

S.F. No. 3920 – Fraudulent business filings

Author: Senator Andrew Mathews

Prepared by: Priyanka Premo, Senate Counsel (651/296-3317)

Date: March 30, 2022

Overview

S.F. 3920 modifies the financing statement filing system operated by the Secretary of State and establishes procedures for financing statements filed with the intent to harass or defraud the person named as the debtor.

Summary

Section 1. [336.9-510] Effectiveness of filed record. Makes a conforming change.

Section 2. [336.9-5135] Termination of wrongfully filed financing statement; reinstatement.

- (a) Defines “intent to harass.”
- (b) Permits a debtor identified in a filed financing statement to provide the filing office with an affidavit stating that the filing was communicated with the intent to harass or defraud the person. Permits the office to reject an affidavit that is incomplete or if the office believes the affidavit was delivered with the intent to harass or defraud the secured party. Requires the secretary of state to provide a form affidavit.
- (c) Requires the office to promptly file a termination statement for the financing statement identified in the affidavit. A termination statement is not effective until 20 days from filing.
- (d) Prohibits the filing office from charging a fee to file an affidavit or termination statement or returning the initial financing statement filing fee.
- (e) Requires the office to send a notice to the secured party for the financing statement that is being terminated within two business days of the filing of the termination.

(f) If a secured party believes that the initial financing statement or amendment was authorized and not filed with the intent to harass or defraud, the secured party may request the filing office complete an expedited review of the termination or commence an action in district court against the filing office for reinstatement.

(g) Requires the office to file a notice that the action has been commenced within ten days of service of process.

(h) If an action for reinstatement is successful, the office must promptly file a record stating so.

(i) Upon filing a reinstatement, the effectiveness of the financing statement is considered never to have been terminated. A continuation statement after the effective date of a termination becomes effective if the financing statement is reinstated.

(j) If the court determines that the financing statement was appropriately terminated under this section, the debtor and filing office may recover costs and expenses, including reasonable attorney fees.

Section 3. [336.9-516] What constitutes filing; effectiveness of filing.

(b)(8) Provides that filing does not occur if an initial financing statement or amendment to a financing statement names a new debtor and the office reasonably believes the record was communicated with the intent to harass or defraud the debtor or for another unlawful purpose. Provides that the office has no duty to investigate or form a belief that the record was filed wrongfully.

(e) Provides that a record that the filing office initially refuses to accept under paragraph (b), clause (8), but later accepts is effective as if the office had not initially refused acceptance, except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.