

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.  
11

## Subtitle

12  
13 TO AMEND THE UNIFORM COMMERCIAL CODE TO  
14 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.  
26

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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30 **APPROVED: 04/07/2017**  
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