

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H2/13/97

A Bill

ACT 420 OF 1997
HOUSE BILL 1466

5 By: Representative Vess
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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 4-9-403,
10 4-9-404, 4-9-405, 4-9-406, AND 4-9-407 TO PROVIDE A FILING
11 FEE FOR ADDITIONAL PAGES OF FINANCING AND TERMINATION
12 STATEMENTS; AND FOR OTHER PURPOSES."
13

Subtitle

14 "TO PROVIDE A FILING FEE FOR ADDITIONAL
15 PAGES OF FINANCING AND TERMINATION
16 STATEMENTS"
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Annotated § 4-9-403 is amended to read as
22 follows:

23 "4-9-403. What constitutes filing - Duration of filing - Effect of
24 lapsed filing - Duties of filing officer.

25 (1) Presentation for filing of a financing statement and tender of the
26 filing fee or acceptance of the statement by the filing officer constitutes
27 filing under this chapter.

28 (2) Except as provided in subsection (6) a filed financing statement is
29 effective for a period of five (5) years from the date of filing. The
30 effectiveness of a filed financing statement lapses on the expiration of the
31 five-year period unless a continuation statement is filed prior to the lapse.
32 If a security interest perfected by filing exists at the time insolvency
33 proceedings are commenced by or against the debtor, the security interest
34 remains perfected until termination of the insolvency proceedings and
35 thereafter for a period of sixty (60) days or until expiration of the
36 five-year period, whichever occurs later. Upon lapse the security interest

1 becomes unperfected, unless it is perfected without filing. If the security
2 interest becomes unperfected upon lapse, it is deemed to have been unperfected
3 as against a person who became a purchaser or lien creditor before lapse.

4 (3) A continuation statement may be filed by the secured party within
5 six (6) months prior to the expiration of the five-year period specified in
6 subsection (2). Any such continuation statement must be signed by the secured
7 party, identify the original statement by file number, and state that the
8 original statement is still effective. A continuation statement signed by a
9 person other than the secured party of record must be accompanied by a
10 separate written statement of assignment signed by the secured party of record
11 and complying with § 4-9-405, including payment of the required fee. Upon
12 timely filing of the continuation statement, the effectiveness of the original
13 statement is continued for five (5) years after the last date to which the
14 filing was effective whereupon it lapses in the same manner as provided in
15 subsection (2) unless another continuation statement is filed prior to such
16 lapse. Succeeding continuation statements may be filed in the same manner to
17 continue the effectiveness of the original statement. Unless a statute on
18 disposition of public records provides otherwise, the filing officer may
19 remove a lapsed statement from the files and destroy it immediately if he has
20 retained a microfilm or other photographic record, or in other cases after one
21 (1) year after the lapse. The filing officer shall so arrange matters by
22 physical annexation of financing statements to continuation statements or
23 other related filings, or by other means, that if he physically destroys the
24 financing statements of a period more than five (5) years past, those which
25 have been continued by a continuation statement or which are still effective
26 under subsection (6) shall be retained.

27 (4) Except as provided in subsection (7) a filing officer shall mark
28 each statement with a file number and with the date and hour of filing and
29 shall hold the statement or a microfilm or other photographic copy thereof for
30 public inspection. In addition the filing officer shall index the statement
31 according to the name of the debtor and shall note in the index the file
32 number and the address of the debtor given in the statement.

33 (5) The uniform fee for filing and indexing and for stamping a copy
34 furnished by the secured party to show the date and place of filing for an
35 original financing statement or for a continuation statement shall not exceed
36 six dollars (\$6.00) for the first page and two dollars (\$2.00) for each and

1 every page or exhibit thereafter, up to a maximum fee of one hundred dollars
2 (\$100).

3 (6) If the debtor is a transmitting utility (§ 4-9-401(5)) and a filed
4 financing statement so states, it is effective until a termination statement
5 is filed. A real estate mortgage which is effective as a fixture filing under
6 § 4-9-402(6) remains effective as a fixture filing until the mortgage is
7 released or satisfied of record or its effectiveness otherwise terminates as
8 to the real estate.

