



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1692

Introduced 2/9/2011, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

810 ILCS 5/9-501.1 new
810 ILCS 5/9-510
810 ILCS 5/9-516

Amends the Uniform Commercial Code. Provides that no person shall file a fraudulent financing statement and assigns civil and criminal penalties for such filings. Provides a procedure for filing a form affidavit to provide notice of a fraudulent financing statement or amendment and provides guidance for when the Secretary of State may terminate the financing statement or amendment based on the affidavit. Provides that a filing office may terminate a record under specified circumstances with notice to the filer of the financing statement or amendment. Provides several circumstances where effective filing does not occur. Effective immediately.

LRB097 06688 AEK 46774 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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 financing statements and
9 amendments.

10 (a) No person shall cause to be presented for filing a
11 financing statement or amendment that the person knows or
12 reasonably should know:

13 (1) is not related to a valid lien, a valid security
14 agreement, or a judgment of a court of competent
15 jurisdiction;

16 (2) is for an improper purpose or purposes, such as to
17 harass, hinder, defraud, or otherwise interfere with any
18 person; or

19 (3) contains materially false or misleading
20 information.

21 (b) A person who submits or is responsible for submitting
22 any financing statement or amendment in violation of subsection
23 (a) is guilty of a Class A misdemeanor and a Class 4 felony for

1 a second or subsequent offense.

2 (c) A person who violates subsection (a) shall be liable to
3 each injured person for:

4 (1) the greater of nominal damages up to \$10,000 or the
5 actual damages caused by the violation;

6 (2) reasonable attorney fees;

7 (3) court costs and other related expenses of bringing
8 an action, including investigative expenses; and

9 (4) exemplary damages in an amount determined by the
10 court.

11 (d) The Secretary of State shall adopt and make available a
12 form affidavit to provide notice of a fraudulent financing
13 statement or amendment. A person identified as a debtor in a
14 financing statement or amendment filed with the Secretary of
15 State may file such fraudulent filing affidavit under penalty
16 of perjury with the Secretary of State.

17 A person shall not file an affidavit under this Section
18 with respect to a financing statement or amendment filed by a
19 regulated financial institution or a representative of a
20 regulated financial institution.

21 (e) Upon receipt of an affidavit filed under this Section,
22 or upon administrative action by the Secretary, the Secretary
23 of State shall request from the filer of the financing
24 statement or amendment additional documentation supporting the
25 filing. The Department of Business Services of the Office of
26 the Secretary of State and the Office of the General Counsel

1 shall review all such documentation received within 30 days of
2 receipt. The Secretary of State may terminate the financing
3 statement or amendment effective 30 days from the date of
4 notice if it has a reasonable basis for concluding that:

5 (1) the record is materially false or fraudulent;

6 (2) the record was filed for the purpose of harassing
7 any person;

8 (3) the record asserts a claim against a current or
9 former employee or officer of a federal, State, county, or
10 other local governmental unit that relates to the
11 performance of the officer's or employee's public duties
12 and for which the filer does not hold a properly executed
13 security agreement or judgment from a court of competent
14 jurisdiction;

15 (4) in the case of a record submitted to the filing
16 office described in Section 9-501(b), the debtor does not
17 meet the definition of a transmitting utility as described
18 in Section 9-102(a)(80);

19 (5) in the case of a record submitted to the filing
20 office described in Section 9-501(a), the transaction does
21 not meet the definition of a manufactured-home transaction
22 as described in Section 9-102(a)(54); or

23 (6) in the case of a record submitted to the filing
24 office described in Section 9-501(a), the transaction does
25 not meet the definition of a public-finance transaction as
26 described in Section 9-102(a)(67).

1 (f) The Secretary of State shall not charge a fee to file
2 an affidavit under this Section. The Secretary of State shall
3 not return any filing fee paid for filing a financing statement
4 or amendment, regardless of whether the financing statement or
5 amendment is terminated under this Section.

6 (g) The Secretary of State shall send notice of the
7 termination of a financing statement or an amendment under
8 subsection (e) to the filer of the financing statement or
9 amendment advising the filer that the financing statement or
10 amendment has been terminated. If the filer believes in good
11 faith that the statement or amendment was legally filed and is
12 not fraudulent, the filer may file an action to reinstate the
13 financing statement or amendment.

