

Hall of the House of Representatives
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of House Bill No. 1161

"TO CREATE THE OFFENSE OF FRAUDULENT FILING OF A UNIFORM COMMERCIAL
CODE FINANCING STATEMENT."

Amendment No. 1 to House Bill No. 1161.

Amend House Bill No. 1161 as originally introduced:

Delete everything after the Enacting Clause and substitute

"SECTION 1. Arkansas Code Title 5, Chapter 37, Subchapter 2 is amended to add a new section to read as follows:

5-37-215. Fraudulently filing a Uniform Commercial Code financing statement.

(a) As used in this section:

(1) "Financing statement" means the same as defined in § 4-9-102(a)(39); and

(2) "Security agreement" means the same as defined in § 4-9-102(a)(74).

(b) A person commits the offense of fraudulently filing a Uniform Commercial Code financing statement if, with the purpose to defraud or harass an alleged debtor or any other person, the person knowingly presents or conspires with another person to present a financing statement under the Uniform Commercial Code § 4-1-101 et seq., for filing that the person knows:

(1) Is not based on a bona fide security agreement; or

(2) Was not authorized or authenticated by the alleged debtor identified in the financing statement or an authorized representative of the alleged debtor.

(c)(1) Fraudulently filing a Uniform Commercial Code financing statement is a Class A misdemeanor.

(2)(A) A subsequent offense of fraudulently filing a Uniform Commercial Code financing statement is a Class D felony.

(B)(i) Subdivision (c)(2)(A) of this section includes a subsequent offense by a defendant who has previously pleaded guilty or nolo contendere to or been found guilty of an equivalent penal law of another state or foreign jurisdiction or an equivalent penal federal law.

(ii) The trial judge shall determine whether the defendant has previously pleaded guilty or nolo contendere to or been found guilty of an equivalent penal law in another state or foreign jurisdiction or an equivalent penal federal law based on certified records of the previous offense.



(d) In addition to the criminal penalties provided under subsection (c) of this section and in addition to any other laws under which a person may obtain relief, a person aggrieved or damaged by the filing of a Uniform Commercial Code financing statement in violation of subsection (b) of this section has a civil cause of action against the defendant for injunctive and other curative relief and may also recover:

(1) The greater of ten thousand dollars (\$10,000) or the actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney's fees;

(4) Costs and expenses reasonably related to the expenses of investigating and bringing the civil action; and

(5) Exemplary or punitive damages in an amount determined by the fact finder."

The Amendment was read _____

By: Representative L. Smith
PBB/KSW - 02-09-2009 08:50
PBB106

Chief Clerk