

**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:**

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



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) "Established filer" means a person that:

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

47 (b) has provided the filing office with current contact information and information  
48 sufficient to establish its identity; and

49 (c) satisfies either of the following conditions:

50 (i) the filing office has issued the person credentials for access to online filing services;

51 or

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

54 (2) A person identified as debtor in a filed financing statement may deliver to the filing  
55 office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the  
56 financing statement by file number, indicates the affiant's mailing address, and states that the  
57 affiant believes that the filed record identifying the affiant as debtor was caused to be  
58 communicated to the filing office with the intent to harass or defraud the affiant. The Division

59 of Corporations and Commercial Code shall adopt a form of affidavit for use under this  
60 section.

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

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

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

77 (6) A secured party that believes in good faith that the filed record identified in an  
78 affidavit delivered to the filing office under Subsection (2) was not caused to be communicated  
79 to the filing office with the intent to harass or defraud the affiant may file an action against the  
80 filing office seeking reinstatement of the financing statement to which the filed record relates.  
81 If the affiant is not named as a defendant in the action, the secured party shall send a copy of  
82 the complaint to the affiant at the address indicated in the affidavit. The exclusive venue for  
83 the action shall be in the Third District Court. A party may petition the court to consider the  
84 matter on an expedited basis.

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

89 (8) Except as provided in Subsection (9), upon the filing of a record reinstating a

90 financing statement under Subsection (7), the effectiveness of the financing statement is  
91 reinstated and the financing statement shall be considered never to have been terminated under  
92 this section. A continuation statement filed as provided in Subsection 70A-9a-515(4) after the  
93 effective date of a termination statement filed under Subsection (3) or (11) becomes effective if  
94 the financing statement is reinstated.

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

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

107 (11) If an affidavit delivered to a filing office under Subsection (2) relates to a filed  
108 record communicated to the filing office by an established filer, the filing office shall promptly  
109 send to the secured party of record a notice stating that the affidavit has been delivered to the  
110 filing office and that the filing office is conducting an administrative review to determine  
111 whether the record was caused to be communicated with the intent to harass or defraud the  
112 affiant. The notice shall be sent by mail to the address provided for the secured party in the  
113 financing statement or sent by electronic mail to the electronic mail address provided by the  
114 secured party of record, if any, and a copy shall be sent in the same manner to the affiant. The  
115 administrative review shall be conducted on an expedited basis and the filing office may  
116 require the affiant and the secured party of record to provide any additional information that the  
117 filing office considers appropriate. If the filing office concludes that the record was caused to  
118 be communicated with the intent to harass or defraud the affiant, the filing office shall  
119 promptly file a termination statement under Subsection (3) that will be effective immediately  
120 and send to the secured party of record the notice required by Subsection (5). The secured

121 party may thereafter file an action for reinstatement under Subsection (6), and Subsections (7)  
122 through (10) are applicable.

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

124 **70A-9a-516. What constitutes filing -- Effectiveness of filing.**

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

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

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

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

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

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

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

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

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

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

145 (iv) in the case of a record filed or recorded in the filing office described in Subsection  
146 [70A-9a-501](#)(1)(a), the record does not provide a sufficient description of the real property to  
147 which it relates;

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

151 (e) in the case of an initial financing statement or an amendment that provides a name

152 of a debtor which was not previously provided in the financing statement to which the  
153 amendment relates, the record does not:

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

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

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

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

162 (h) in the case of an initial financing statement or an amendment that provides a name  
163 of a debtor that was not previously provided in the financing statement to which the  
164 amendment relates, the record was not communicated to the filing office by an established filer  
165 and the filing office reasonably believes that the record was caused to be communicated to the  
166 filing office with the intent to harass or defraud the person identified as debtor or for another  
167 unlawful purpose.

168 (3) The filing office has no duty to form a belief as to whether a record was caused to  
169 be communicated with the intent to harass or defraud the person identified as debtor or for  
170 another unlawful purpose and has no duty to investigate or ascertain facts relevant to whether  
171 the intent or purpose was present.

172 ~~[(3)]~~ (4) For purposes of Subsection (2):

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

175 (b) a record that does not indicate that it is an amendment or identify an initial  
176 financing statement to which it relates, as required by Section 70A-9a-512, 70A-9a-514, or  
177 70A-9a-518, is an initial financing statement.

178 ~~[(4)]~~ (5) A filing office may refuse to accept a record for filing, and if it does so, filing  
179 does not occur with respect to the record, because:

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

182 (b) the record, in the collateral description or elsewhere, including an attachment,

183 discloses personally identifying information such as a Social Security number, driver license  
184 number, identification card number, bank account number, credit or debit card account number,  
185 date of birth, or place of birth; or

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

188 ~~[(5)]~~ (6) A record that is communicated to the filing office with tender of the filing fee,  
189 but which the filing office refuses to accept for a reason other than one set forth in Subsection  
190 (2) or ~~[(4)]~~ (5), is effective as a filed record except as against a purchaser of the collateral  
191 which gives value in reasonable reliance upon the absence of the record from the files.

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

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

197 **70A-9a-520. Acceptance and refusal to accept record.**

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

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

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

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

214 (5) This section does not apply to a filing office described in Subsection  
215 70A-9a-501(1)(a).

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

217 **70A-9a-521. Uniform form of written financing statement and amendment.**

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

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

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

229 **76-6-503.7. Records filed with intent to harass or defraud.**

230 (1) No person shall cause to be communicated to the filing office, as defined in Section  
231 70A-9a-102, for filing a record if:

232 (a) the person is not authorized to file the record under Section 70A-9a-509,  
233 70A-9a-708, or 70A-9a-808;

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

236 (c) the record is filed with the intent to harass or defraud the person identified as debtor  
237 in the record.

238 (2) A person that violates Subsection (1) is guilty of a class B misdemeanor for a first  
239 offense and a class A misdemeanor for a second or subsequent offense.

**Legislative Review Note**  
**as of 1-21-15 2:50 PM**

**Office of Legislative Research and General Counsel**