

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H2/11/09

A Bill

HOUSE BILL 1161

5 By: Representative L. Smith
6 By: Senator D. Johnson
7
8

For An Act To Be Entitled

10 AN ACT TO CREATE THE OFFENSE OF FRAUDULENT FILING
11 OF A UNIFORM COMMERCIAL CODE FINANCING STATEMENT;
12 AND FOR OTHER PURPOSES.
13
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Subtitle

15 TO CREATE THE OFFENSE OF FRAUDULENT
16 FILING OF A UNIFORM COMMERCIAL CODE
17 FINANCING STATEMENT.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 *SECTION 1. Arkansas Code Title 5, Chapter 37, Subchapter 2 is amended*
24 *to add a new section to read as follows:*

25 5-37-215. Fraudulently filing a Uniform Commercial Code financing
26 statement.

27 (a) As used in this section:

28 (1) "Financing statement" means the same as defined in § 4-9-
29 102(a)(39); and

30 (2) "Security agreement" means the same as defined in § 4-9-
31 102(a)(74).

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



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

2 (2) Was not authorized or authenticated by the alleged debtor

3 identified in the financing statement or an authorized representative of the
4 alleged debtor.

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

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

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

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

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

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

26 (2) Court costs;

27 (3) Reasonable attorney's fees;

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

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

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33 /s/ L. Smith