



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5190

Introduced 2/8/2012, by Rep. Michael J. Zalewski

#### 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 16765 JLS 62044 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 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 knowingly submits or is responsible for  
22 submitting any financing statement or amendment in violation of  
23 subsection (a) is guilty of a Class A misdemeanor and a Class 4

1 felony for 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.