



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3813

Introduced 2/10/2012, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

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

Amends the Secured Transactions Article of the Uniform Commercial Code. Provides that a person may not cause to be presented for filing a financing statement or amendment that the person knows or reasonably should know: is not related to a valid lien, a valid security agreement, or a judgment of a court of competent jurisdiction; is for an improper purpose or purposes, such as to harass, hinder, defraud, or otherwise interfere with any person; or contains materially false or misleading information. Imposes criminal penalties for violations and civil liability to injured persons. Requires the Secretary of State to make available a form affidavit to provide notice of a fraudulent financing statement or amendment. Contains provisions regarding: filing a fraudulent filing affidavit; additional documentation supporting a filing; review of documentation; termination of a financing statement or amendment; fees; notice; reinstatement; liability; effectiveness; and other matters. Effective immediately.

LRB097 19332 JLS 64581 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

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:

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

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

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

20 (b) A person who submits or is responsible for submitting  
21 any financing statement or amendment in violation of subsection

22 (a) is guilty of a Class A misdemeanor and a Class 4 felony for  
23 a second or subsequent offense.

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

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

5           (2) reasonable attorney fees;

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

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

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

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

20       (e) Upon receipt of an affidavit filed under this Section,  
21 or upon administrative action by the Secretary, the Secretary  
22 of State shall request from the filer of the financing  
23 statement or amendment additional documentation supporting the  
24 filing. The Department of Business Services of the Office of  
25 the Secretary of State and the Office of the General Counsel  
26 shall review all such documentation received within 30 days of

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

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

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

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

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

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

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

26 (f) The Secretary of State shall not charge a fee to file

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

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

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

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

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

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

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

24 (810 ILCS 5/9-510)

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

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

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

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

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

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

14 (810 ILCS 5/9-516)

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

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

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

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

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

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

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

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

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

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

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(b), the debtor does  
2 not meet the definition of a transmitting utility as  
3 described in Section 9-102(a) (80);

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

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

12 (3.5) in the case of an initial financing statement or  
13 an amendment, if the filing office believes in good faith  
14 that a document submitted for filing is materially false or  
15 fraudulent or is being filed for the purpose of harassing  
16 any person or asserts a claim against a current or former  
17 employee or officer of a federal, State, county, or other  
18 local governmental unit that relates to the performance of  
19 the officer's or employee's public duties and for which the  
20 filer does not hold a properly executed security agreement  
21 or judgment from a court of competent jurisdiction being  
22 ~~filed for the purpose of defrauding any person or harassing~~  
23 ~~any person in the performance of duties as a public~~  
24 ~~servant;~~

25 (4) in the case of an initial financing statement or an  
26 amendment that adds a secured party of record, the record

1 does not provide a name and mailing address for the secured  
2 party of record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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