

State of Arkansas
92nd General Assembly
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As Engrossed: H3/11/19
A Bill

HOUSE BILL 1463

By: Representative Gazaway
By: Senator Hester

For An Act To Be Entitled

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE TO PREVENT FRAUDULENT FILINGS; TO ALLOW THE FILING OFFICE TO REFUSE TO FILE FRAUDULENT RECORDS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE UNIFORM COMMERCIAL CODE TO PREVENT FRAUDULENT FILINGS; AND TO ALLOW THE FILING OFFICE TO REFUSE TO FILE FRAUDULENT RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-9-516(b), concerning what constitutes filing under the Uniform Commercial Code, is amended to add an additional subdivision, to read as follows:

(8) in the case of a financing statement, the filing office determines that the financing statement is fraudulent under § 4-9-520(e).

SECTION 2. Arkansas Code § 4-9-520(c), concerning acceptance and the refusal to accept a record under the Uniform Commercial Code, is amended to read as follows:

(c) A Except as provided in §4-9-520(e)(4)(B), a filed financing statement satisfying § 4-9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, § 4-9-338 applies to a filed financing statement providing



information described in § 4-9-516(b)(5) which is incorrect at the time the financing statement is filed.

SECTION 3. Arkansas Code § 4-9-520, concerning acceptance and the refusal to accept a record under the Uniform Commercial Code, is amended to add an additional subsection to read as follows:

(e)(1)(A) A filing officer may review a financing statement to determine if it should be refused for filing as fraudulent under this subsection.

(B) When reviewing a financing statement under subdivision (e)(1)(A) of this section, the filing officer shall consider the following factors, including without limitation whether:

(i) the financing statement is authorized under the Uniform Commercial Code;

(ii) the financing statement cites performance or nonperformance of official duties by a current or former employee or officer of a federal, state, county, or other local government entity without an accompanying, properly executed security agreement or judgment from a court with jurisdiction;

(iii) the financing statement identifies the secured party and debtor as being the same person;

(iv) there is sufficient proof that a debtor identified as a transmitting utility meets the definition of a transmitting utility as specified in the Uniform Commercial Code;

(v) the financing statement is remitted by or on behalf of an inmate in a correction facility without being accompanied by a sworn notarized statement signed by the debtor acknowledging that the person entered into a security agreement with the inmate and authorized the filing;

(vi) the financing statement is being filed for a purpose other than a transaction within the scope of the Uniform Commercial Code; and

(vii) the text within the financing statement contains language indicative of past fraudulent filings.

(2) If a filing official acting in good faith has reason to believe that the financing statement is filed for a fraudulent purpose, to promote or conduct an illegitimate object or purpose, or for the purpose of defrauding or harassing a person or entity, the filing official shall provide the reason

to refuse the filing to:

(i) the director of the Business and Commercial Services Division of the office of the Secretary of State; and

(ii) the general counsel for the Secretary of State.

(3) If the director and the general counsel concur in the filing official's reasoning, then written notice under signature of the director shall be sent by certified mail, return receipt requested, to the mailing address provided for the secured party of record, stating:

(A) the fact of and reason for refusal to file the financing statement;

(B) the need for the secured party to submit, within thirty (30) days of the date of the certified letter, documentation as to why the financing statement should not be refused for filing, including without limitation a properly executed security agreement or a judgment from a court with jurisdiction authorizing the filing; and

(C) legal penalties for filing fraudulent financing statements.

(4)(A) If the filing official determines that the secured party provided sufficient evidence within the thirty-day period specified in the certified letter demonstrating that the refused filing should have been accepted for filing, the filing office shall file the record with an effective date of the time that it was originally submitted for filing with an information statement indicating that the financing statement was filed under its initial filing date.

(B) If within the thirty-day period specified in the certified letter the secured party fails to respond or fails to provide sufficient evidence to support the effectiveness of the financing statement, then the filing office may refuse the record for filing. The financing statement record shall be void and have no force or effect on any person or persons named in the financing statement as related to the effectiveness of a record under this subchapter.

(5) The filing office shall not return a fee paid for filing a statement which has been refused for filing as fraudulent.

(6) Neither the filing office nor an employee of the filing office shall be liable for the refusal to file financing statements in the lawful performance of the office or employee under this subsection.

(7) Regulated financial institutions, other lenders in the

business of making loans or extending credit, and persons that regularly extend credit to agricultural producers are exempt from the requirements of this subsection."

SECTION 4. Arkansas Code § 4-9-529(a), concerning unauthorized financing statement filings, is amended to read as follows:

(a) An individual ~~or a~~, representative of an organization, or other lender in the business of making loans or extending credit may file in the filing office a notarized affidavit or sworn affirmation, signed or attested to under penalty of perjury, that identifies a filed financing statement and states that:

(1) the individual ~~or~~, organization, or other lender is identified as a debtor in the financing statement;

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

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

/s/Gazaway

APPROVED: 4/4/19