

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Uniform Commercial Code is amended by
5 changing Sections 9-510 and 9-516 and by adding Section 9-501.1
6 as follows:

7 (810 ILCS 5/9-501.1 new)

8 Sec. 9-501.1. Fraudulent records.

9 (a) No person shall cause to be communicated to the filing
10 office for filing a false record the person knows or reasonably
11 should know:

12 (1) is not authorized or permitted under Section 9-509,
13 9-708, or 9-808 of this Article;

14 (2) is not related to a valid existing or potential
15 commercial or financial transaction, an existing
16 agricultural or other lien, or a judgment of a court of
17 competent jurisdiction; and

18 (3) is filed with the intent to harass or defraud the
19 person identified as debtor in the record or any other
20 person.

21 (b) A person who violates subsection (a) is guilty of a
22 Class A misdemeanor for a first offense and a Class 4 felony
23 for a second or subsequent offense.

1 (c) A person who violates subsection (a) shall be liable in
2 a civil action to each injured person for:

3 (1) the greater of the actual damages caused by the
4 violation or up to \$10,000 in lieu of actual damages;

5 (2) reasonable attorney's fees;

6 (3) court costs and other related expenses of bringing
7 an action, including reasonable investigative expenses;
8 and

9 (4) in the discretion of the court, exemplary damages
10 in an amount determined by the court or jury.

11 (d) A person identified as debtor in a filed record the
12 person believes was caused to be communicated to the filing
13 office in violation of subsection (a) may, under penalty of
14 perjury, file with the Secretary of State an affidavit to that
15 effect. The Secretary of State shall adopt and make available a
16 form affidavit for use under this Section.

17 (e) Upon receipt of an affidavit filed under this Section,
18 or upon administrative action by the Secretary of State, the
19 Secretary of State shall communicate to the secured party of
20 record on the record to which the affidavit or administrative
21 action relates and to the person that communicated the record
22 to the filing office, if different and known to the office, a
23 request for additional documentation supporting the
24 effectiveness of the record. The Department of Business
25 Services of the Office of the Secretary of State and the Office
26 of the General Counsel shall review all such documentation

1 received within 30 days after the first request for additional
2 documentation is sent. The Secretary of State may terminate the
3 record effective 30 days after the first request for additional
4 documentation is sent if it has a reasonable basis for
5 concluding that the record was communicated to the filing
6 office in violation of subsection (a).

7 The Secretary of State may initiate an administrative
8 action under the first paragraph of this subsection (e) with
9 regard to a filed record if it has reason to believe, from
10 information contained in the record or obtained from the person
11 that communicated the record to the filing office, that the
12 record was communicated to the filing office in violation of
13 subsection (a). The Secretary of State may give heightened
14 scrutiny to a record that indicates that the debtor is a
15 transmitting utility or that indicates that the transaction to
16 which the record relates is a manufactured-home transaction or
17 a public-finance transaction.

18 (f) The Secretary of State shall not charge a fee to file
19 an affidavit under this Section and shall not return any fee
20 paid for filing a record terminated under this Section.

21 (g) The Secretary of State shall promptly communicate to
22 the secured party of record a notice of the termination of a
23 record under subsection (e). A secured party of record that
24 believes in good faith that the record was not communicated to
25 the filing office in violation of subsection (a) may file an
26 action to require that the record be reinstated by the filing

1 office. A person that communicated a record to the filing
2 office that the filing office rejected in reliance on Section
3 9-516(b) (3.5), who believes in good faith that the record was
4 not communicated to the filing office in violation of Section
5 9-516(b) (3.5), may file an action to require that the record be
6 accepted by the filing office.

7 (h) If a court or tribunal in an action under this Section
8 determines that a record terminated under this Section or
9 rejected in reliance on Section 9-516(b) (3.5) should be
10 reinstated or accepted, the court or tribunal shall provide a
11 copy of its order to that effect to the Secretary of State. On
12 receipt of an order reinstating a terminated record, the
13 Secretary of State shall refile the record along with a notice
14 indicating that the record was refiled pursuant to this Section
15 and its initial filing date. On receipt of an order requiring
16 that a rejected record be accepted, the Secretary of State
17 shall promptly file the record along with a notice indicating
18 that the record was filed pursuant to this Section and the date
19 on which it was communicated for filing. A rejected record that
20 is filed pursuant to an order of a court or tribunal shall have
21 the effect described in Section 9-516(d) for a record the
22 filing office refuses to accept for a reason other than one set
23 forth in Section 9-516(b).

24 (i) A terminated record that is refiled under subsection
25 (h) is effective as a filed record from the initial filing
26 date. If the period of effectiveness of a refiled record would

1 have lapsed during the period of termination, the secured party
2 may file a continuation statement within 30 days after the
3 record is refiled and the continuation statement shall have the
4 same effect as if it had been filed during the 6-month period
5 described in Section 9-515(d). A refiled record shall be
6 considered never to have been ineffective against all persons
7 and for all purposes except that it shall not be effective as
8 against a purchaser of the collateral that gave value in
9 reasonable reliance on the absence of the record from the
10 files.