14 (h) If a court or tribunal in an action under this Section
15 determines that the financing statement or amendment should be
16 reinstated or accepted, the court or tribunal shall provide a
17 copy of its order to the Secretary of State. On receipt of an
18 order reinstating a financing statement or an amendment, the
19 Secretary of State shall file a record that identifies by its
20 file number the initial financing statement or amendment to
21 which the record relates and indicates that the financing
22 statement or amendment has been reinstated.

23 (i) On the filing of a record reinstating a financing
24 statement or an amendment under subsection (h), the financing
25 statement or amendment is effective as a filed record from the
26 initial filing date. If a financing statement that is

1 reinstated would have lapsed during the period of termination,
2 the secured party may file a continuation statement within 30
3 days after the record reinstating the financing statement is
4 filed. The continuation statement is effective as a filed
5 record from the date the financing statement would have lapsed.
6 However, a financing or continuation statement or amendment is
7 not retroactive as provided in this subsection as against a
8 purchaser of the collateral that gives value in reasonable
9 reliance on the absence of the record from the files.

10 (j) Neither the filing office nor any of its employees
11 incur liability for the termination of a record under this
12 Section, the refusal to accept a record for filing under
13 Section 9-516, or the failure to terminate a record or to
14 refuse to accept a record for filing in the lawful performance
15 of its duties.

16 (k) As used in this Section, the term "regulated financial
17 institution" means a financial institution subject to
18 regulatory oversight or examination by a State or federal
19 agency and includes banks, savings banks, savings
20 associations, building and loan associations, credit unions,
21 consumer finance companies, industrial banks, industrial loan
22 companies, insurance companies, investment companies,
23 installment sellers, mortgage servicers, sales finance
24 companies, and leasing companies.

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

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

5 (b) Authorization by one secured party of record. A record
6 authorized by one secured party of record does not affect the
7 financing statement with respect to another secured party of
8 record.

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

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

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

15 (810 ILCS 5/9-516)

16 Sec. 9-516. What constitutes filing; effectiveness of
17 filing.

18 (a) What constitutes filing. Except as otherwise provided
19 in subsection (b), communication of a record to a filing office
20 and tender of the filing fee or acceptance of the record by the
21 filing office constitutes filing.

22 (b) Refusal to accept record; filing does not occur. Filing
23 does not occur with respect to a record that a filing office
24 refuses to accept because:

25 (1) the record is not communicated by a method or

1 medium of communication authorized by the filing office;

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

4 (3) the filing office is unable to index the record
5 because:

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

8 (B) in the case of an amendment or correction
9 statement, the record:

10 (i) does not identify the initial financing
11 statement as required by Section 9-512 or 9-518, as
12 applicable; or

13 (ii) identifies an initial financing statement
14 whose effectiveness has lapsed under Section
15 9-515;

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

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

1 (E) in the case of a record submitted to the filing
2 office described in Section 9-501(b), the debtor does
3 not meet the definition of a transmitting utility as
4 described in Section 9-102(a) (80);

5 (F) in the case of a record submitted to the filing
6 office described in Section 9-501(a), the transaction
7 does not meet the definition of a manufactured home
8 transaction as described in Section 9-102(a) (54);

9 (G) in the case of a record submitted to the filing
10 office described in Section 9-501(a), the transaction
11 does not meet the definition of a public-finance
12 transaction as described in Section 9-102(a) (67);

13 (3.5) in the case of an initial financing statement or
14 an amendment, if the filing office believes in good faith
15 that a document submitted for filing is materially false or
16 fraudulent or is being filed for the purpose of harassing
17 any person or asserts a claim against a current or former
18 employee or officer of a federal, State, county, or other
19 local governmental unit that relates to the performance of
20 the officer's or employee's public duties and for which the
21 filer does not hold a properly executed security agreement
22 or judgment from a court of competent jurisdiction ~~being~~
23 ~~filed for the purpose of defrauding any person or harassing~~
24 ~~any person in the performance of duties as a public~~
25 ~~servant;~~

26 (4) in the case of an initial financing statement or an

1 amendment that adds a secured party of record, the record
2 does not provide a name and mailing address for the secured
3 party of record;

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

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

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

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

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

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

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

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

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

26 (c) Rules applicable to subsection (b). For purposes of

1 subsection (b):

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

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

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

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

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

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