9 (7) When a financing statement covers timber to be cut or covers
10 minerals or the like (including oil and gas) or accounts subject to
11 § 4-9-103(5), or is filed as a fixture filing, it shall be filed for record
12 and the filing officer shall index it under the names of the debtor and any
13 owner of record shown on the financing statement in the same fashion as if
14 they were the mortgagors in a mortgage of the real estate described, and, to
15 the extent that the law of this state provides for indexing of mortgages under
16 the name of the mortgagee, under the name of the secured party as if he were
17 the mortgagee thereunder, or where indexing is by description in the same
18 fashion as if the financing statement were a mortgage of the real estate
19 described."

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21 SECTION 2. Arkansas Code Annotated 4-9-404 is amended to read as
22 follows:

23 "4-9-404. Termination statement.

24 (1) If a financing statement covering consumer goods is filed on or
25 after January 1, 1974, then within one (1) month or within ten (10) days
26 following written demand by the debtor after there is no outstanding secured
27 obligation and no commitment to make advances, incur obligations, or otherwise
28 give value, the secured party must file with each filing officer with whom the
29 financing statement was filed, a termination statement to the effect that he
30 no longer claims a security interest under the financing statement, which
31 shall be identified by file number. In other cases whenever there is no
32 outstanding secured obligation and no commitment to make advances, incur
33 obligations, or otherwise give value, the secured party must on written demand
34 by the debtor send the debtor, for each filing officer with whom the financing
35 statement was filed, a termination statement to the effect that he no longer
36 claims a security interest under the financing statement, which shall be

1 identified by file number. A termination statement signed by a person other
2 than the secured party of record must be accompanied by a separate written
3 statement of assignment signed by the secured party of record and complying
4 with § 4-9-405(2), including payment of the required fee. If the affected
5 secured party fails to file such a termination statement as required by this
6 subsection, or to send such a termination statement within ten (10) days after
7 proper demand therefor, he shall be liable to the debtor for one hundred
8 dollars (\$100), and in addition for any loss caused to the debtor by such
9 failure.

10 (2) On presentation to the filing officer of such a termination
11 statement he must note it in the index. If he has received the termination
12 statement in duplicate, he shall return one (1) copy of the termination
13 statement to the secured party stamped to show the time of receipt thereof. If
14 the filing officer has a microfilm or other photographic record of the
15 financing statement, and of any related continuation statement, statement of
16 assignment, and statement of release, he may remove the originals from the
17 files at any time after receipt of the termination statement, or if he has no
18 such record, he may remove them from the files at any time after one (1) year
19 after receipt of the termination statement.

20 (3) The uniform fee for filing and indexing a termination statement
21 including sending or delivering the financing statement shall not exceed six
22 dollars (\$6.00) for the first page and two dollars (\$2.00) for each and every
23 page or exhibit thereafter, up to a maximum fee of one hundred (\$100).
24 However, this fee shall be collected by the filing officer at the time of the
25 initial filing and indexing of the original financing statement."
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27 SECTION 3. Arkansas Code Annotated § 4-9-405 is amended to read as
28 follows:

29 "4-9-405. Assignment of security interest - Duties of filing officer -
30 Fees.

31 (1) A financing statement may disclose an assignment of a security
32 interest in the collateral described in the financing statement by indication
33 in the financing statement of the name and address of the assignee or by an
34 assignment itself or a copy thereof on the face or back of the statement. On
35 presentation to the filing officer of such a financing statement, the filing
36 officer shall mark the same as provided in § 4-9-403(4). The uniform fee for

1 filing, indexing, and furnishing filing data for a financing statement so
2 indicating an assignment shall not exceed six dollars (\$6.00) for the first
3 page and two dollars (\$2.00) for each and every page or exhibit thereafter, up
4 to a maximum fee of one hundred dollars (\$100).

