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Chapter No. 382
13/HR40/R1185
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HOUSE BILL NO. 1008

Originated in House



Clerk

HOUSE BILL NO. 1008

AN ACT TO CREATE SECTION 75-9-501.1, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REFUSAL AND TERMINATION OF FRAUDULENT OR FALSE UNIFORM COMMERCIAL CODE FILINGS; TO AMEND SECTIONS 75-9-510 AND 75-9-516, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 75-9-501.1, Mississippi Code of 1972:

75-9-501.1. (a) No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

(1) Is filed with the intent to harass or defraud the person identified as debtor in the record or any other person;

(2) Is not authorized or permitted under Sections 75-9-509, 75-9-708 or 75-9-808 of this article; or

(3) Is not related to a valid existing or potential commercial or financial transaction, an existing agricultural or other lien, or a judgment of a court of competent jurisdiction.

(b) The Secretary of State may initiate a review of a record presented for filing or a filed record if:

(1) The Secretary of State receives an information statement filed by the debtor with the Secretary of State under Section 75-9-518 alleging the record was communicated to the filing office in violation of subsection (a); or

(2) The Secretary of State has reason to believe, from information contained in the record or obtained from the person that communicated the record to the filing office, that the record was communicated to the filing office in violation of subsection (a).

(c) Upon initiating the review, the Secretary of State shall communicate to the secured party of record on the record to which the review relates and to the person that communicated the record to the filing, if different and known to the office, a request for additional documentation supporting the effectiveness of the record. The Secretary of State may terminate the record effective thirty (30) days after the first request for additional documentation is sent if it has a reasonable basis for concluding that the record was communicated to the filing office in violation of subsection (a). The Secretary of State may give heightened scrutiny to a record when:

(1) The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the

officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction;

(2) The record indicates that the debtor and the secured party are substantially the same;

(3) The debtor is a transmitting utility; or

(4) The transaction to which the record relates is a public-finance transaction.

(d) The Secretary of State shall not return any fee paid for filing a record refused or terminated under this section.

(e) The Secretary of State shall promptly communicate to the secured party of record a notice of the refusal or termination of a record under subsection (c). A secured party of record that believes in good faith the record was not communicated to the filing office in violation of subsection (a) may commence an action in the Chancery Court of the First Judicial District of Hinds County, Mississippi, to require the Secretary of State to accept or reinstate the record.

(f) A record ordered by the court to be accepted or reinstated is effective as a filed record from the initial filing date except as against a purchaser of the collateral which gives value in reasonable reliance on the absence of the record from the files.

(g) Neither the filing office nor any of its employees shall incur liability for the termination or failure to terminate a

record under this section or for the refusal to accept a record for filing in the lawful performance of the duties of the office or employee.

(h) This section does not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution except that the Secretary of State may request from the secured party of record on the record or from the person that communicated the record to the filing office, if different and known to the office, additional documentation supporting that the record was communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution. "Regulated financial institution" means a financial institution subject to regulatory oversight or examination by a state or federal agency, including, but not limited to, any bank, commercial finance lender or insurer, consumer loan broker, credit union, debt management service provider, finance company, industrial loan company, insurance premium finance company, investment company, investment fund, mortgage service provider, savings association, small loan company, and trust company.

(i) This section applies to records communicated to the filing office for filing before the effective date if the communication constitutes a violation of subsection (a).

SECTION 2. Section 75-9-510, Mississippi Code of 1972, is amended as follows:

75-9-510. (a) A filed record is effective only to the extent that it was filed by a person that may file it under Section 75-9-509.

(b) A record authorized by one (1) secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by Section 75-9-515(d) is ineffective.

(d) A filed record ceases to be effective if the Secretary of State terminates the record pursuant to Section 75-9-501.1.

SECTION 3. Section 75-9-516, Mississippi Code of 1972, is amended as follows:

75-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by Section 75-9-512 or 75-9-518, as applicable; * * *

(ii) Identifies an initial financing statement whose effectiveness has lapsed under Section 75-9-515;
or

(iii) Identifies an initial financing statement which was terminated pursuant to Section 75-9-501.1;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed, or filed for record, in the filing office described in Section 75-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(3.5) In the case of an initial financing statement or an amendment, if the Secretary of State believes in good faith

that the record was communicated to the filing office in violation of Section 75-9-501.1(a);

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under Section 75-9-514(a) or an amendment filed under Section 75-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 75-9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 75-9-512, 75-9-514 or 75-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

SECTION 4. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 31, 2013



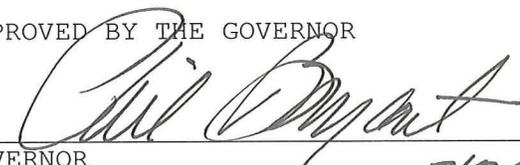
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 8, 2013



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

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