

Senator Lyle W. Hillyard proposes the following substitute bill:

UNIFORM COMMERCIAL CODE FILING AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: R. Curt Webb

LONG TITLE

General Description:

This bill modifies the Uniform Commercial Code and criminal provisions to address certain filings.

Highlighted Provisions:

This bill:

- ▶ addresses the effectiveness of a filed record;
- ▶ provides for the termination of a wrongfully filed financing statement and possible reinstatement;
- ▶ modifies the provision of what constitutes a filing and the effectiveness of a filing;
- ▶ creates a crime for certain filings filed with intent to harass or defraud; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

70A-9a-510, as enacted by Laws of Utah 2000, Chapter 252



26 70A-9a-516, as last amended by Laws of Utah 2013, Chapter 225

27 70A-9a-520, as last amended by Laws of Utah 2013, Chapter 225

28 70A-9a-521, as last amended by Laws of Utah 2013, Chapter 225

29 ENACTS:

30 70A-9a-513.5, Utah Code Annotated 1953

31 76-6-503.7, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section 70A-9a-510 is amended to read:

35 **70A-9a-510. Effectiveness of filed record.**

36 (1) A filed record is effective only to the extent that it was filed by a person that may
37 file it under Section 70A-9a-509 or by the filing office under Section 70A-9a-513.5.

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

40 (3) A continuation statement that is not filed within the six-month period prescribed by
41 Subsection 70A-9a-515(4) is ineffective.

42 Section 2. Section 70A-9a-513.5 is enacted to read:

43 **70A-9a-513.5. Termination of wrongfully filed financing statement --**

44 **Reinstatement.**

45 (1) As used in this section:

46 (a) "Established filer" means a person that:

47 (i) regularly causes records to be communicated to the filing office for filing and has
48 provided the filing office with current contact information and information sufficient to
49 establish its identity; or

50 (ii) satisfies either of the following conditions:

51 (A) the filing office has issued the person credentials for access to online filing
52 services; or

53 (B) the person has established an account for payment of filing fees, regardless of
54 whether the account is used in a particular transaction.

55 (b) "Filing office" means the same as that term is defined in Section 70A-9a-102,
56 except that it does not include a county recorder office.

57 (2) A person identified as debtor in a filed financing statement may deliver to the filing
58 office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the
59 financing statement by file number, indicates the affiant's mailing address, and states that the
60 affiant believes that the filed record identifying the affiant as debtor was not authorized and
61 was caused to be communicated to the filing office with the intent to harass or defraud the
62 affiant. The filing office shall adopt a form of affidavit for use under this section. The filing
63 office may reject an affidavit described in this Subsection (2) if:

64 (a) the affidavit is incomplete; or

65 (b) the filing office reasonably believes that the affidavit was communicated to the
66 filing office with the intent to harass or defraud, or for any other unlawful purpose.

67 (3) Subject to Subsection (10), if an affidavit is delivered to the filing office under
68 Subsection (2), the filing office shall promptly file a termination statement with respect to the
69 financing statement identified in the affidavit. The termination statement must identify by its
70 file number the initial financing statement to which it relates and must indicate that it was filed
71 pursuant to this section. A termination statement filed under this Subsection (3) is not effective
72 until 14 days after it is filed.

73 (4) The filing office may not charge a fee for the filing of an affidavit under Subsection
74 (2) or a termination statement under Subsection (3). The filing office may not return any fee
75 paid for filing the financing statement identified in the affidavit, whether or not the financing
76 statement is reinstated under Subsection (7).

77 (5) On the same day that a filing office files a termination statement under Subsection
78 (3), it shall send to the secured party of record for the financing statement to which the
79 termination statement relates a notice stating that the termination statement has been filed and
80 will become effective 14 days after filing. The notice shall be sent by mail to the address
81 provided for the secured party of record in the financing statement or by electronic mail to the
82 electronic mail address provided by the secured party of record, if any.

83 (6) (a) A secured party that believes in good faith that the filed record identified in an
84 affidavit delivered to the filing office under Subsection (2) was authorized and was not caused
85 to be communicated to the filing office with the intent to harass or defraud the affiant may:

86 (i) before the termination statement takes effect under Subsection (3), request the filing
87 office to review the filed record concerning whether the filed record was filed with the intent to

88 harass or defraud; or

89 (ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an
90 action against the filing office seeking reinstatement of the financing statement to which the
91 filed record relates.

91a Ĥ→ (b) ←Ĥ Within 10 days after being served with process in an action under this
92 Subsection (6), the filing office shall file a notice indicating that the action has been
93 commenced. The notice shall indicate the file number of the initial financing statement to
94 which it relates.

95 Ĥ→ ~~(b)~~ (c) ←Ĥ If the affiant is not named as a defendant in the action described in
95a Subsection
96 (6)(a)(ii), the secured party shall send a copy of the complaint to the affiant at the address
97 indicated in the affidavit. The exclusive venue for the action shall be in the Third District
98 Court. A party may petition the court to consider the matter on an expedited basis.

