18 for the debtor or indicate that the debtor has
19 none;

20 (6) in the case of an assignment reflected in an
21 initial financing statement under Section 9-514(a) or an
22 amendment filed under Section 9-514(b), the record does not
23 provide a name and mailing address for the assignee; or

24 (7) in the case of a continuation statement, the record
25 is not filed within the six-month period prescribed by
26 Section 9-515(d).

1 (c) Rules applicable to subsection (b). For purposes of
2 subsection (b):

3 (1) a record does not provide information if the filing
4 office is unable to read or decipher the information; and

5 (2) a record that does not indicate that it is an
6 amendment or identify an initial financing statement to
7 which it relates, as required by Section 9-512, 9-514, or
8 9-518, is an initial financing statement.

9 (d) Refusal to accept record; record effective as filed
10 record. A record that is communicated to the filing office with
11 tender of the filing fee, but which the filing office refuses
12 to accept for a reason other than one set forth in subsection
13 (b), is effective as a filed record except as against a
14 purchaser of the collateral which gives value in reasonable
15 reliance upon the absence of the record from the files.

16 (e) The Secretary of State may refuse to accept a record
17 for filing under subdivision (b) (3) (E) or (b) (3.5) only if the
18 refusal is approved by the Department of Business Services of
19 the Secretary of State and the General Counsel to the Secretary
20 of State.

21 (Source: P.A. 95-446, eff. 1-1-08.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."