

Subject Fraudulent Business Filings

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Overview

This bill makes changes to the financing statement filing system operated by the Minnesota Secretary of State in regards to financing statements filed with the intent to harass or defraud the person named as the debtor.

Summary

Section	Description
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| 1 | <p>[336.9-510] Effectiveness of filed record.
Makes conforming changes.</p> |
| 2 | <p>[336.9-5135] Termination of wrongfully filed financing statement; reinstatement.</p> <p>(a) Defines “intent to harass.”</p> <p>(b) Allows the person named as a debtor in a filed financing statement to provide the filing office with a notarized affidavit including certain information and stating that the filing was communicated with the intent to harass or defraud the person. Allows the office to reject an affidavit that is incomplete or if the office believes the affidavit was delivered with the intent to harass or defraud the secured party. Requires the secretary of state to provide a form affidavit.</p> <p>(c) Requires the office to promptly file a termination statement for the financing statement identified in the affidavit. A termination must state that it was filed under this section and is not effective until 20 days from filing.</p> <p>(d) The filing office cannot charge a fee to file an affidavit or termination under this section. The office must not return the initial financing statement filing fee.</p> <p>(e) The office must send a notice to the secured party for the financing statement that is being terminated within two business days of the filing of the termination. The notice must contain certain information.</p> |

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(f) If a secured party believes that the initial financing statement or amendment was authorized and not filed with the intent to harass or defraud, the secured party may request the filing office complete an expedited review of the termination or commence an action against the filing office for reinstatement.

(g) Requires the office to file a notice that the action has been commenced under paragraph (f) within ten days of service of process.

(h) If an action for reinstatement is successful the office must promptly file a record stating so.

(i) Upon filing a reinstatement, the effectiveness of the financing statement is considered never to have been terminated. A continuation statement after the effective date of a termination becomes effective if the financing statement is reinstated.

(j) If the court determines that the financing statement was appropriated terminated under this section, but the secured party brought suit pursuant to paragraph (f), then secured party may be liable to the person named as the debtor for the action costs and expenses including reasonable attorneys' fees.

3 **[336.9-516] What constitutes filing; effectiveness of filing.**

(b)(8) Provides filing does not occur if an initial financing statement, or amendment to a financing statement names a new debtor, and the office reasonably believes the record was communicated with the intent to harass or defraud the debtor or for an another unlawful purpose.

The office has no duty to form a belief as to whether a filing was communicated with the intent to harass or defraud the person identified as the debtor and has no duty to investigate or ascertain facts relevant to whether the intent or purpose was present. The secretary of state is not required to return an image of a filing rejected under this clause.

(e) A record that the filing office initially refuses to accept under paragraph (b), clause (8), but later accepts after receiving additional information, is effective as if the office had not initially refused to accept the record, except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.



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