99 Ĥ→ ~~(c)~~ (d) ←Ĥ An action under this Subsection (6) must be filed before the
99a expiration of six
100 months after the date on which the termination statement filed under Subsection (3) becomes
101 effective.

102 (7) If, in an action under Subsection (6), the court determines that the financing
103 statement should be reinstated, the filing office shall promptly file a record that identifies by its
104 file number the initial financing statement to which the record relates and indicates that the
105 financing statement has been reinstated.

106 (8) Upon the filing of a record reinstating a financing statement under Subsection (7),
107 the effectiveness of the financing statement is reinstated and the financing statement shall be
108 considered never to have been terminated under this section. A continuation statement filed as
109 provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed
110 under Subsection (3) or (10) becomes effective if the financing statement is reinstated.

111 (9) If, in an action under Subsection (6), the court determines that the filed record
112 identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized
113 and was caused to be communicated to the filing office with the intent to harass or defraud the
114 affiant, the filing office and the affiant may recover from the secured party that filed the action
115 the costs and expenses, including reasonable attorney fees, that the filing office and the affiant
116 incurred in the action. This recovery is in addition to any recovery to which the affiant is
117 entitled under Section 70A-9a-625.

118 (10) If an affidavit delivered to a filing office under Subsection (2) relates to a filed

119 record communicated to the filing office by an established filer, the filing office shall promptly
 120 send to the secured party of record a notice stating that the affidavit has been delivered to the
 121 filing office and that the filing office is conducting an administrative review to determine
 122 whether the record was unauthorized and was caused to be communicated with the intent to
 123 harass or defraud the affiant. The notice shall be sent by mail to the address provided for the
 124 secured party in the financing statement or sent by electronic mail to the electronic mail address
 125 provided by the secured party of record, if any, and a copy shall be sent in the same manner to
 126 the affiant. The administrative review shall be conducted on an expedited basis and the filing
 127 office may require the affiant and the secured party of record to provide any additional
 128 information that the filing office considers appropriate. If the filing office concludes that the
 129 record was ~~H~~→ **not authorized and was** ←~~H~~ caused to be communicated with the intent to harass
 129a or defraud the affiant, the
 130 filing office shall promptly file a termination statement under Subsection (3) that will be
 131 effective immediately and send to the secured party of record the notice required by Subsection
 132 (5). The secured party may thereafter file an action for reinstatement under Subsection (6), and
 133 Subsections (7) through (9) are applicable.

134 Section 3. Section **70A-9a-516** is amended to read:

135 **70A-9a-516. What constitutes filing -- Effectiveness of filing.**

136 (1) Except as otherwise provided in Subsection (2) or [~~(4)~~] (5), communication of a
 137 record to a filing office and tender of the filing fee or acceptance of the record by the filing
 138 office constitutes filing.

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

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

143 (b) an amount equal to or greater than the applicable filing fee is not tendered;

144 (c) the filing office is unable to index the record because:

145 (i) in the case of an initial financing statement, the record does not provide a name for
 146 the debtor;

147 (ii) in the case of an amendment or information statement, the record:

148 (A) does not identify the initial financing statement as required by Section **70A-9a-512**
 149 or **70A-9a-518**, as applicable; or

150 (B) identifies an initial financing statement whose effectiveness has lapsed under
 151 Section [70A-9a-515](#);

152 (iii) in the case of an initial financing statement that provides the name of a debtor
 153 identified as an individual or an amendment that provides a name of a debtor identified as an
 154 individual which was not previously provided in the financing statement to which the record
 155 relates, the record does not identify the debtor's surname; or

156 (iv) in the case of a record filed or recorded in the filing office described in Subsection
 157 [70A-9a-501](#)(1)(a), the record does not provide a sufficient description of the real property to
 158 which it relates;

159 (d) in the case of an initial financing statement or an amendment that adds a secured
 160 party of record, the record does not provide a name and mailing address for the secured party of
 161 record;

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

165 (i) provide a mailing address for the debtor; or

166 (ii) indicate whether the name provided as the name of the debtor is the name of an
 167 individual or an organization;

168 (f) in the case of an assignment reflected in an initial financing statement under
 169 Subsection [70A-9a-514](#)(1) or an amendment filed under Subsection [70A-9a-514](#)(2), the record
 170 does not provide a name and mailing address for the assignee; ~~or~~

171 (g) in the case of a continuation statement, the record is not filed within the six-month
 172 period prescribed by Subsection [70A-9a-515](#)(4)~~]; or~~

173 (h) in the case of an initial financing statement or an amendment that provides a name
 174 of a debtor that was not previously provided in the financing statement to which the
 175 amendment relates, the record was not communicated to the filing office, as defined in Section
 176 [70A-9a-513.5](#), by an established filer, as defined in Section [70A-9a-513.5](#), and the filing office
 177 reasonably believes that the record was caused to be communicated to the filing office with the
 178 intent to harass or defraud the person identified as debtor or for another unlawful purpose.

