

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 414

5 By: Senator Hester
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For An Act To Be Entitled

8 AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE TO
9 PREVENT FRAUDULENT LIEN FILINGS; AND FOR OTHER
10 PURPOSES.
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Subtitle

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14 TO AMEND THE UNIFORM COMMERCIAL CODE TO
15 PREVENT FRAUDULENT LIEN FILINGS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 4-9-510(a), concerning the effectiveness of
21 a filed record under the Uniform Commercial Code, is amended to read as
22 follows:

23 (a) A filed record is effective only to the extent that it was filed
24 by a person that may file it under § 4-9-509 or by the filing office under §
25 4-9-529.
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27 SECTION 2. Arkansas Code Title 4, Chapter 9, Subchapter 5, is amended
28 to add an additional section to read as follows:

29 4-9-529. Unauthorized financing statement filings – Procedures –
30 Remedies.

31 (a) An individual or a representative of an organization may file in
32 the filing office a notarized affidavit or sworn affirmation, signed or
33 attested to under penalty of perjury, that identifies a filed financing
34 statement and states that:

35 (1) the individual or organization is identified as a debtor in
36 the financing statement;



1 (2) the financing statement was not filed by a bank or by a
2 person that regularly extends credit to agricultural producers; and

3 (3) the financing statement was filed by a person not entitled
4 to do so under § 4-9-509, § 4-9-708, or § 4-9-808.

5 (b) An affidavit or sworn affirmation filed under subsection (a) of
6 this section shall include any pertinent information that the Secretary of
7 State may reasonably require.

8 (c) An affidavit or sworn affirmation shall not be filed under
9 subsection (a) of this section with respect to a financing statement filed by
10 a bank or by a person that regularly extends credit to agricultural
11 producers.

12 (d)(1) If an affidavit or sworn affirmation is filed under subsection
13 (a) of this section, the filing office may file a termination statement with
14 respect to the financing statement identified in the affidavit.

15 (2) the termination statement shall indicate that it was filed
16 under this section.

17 (3) except as provided in subsections (g) and (h) of this
18 section, a termination statement filed under subdivision (d)(1) of this
19 section shall take effect thirty (30) days after it is filed.

20 (4) the Secretary of State shall maintain a record of all
21 terminated financing statements.

22 (e)(1) On the same day that the filing office files a termination
23 statement under subdivision (d)(1) of this section, the filing office shall
24 send to each secured party of record identified in the financing statement a
25 notice advising the secured party of record that the termination statement
26 has been filed.

27 (2) notice shall be sent by certified mail, return receipt
28 requested, to the mailing address provided for the secured party of record.

29 (f)(1) A secured party of record identified in a financing statement
30 as to which a termination statement has been filed under subdivision (d)(1)
31 of this section may bring an action within twenty (20) days after the
32 termination statement is filed against the individual who filed the affidavit
33 under subsection (a) of this section seeking a determination as to whether
34 the financing statement was filed by a person entitled to do so under § 4-9-
35 509, § 4-9-708, or § 4-9-808.

36 (2) an action under subdivision (f)(1) of this section shall

1 have priority on the court's calendar and shall proceed by expedited hearing.

2 (3) the action shall be brought in the circuit court of the
3 county where the filing office in which the financing statement was filed.

4 (g)(1) In an action brought under subdivision (f)(1) of this section,
5 a court may order, in appropriate circumstances, preliminary relief,
6 including an order:

7 (A) precluding the termination statement from taking
8 effect; or

9 (B) directing a party to take action to prevent the
10 termination statement from taking effect.

11 (2) if the court issues an order under subdivision (g)(1) of
12 this section and the filing office receives a certified copy of the order
13 before the termination statement takes effect, then:

14 (A) the termination statement shall not take effect; and

15 (B) the filing office shall promptly file an amendment to
16 the financing statement that indicates that an order has prevented the
17 termination statement from taking effect.

18 (3) if an order to preclude the termination statement ceases to
19 be effective by reason of a subsequent order or a final judgment of the court
20 or by an order issued by another court and the filing office receives a
21 certified copy of the subsequent order or judgment or order, then:

22 (A) the termination statement shall become immediately
23 effective upon receipt of the certified copy; and

24 (B) the filing office shall promptly file an amendment to
25 the financing statement indicating that the termination statement is
26 effective.

27 (h)(1) If a court determines in an action brought under subdivision
28 (f)(1) of this section that the financing statement was filed by a person
29 entitled to do so under § 4-9-509, § 4-9-708, or § 4-9-808, and the filing
30 office receives a certified copy of the court's final judgment or order
31 before the termination statement takes effect, then:

32 (A) the termination statement shall not take effect; and

33 (B) the filing office shall remove the termination
34 statement and any amendments filed under subsection (g) of this section from
35 the files.

36 (2) if the filing office receives the certified copy of the

1 final judgment of the court or order after the termination statement takes
2 effect and within thirty (30) days after the final judgment or order was
3 entered, the filing office shall promptly file an amendment to the financing
4 statement that indicates that the financing statement has been reinstated.

5 (i) Except as provided in subsection (j) of this section, upon the
6 filing of an amendment reinstating a financing statement under subdivision
7 (h)(1) of this section, the effectiveness of the financing statement is
8 retroactively reinstated and the financing statement shall be considered
9 never to have been ineffective against all persons and for all purposes.

10 (j) A financing statement whose effectiveness was terminated under
11 subdivision (d)(1) of this section and has been reinstated under subdivision
12 (h)(1) of this section shall not be effective against a person who purchased
13 the collateral in good faith between the time the termination statement was
14 filed and the time of the filing of the amendment reinstating the financing
15 statement to the extent that the person gave new value in reliance on the
16 termination statement.

17 (k)(1) The filing office shall not charge a fee for the filing of an
18 affidavit or a termination statement under this section.

19 (2) the filing office shall not return any fee paid for filing
20 the financing statement identified in the affidavit whether or not the
21 financing statement is subsequently reinstated.

22 (l) The filing office or employees of the filing office shall not be
23 subject to liability for the termination or amendment of a financing
24 statement in the lawful performance of the duties of the filing office under
25 this section.

26 (m) The Secretary of State shall adopt and make available a form of
27 affidavit for use under this section.

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