

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 414

By: Senator Hester

For An Act To Be Entitled

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

Subtitle

TO AMEND THE UNIFORM COMMERCIAL CODE TO
PREVENT FRAUDULENT LIEN FILINGS.

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

SECTION 1. Arkansas Code § 4-9-510(a), concerning the effectiveness of a filed record under the Uniform Commercial Code, is amended to read as follows:

(a) A filed record is effective only to the extent that it was filed by a person that may file it under § 4-9-509 or by the filing office under § 4-9-529.

SECTION 2. Arkansas Code Title 4, Chapter 9, Subchapter 5, is amended to add an additional section to read as follows:

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

(a) An individual or a representative of an organization 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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