

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
- 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
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Office of Legislative Research and General Counsel