

**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:**

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

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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;

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

50 (iii) 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 caused to be  
61 communicated to the filing office with the intent to harass or defraud the affiant. The Division  
62 of Corporations and Commercial Code shall adopt a form of affidavit for use under this  
63 section.

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

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

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

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

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

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

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

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

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

119 require the affiant and the secured party of record to provide any additional information that the  
120 filing office considers appropriate. If the filing office concludes that the record was caused to  
121 be communicated with the intent to harass or defraud the affiant, the filing office shall  
122 promptly file a termination statement under Subsection (3) that will be effective immediately  
123 and send to the secured party of record the notice required by Subsection (5). The secured  
124 party may thereafter file an action for reinstatement under Subsection (6), and Subsections (7)  
125 through (10) are applicable.

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

127 **70A-9a-516. What constitutes filing -- Effectiveness of filing.**

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

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

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

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

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

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

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

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

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

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

148 (iv) in the case of a record filed or recorded in the filing office described in Subsection  
149 **70A-9a-501(1)(a)**, the record does not provide a sufficient description of the real property to

150 which it relates;

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

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

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

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

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

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

165 (h) in the case of an initial financing statement or an amendment that provides a name  
166 of a debtor that was not previously provided in the financing statement to which the  
167 amendment relates, the record was not communicated to the filing office, as defined in Section  
168 70A-9a-513.5, by an established filer, as defined in Section 70A-9a-513.5, and the filing office  
169 reasonably believes that the record was caused to be communicated to the filing office with the  
170 intent to harass or defraud the person identified as debtor or for another unlawful purpose.

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

175 ~~[(3)]~~ (4) For purposes of Subsection (2):

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

178 (b) a record that does not indicate that it is an amendment or identify an initial  
179 financing statement to which it relates, as required by Section 70A-9a-512, 70A-9a-514, or  
180 70A-9a-518, is an initial financing statement.

181           ~~[(4)]~~ (5) A filing office may refuse to accept a record for filing, and if it does so, filing  
182 does not occur with respect to the record, because:

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

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

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

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

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

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

201           **70A-9a-520. Acceptance and refusal to accept record.**

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

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

211           (3) A filed financing statement satisfying Subsections 70A-9a-502(1) and (2) is

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

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

218 (5) This section does not apply to a filing office described in Subsection  
219 70A-9a-501(1)(a).

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

221 **70A-9a-521. Uniform form of written financing statement and amendment.**

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

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

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

233 **76-6-503.7. Records filed with intent to harass or defraud.**

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

236 (a) the person is not authorized to file the record under Section 70A-9a-509,  
237 70A-9a-708, or 70A-9a-808;

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

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

242 (2) A person that violates Subsection (1) is guilty of a class B misdemeanor for a first



243 offense and a class A misdemeanor for a second or subsequent offense.