179 (3) ~~the~~ **Except as provided in Section [70A-9a-513.5](#), the** ~~the~~ filing office
 179a ~~has no duty to form a belief~~
 180 as to whether a record was caused to be communicated with the intent to harass or defraud the

181 person identified as debtor or for another unlawful purpose and has no duty to investigate or
182 ascertain facts relevant to whether the intent or purpose was present.

183 [~~3~~] (4) For purposes of Subsection (2):

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

186 (b) a record that does not indicate that it is an amendment or identify an initial
187 financing statement to which it relates, as required by Section 70A-9a-512, 70A-9a-514, or
188 70A-9a-518, is an initial financing statement.

189 [~~4~~] (5) A filing office may refuse to accept a record for filing, and if it does so, filing
190 does not occur with respect to the record, because:

191 (a) the debtor is an individual and the debtor's name contains unusually placed and
192 apparently unnecessary punctuation, symbols, or other nonalphabetic characters;

193 (b) the record, in the collateral description or elsewhere, including an attachment,
194 discloses personally identifying information such as a Social Security number, driver license
195 number, identification card number, bank account number, credit or debit card account number,
196 date of birth, or place of birth; or

197 (c) the debtor is an individual and the record indicates that the debtor is a transmitting
198 utility.

199 [~~5~~] (6) A record that is communicated to the filing office with tender of the filing fee,
200 but which the filing office refuses to accept for a reason other than one set forth in Subsection
201 (2) or [~~4~~] (5), is effective as a filed record except as against a purchaser of the collateral
202 which gives value in reasonable reliance upon the absence of the record from the files.

203 (7) A record that the filing office, as defined in Section 70A-9a-513.5, initially refuses
204 to accept under Subsection (2)(h) but that it later accepts after it receives additional information
205 is effective as if the filing office had not initially refused to accept the record except as against
206 a purchaser of the collateral that gives value in reasonable reliance upon the absence of the
207 record from the files.

208 Section 4. Section 70A-9a-520 is amended to read:

209 **70A-9a-520. Acceptance and refusal to accept record.**

210 (1) A filing office shall refuse to accept a record for filing for a reason set forth in
211 Subsection 70A-9a-516(2) or [~~4~~] (5) and may refuse to accept a record for filing only for a

212 reason set forth in Subsection 70A-9a-516(2).

213 (2) If a filing office refuses to accept a record for filing, it shall communicate to the
214 person that presented the record the fact of and reason for the refusal and the date and time the
215 record would have been filed had the filing office accepted it. The communication must be
216 made at the time and in the manner prescribed by filing-office rule but, in the case of a filing
217 office described in Subsection 70A-9a-501(1)(b), in no event more than two business days after
218 the filing office receives the record.

219 (3) A filed financing statement satisfying Subsections 70A-9a-502(1) and (2) is
220 effective, even if the filing office is required to refuse to accept it for filing under Subsection
221 (1). However, Section 70A-9a-338 applies to a filed financing statement providing information
222 described in Subsection 70A-9a-516(2)(e) which is incorrect at the time the financing
223 statement is filed.

224 (4) If a record communicated to a filing office provides information that relates to more
225 than one debtor, this part applies as to each debtor separately.

226 (5) This section does not apply to a filing office described in Subsection
227 70A-9a-501(1)(a).

228 Section 5. Section 70A-9a-521 is amended to read:

229 **70A-9a-521. Uniform form of written financing statement and amendment.**

230 (1) A filing office that accepts written records may not refuse to accept a written initial
231 financing statement in the form and format set forth in the final official text of the 2010
232 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law
233 Institute and the National Conference of Commissioners on Uniform State Laws, except for a
234 reason set forth in Subsection 70A-9a-516(2) or [~~(4)~~] (5).

235 (2) A filing office that accepts written records may not refuse to accept a written record
236 in the form and format set forth in the final official text of the 2010 revisions to Article 9 of the
237 Uniform Commercial Code promulgated by The American Law Institute and the National
238 Conference of Commissioners on Uniform State Laws, except for a reason set forth in
239 Subsection 70A-9a-516(2) or [~~(4)~~] (5).

240 Section 6. Section 76-6-503.7 is enacted to read:

241 **76-6-503.7. Records filed with intent to harass or defraud.**

242 (1) No person shall cause a record to be communicated to the filing office, as defined

243 in Section [70A-9a-513.5](#), for filing if:

244 (a) the person is not authorized to file the record under Section [70A-9a-509](#),

245 [70A-9a-708](#), or [70A-9a-808](#);

246 (b) the record is not related to an existing or anticipated transaction that is or will be

247 governed by Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and

248 (c) the record is filed knowingly or intentionally to:

249 (i) harass the person identified as the debtor in the record; or

250 (ii) defraud the person identified as the debtor in the record.

251 (2) (a) A person who violates Subsections (1)(a), (b), and (c)(i) is guilty of a class B

252 misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

253 (b) A person who violates Subsections (1)(a), (b), and (c)(ii) is guilty of a third degree

254 felony.