11 (j) Neither the filing office nor any of its employees
12 shall incur liability for the termination or failure to
13 terminate a record under this Section or for the refusal to
14 accept a record for filing in the lawful performance of the
15 duties of the office or employee.

16 (k) This Section does not apply to a record communicated to
17 the filing office by a regulated financial institution or by a
18 representative of a regulated financial institution except
19 that the Secretary of State may request from the secured party
20 of record on the record or from the person that communicated
21 the record to the filing office, if different and known to the
22 office, additional documentation supporting that the record
23 was communicated to the filing office by a regulated financial
24 institution or by a representative of a regulated financial
25 institution. The term "regulated financial institution" means
26 a financial institution subject to regulatory oversight or

1 examination by a State or federal agency and includes banks,
2 savings banks, savings associations, building and loan
3 associations, credit unions, consumer finance companies,
4 industrial banks, industrial loan companies, insurance
5 companies, investment companies, investment funds, installment
6 sellers, mortgage servicers, sales finance companies, and
7 leasing companies.

8 (l) If a record was communicated to the filing office for
9 filing before the effective date of this Section and its
10 communication would have constituted a violation of subsection
11 (a) if it had occurred on or after the effective date of the
12 Section: (i) subsections (b) and (c) are not applicable; and
13 (ii) the other subsections of this Section are applicable.

14 (810 ILCS 5/9-510)

15 Sec. 9-510. Effectiveness of filed record.

16 (a) Filed record effective if authorized. A filed record is
17 effective only to the extent that it was filed by a person that
18 may file it under Section 9-509.

19 (b) Authorization by one secured party of record. A record
20 authorized by one secured party of record does not affect the
21 financing statement with respect to another secured party of
22 record.

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

1 (d) A filed record ceases to be effective if the filing
2 office terminates the record pursuant to Section 9-501.1.

3 (Source: P.A. 91-893, eff. 7-1-01.)

4 (810 ILCS 5/9-516)

5 Sec. 9-516. What constitutes filing; effectiveness of
6 filing.

7 (a) What constitutes filing. Except as otherwise provided
8 in subsection (b), communication of a record to a filing office
9 and tender of the filing fee or acceptance of the record by the
10 filing office constitutes filing.

11 (b) Refusal to accept record; filing does not occur. Filing
12 does not occur with respect to a record that a filing office
13 refuses to accept because:

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

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

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

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

22 (B) in the case of an amendment or correction
23 statement, the record:

24 (i) does not identify the initial financing
25 statement as required by Section 9-512 or 9-518, as

1 applicable; ~~or~~

2 (ii) identifies an initial financing statement
3 whose effectiveness has lapsed under Section
4 9-515; or

5 (iii) identifies an initial financing
6 statement which was terminated pursuant to Section
7 9-501.1;

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

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

19 (E) in the case of a record submitted to the filing
20 office described in Section 9-501(a)(1), the filing
21 office has reason to believe, from information
22 contained in the record or from the person that
23 communicated the record to the office, that: (i) if the
24 record indicates that the debtor is a transmitting
25 utility, the debtor does not meet the definition of a
26 transmitting utility as described in Section

1 9-102(a)(81); (ii) if the record indicates that the
2 transaction relating to the record is a
3 manufactured-home transaction, the transaction does
4 not meet the definition of a manufactured-home
5 transaction as described in Section 9-102(a)(54); or
6 (iii) if the record indicates that the transaction
7 relating to the record is a public-finance
8 transaction, the transaction does not meet the
9 definition of a public-finance transaction as
10 described in Section 9-102(a)(67); ~~9-501(b), the~~
11 ~~debtor does not meet the definition of a transmitting~~
12 ~~utility as described in Section 9-102(a)(80);~~

13 (3.5) in the case of an initial financing statement or
14 an amendment, if the filing office believes in good faith
15 that the record was communicated to the filing office in
16 violation of Section 9-501.1(a); ~~a document submitted for~~
17 ~~filing is being filed for the purpose of defrauding any~~
18 ~~person or harassing any person in the performance of duties~~
19 ~~as a public servant;~~

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

24 (5) in the case of an initial financing statement or an
25 amendment that provides a name of a debtor which was not
26 previously provided in the financing statement to which the

1 amendment relates, the record does not:

2 (A) provide a mailing address for the debtor;

3 (B) indicate whether the debtor is an individual or
4 an organization; or

5 (C) if the financing statement indicates that the
6 debtor is an organization, provide:

7 (i) a type of organization for the debtor;

8 (ii) a jurisdiction of organization for the
9 debtor; or

10 (iii) an organizational identification number
11 for the debtor or indicate that the debtor has
12 none;

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

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

20 (c) Rules applicable to subsection (b). For purposes of
21 subsection (b):

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

24 (2) a record that does not indicate that it is an
25 amendment or identify an initial financing statement to
26 which it relates, as required by Section 9-512, 9-514, or

1 9-518, is an initial financing statement.

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

9 (e) The Secretary of State may refuse to accept a record
10 for filing under subdivision (b) (3) (E) or (b) (3.5) only if the
11 refusal is approved by the Department of Business Services of
12 the Secretary of State and the General Counsel to the Secretary
13 of State.

14 (Source: P.A. 95-446, eff. 1-1-08.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.