5 (2) A secured party may assign of record all or part of his rights
6 under a financing statement by the filing in the place where the original
7 financing statement was filed of a separate written statement of assignment
8 signed by the secured party of record and setting forth the name of the
9 secured party of record and the debtor, the file number, and the date of
10 filing of the financing statement and the name and address of the assignee and
11 containing a description of the collateral assigned. A copy of the assignment
12 is sufficient as a separate statement if it complies with the preceding
13 sentence. On presentation to the filing officer of such a separate statement,
14 the filing officer shall mark such separate statement with the date and hour
15 of the filing. He shall note the assignment on the index of the financing
16 statement, or in the case of a fixture filing, or a filing covering timber to
17 be cut, or covering minerals or the like (including oil and gas) or accounts
18 subject to § 4-9-103(5), he shall index the assignment under the name of the
19 assignor or grantor, and, to the extent that the law of this state provides
20 for indexing the assignment of a mortgage under the name of the assignee, he
21 shall index the assignment of the financing statement under the name of the
22 assignee. The uniform fee for filing, indexing, and furnishing filing data
23 about such a separate statement of assignment shall not exceed six dollars
24 (\$6.00) for the first page and two dollars (\$2.00) for each and every page or
25 exhibit thereafter, up to a maximum fee of one hundred dollars (\$100).

26 Notwithstanding the provisions of this subsection, an assignment of record of
27 a security interest in a fixture contained in a mortgage effective as a
28 fixture filing (§ 4-9-402(6)) may be made only by an assignment of the
29 mortgage in the manner provided by the law of this state other than this
30 subtitle.

31 (3) After the disclosure or filing of an assignment under this section,
32 the assignee is the secured party of record."

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34 SECTION 4. Arkansas Code Annotated § 4-9-406 is amended to read as
35 follows:

36 "4-9-406. Release of collateral - Duties of filing officer - Fees.

1 A secured party of record may by his signed statement release all or a
2 part of any collateral described in a filed financing statement. The statement
3 of release is sufficient if it contains a description of the collateral being
4 released, the name and address of the debtor, the name and address of the
5 secured party, and the file number of the financing statement. A statement of
6 release signed by a person other than the secured party of record must be
7 accompanied by a separate written statement of assignment signed by the
8 secured party of record and complying with § 4-9-405(2), including payment of
9 the required fees. Upon presentation of such a statement of release to the
10 filing officer he shall mark the statement with the hour and the date of
11 filing and shall note the same upon the margin of the index of the filing of
12 the financing statement. There shall be a fee for filing and noting such a
13 statement of release not to exceed six dollars (\$6.00) for the first page and
14 two dollars (\$2.00) for each and every page or exhibit thereafter, up to a
15 maximum fee of one hundred dollars (\$100)."

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17 SECTION 5. Arkansas Code Annotated § 4-9-407 is amended to read as
18 follows:

19 "4-9-407. Information from filing officer - Fees.

20 (1) If the person filing any financial statement, termination
21 statement, statement of assignment, or statement of release furnishes the
22 filing officer a copy thereof, the filing officer shall upon request note upon
23 the copy the file number and date and hour of the filing of the original and
24 deliver or send the copy to such person.

25 (2) Upon request of any person, the filing officer shall issue his
26 certificate showing whether there is on file on the date and hour stated
27 therein any presently effective financing statement naming a particular debtor
28 and any statement of assignment thereof and if there is, giving the date and
29 hour of filing of each such statement and the names and addresses of each
30 secured party named therein. The fee for such a certificate shall not exceed
31 six dollars (\$6.00). Upon request, the filing officer shall furnish a copy of
32 any filed financing statement, continuation statement, termination statement,
33 statement of assignment or statement of release for a fee of ~~five dollars~~
34 ~~(\$5.00)~~ six dollars (\$6.00) for the first page and two dollars (\$2.00) for
35 each and every page or exhibit thereafter, up to a maximum fee of one hundred
36 dollars (\$100) and, if such statement consists of more than three (3) pages,

1 ~~an additional fee of one dollar (\$1.00) for the fourth and each succeeding~~
2 ~~page."~~

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4 SECTION 6. All provisions of this act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

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8 SECTION 7. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

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14 SECTION 8. All laws and parts of laws in conflict with this act are
15 hereby repealed.

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/s/Rep. Vess

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APPROVED:3-10-97

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