

## SB0093S02 compared with SB0093S01

~~text~~ shows text that was in SB0093S01 but was deleted in SB0093S02.

text shows text that was not in SB0093S01 but was inserted into SB0093S02.

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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

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#### 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:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

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

**76-6-503.7**, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

**Reinstatement.**

(1) As used in this section:

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

(i) regularly causes records to be communicated to the filing office for filing;

(ii) ~~and~~ has provided the filing office with current contact information and information sufficient to establish its identity; ~~and~~ or

(~~iii~~) ~~ii~~) satisfies either of the following conditions:

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

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

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

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

(a) the affidavit is incomplete; or

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

(3) Subject to Subsection (~~{11}~~10), if an affidavit is delivered to the filing office under Subsection (2), the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must identify by its file number the initial financing statement to which it relates and must indicate that it was filed pursuant to this section. A termination statement filed under this Subsection (3) is not effective until 14 days after it is filed.

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

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

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provided for the secured party of record in the financing statement or by electronic mail to the electronic mail address provided by the secured party of record, if any.

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

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

(ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an action against the filing office seeking reinstatement of the financing statement to which the filed record relates. Within 10 days after being served with process in an action under this Subsection (6), the filing office shall file a notice indicating that the action has been commenced. The notice shall indicate the file number of the initial financing statement to which it relates.

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

(c) An action under this Subsection (6) must be filed before the expiration of six months after the date on which the termination statement filed under Subsection (3) becomes effective.

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

(8) ~~Except as provided in Subsection (9), upon~~ Upon the filing of a record reinstating a financing statement under Subsection (7), the effectiveness of the financing statement is reinstated and the financing statement shall be considered never to have been terminated under this section. A continuation statement filed as provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed under Subsection (3) or ~~(11)~~ 10 becomes effective if the financing statement is reinstated.

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~~{ (9) A financing statement whose effectiveness is reinstated is not effective as against a person that purchased the collateral in good faith to the extent the person gave new value, in reliance on the termination statement, between the time the termination statement took effect as provided in Subsection (3) or (11) and the time of the filing of the record reinstating the financing statement.~~

‡ ~~(10)9~~ If, in an action under Subsection (6), the court determines that the filed record identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant, the filing office and the affiant may recover from the secured party that filed the action the costs and expenses, including reasonable attorney fees, that the filing office and the affiant incurred in the action. This recovery is in addition to any recovery to which the affiant is entitled under Section 70A-9a-625.

~~(11)10~~ If an affidavit delivered to a filing office under Subsection (2) relates to a filed record communicated to the filing office by an established filer, the filing office shall promptly send to the secured party of record a notice stating that the affidavit has been delivered to the filing office and that the filing office is conducting an administrative review to determine whether the record was unauthorized and was caused to be communicated with the intent to harass or defraud the affiant. The notice shall be sent by mail to the address provided for the secured party in the financing statement or sent by electronic mail to the electronic mail address provided by the secured party of record, if any, and a copy shall be sent in the same manner to the affiant. The administrative review shall be conducted on an expedited basis and the filing office may require the affiant and the secured party of record to provide any additional information that the filing office considers appropriate. If the filing office concludes that the record was caused to be communicated with the intent to harass or defraud the affiant, the filing office shall promptly file a termination statement under Subsection (3) that will be effective immediately and send to the secured party of record the notice required by Subsection (5). The secured party may thereafter file an action for reinstatement under Subsection (6), and Subsections (7) through ~~(10)9~~ are applicable.

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

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

(1) Except as otherwise provided in Subsection (2) or ~~(4)~~ (5), communication of a

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record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

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

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

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

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

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

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

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

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

(iii) 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 surname; or

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

(d) 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;

(e) 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:

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

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

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

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

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

(3) The filing office, as defined in Section 70A-9a-513.5, has no duty to form a belief as to whether a record was caused to be communicated with the intent to harass or defraud the person identified as debtor or for another unlawful purpose and has no duty to investigate or ascertain facts relevant to whether the intent or purpose was present.

~~(3)~~ (4) For purposes of Subsection (2):

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

(b) 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 70A-9a-512, 70A-9a-514, or 70A-9a-518, is an initial financing statement.

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

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

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

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

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~~[(5)]~~ (6) 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 (2) or ~~[(4)]~~ (5), 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) No person shall cause a record to be communicated to the filing office, as defined in Section 70A-9a-513.5, for filing if:

(a) the person is not authorized to file the record under Section 70A-9a-509, 70A-9a-708, or 70A-9a-808;

(b) the record is not related to an existing or anticipated transaction that is or will be governed by Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and

(c) the record is filed ~~{with the intent to harass or}~~ knowingly or intentionally to:

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

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

(2) (a) A person ~~{that;}~~ who violates ~~{Subsection}~~ Subsections (1)(a), (b), and (c)(i) is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

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