

Subject Fraudulent business filings

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Overview

This bill makes changes to Article 9 of the Uniform Commercial Code (U.C.C.). Article 9 creates a filing system for finance statements, which evidence and make public a lien against a debtor's personal property (such as equipment, receivables, accounts, and fixtures). The Minnesota secretary of state currently operates the filing system. The bill creates a pre-filing remedy for financing statements that are filed with the intent to harass or defraud a debtor. The secretary of state has the ability to reject a filing, accept an affidavit of wrongful filing from a debtor, and reinstate a filing. The solution currently to a fraudulent filing is through the civil court system.

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| 1 | Effectiveness of filed record.
Cross-references section 3 of the bill to add an additional circumstance under which a filed record is effective. |
| 2 | What constitutes filing; effectiveness of filing.
(8) Provides that a financing statement or amendment with an additional debtor name not in the original financing statement is not filed if the office reasonably believes the record was communicated with the intent to harass or defraud the named debtor or for another unlawful purpose. Relieves the office from the duty to investigate, ascertain facts, or form a belief regarding whether the financing statement or amendment is made with the intent to harass, defraud, or for another unlawful purpose.

(e) Effectiveness of record; purchaser in good faith. Provides that a filing rejected under section 2 that is later accepted is effective as if the office had not initially refused to accept the record, except as against a purchaser of the secured collateral who gives value in reasonable reliance on the absence of the record from the files. |
| 3 | [336.9-5135] Termination of wrongfully filed financing statement; reinstatement.
(a) Intent to harass. Defines a filing with the "intent to harass." |

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(b) Affidavit of wrongful filing. Allows a person identified as the debtor to provide the office with an affidavit stating that a record was filed with the intent to harass or defraud the person. Allows the office to reject an incomplete affidavit or an affidavit offered with the intent to harass or defraud the secured party. Requires the secretary of state to provide a form affidavit.

(c) Termination statement by filing office. Requires that when an affidavit is accepted under paragraph (b), the office must promptly file a termination statement in regards to the identified financing statement. The termination statement is effective 20 days after filing.

(d) No fee charged. Prohibits the office from charging a filing fee for the affidavit or termination statement. Prohibits the office from returning the financing statement filing fee even if it is reinstated.

(e) Notice of termination of statement. Requires the office to notify the secured party whose filing has been terminated under paragraph (c) on the same day the termination is filed. Requires notice to be sent by mail with a copy by e-mail.

(f) Administrative review; action for reinstatement. Allows a secured party who believes that the filing was not intended to harass or defraud to request the filing office conduct a review of the filed record and review documentation provided by the secured party; or file a court action to have the office reinstate the filing. The district court for the county where the filing office in which the financing statement is located is the exclusive venue for a court action, and the action must be taken by the court on an expedited basis.

(g) Office to file notice of action for reinstatement. A filing office that receives service of process for a court action under paragraph (f) must file a notice indicating the action has been commenced within ten days of being served.

(h) Action for reinstatement successful. If the court, pursuant to an action filed under paragraph (f), finds that the financing statement was authorized and not fraudulent, the court must order the financing statement reinstated. The office must promptly file a record showing that a financing statement is reinstated upon order issued by the court.

(i) Effect of reinstatement. If a reinstatement occurs pursuant to paragraph (h), the financing statement is considered never to have been terminated under this section. A continuation statement becomes effective after a termination if the financing statement is reinstated.

(j) Liability for wrongful filing. If the court finds, pursuant to a hearing under paragraph (f), that a financing statement was not authorized and was communicated

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with the intent to harass or defraud the person identified as the debtor, the debtor may recover from the secured party the costs and expenses, including reasonable attorney fees, incurred. This recovery is in addition to any recovery available under section 336.9-625.

4 **[609.7476] Records filed with intent to harass or defraud.**

(a) Prohibits a person from filing a record with the office if not authorized, the record is not related to a transaction governed by Article 9, and the record is filed with the intent to harass or defraud the person identified as the debtor in the filing.

(b) Finds a person who violates paragraph (a) guilty of a gross misdemeanor for a first offense and a felony for a second or subsequent offense.



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