

Chapter 8

(Senate Bill 77)

AN ACT concerning

Commercial Law – Secured Transactions – False ~~Records~~ Financing Statements

FOR the purpose of prohibiting a person from causing a ~~record~~ financing statement to be filed or recorded with a filing office under certain circumstances; ~~authorizing a filing office to refuse to accept a record for filing or recording under certain circumstances; authorizing a certain person to file a request to terminate a filed record under certain circumstances; requiring the request to be accompanied by a certain affidavit; requiring the State Department of Assessments and Taxation to adopt by regulation and make available a certain request form and affidavit; requiring a filing office, on the filing office's refusal to accept a record or on receipt of a request to terminate a filed record, to send to certain persons a request to provide certain information; authorizing a filing office to terminate a record under certain circumstances; prohibiting a filing office from charging or refunding certain fees; requiring a filing office to notify certain persons of a certain decision; establishing that the sole remedy of a party aggrieved by a filing office's decision is to file a certain petition in the circuit court for the county where certain property is located; providing for the parties to the proceeding; requiring the prevailing party to provide a copy of the court order to the filing office under certain circumstances; requiring the filing office to take certain actions on receipt of the court order;~~ requiring a filing office to accept for filing a financing statement that meets certain requirements and send a certain notice in a certain manner to certain persons under certain circumstances; authorizing a certain person to submit a certain affidavit stating certain information; requiring a filing office to send a certain notice if the filing office receives a certain affidavit; requiring the State Department of Assessments and Taxation to adopt by regulation and make available a certain form of affidavit to be used for certain purposes; authorizing a filing office to terminate a financing statement under certain circumstances; requiring a filing office that terminates a financing statement to send notice of the termination to certain persons in a certain manner; requiring a filing office to review a certain affidavit for a certain purpose and, under certain circumstances, to send a certain notice to certain persons in a certain manner; authorizing a certain person, under certain circumstances, to file a certain petition in a certain circuit court seeking a certain determination; requiring the petition to be filed within a certain period of time; requiring a certain proceeding to include certain parties; prohibiting a filing office from being joined as a party to the proceeding; establishing certain notice procedures for the proceeding; requiring the court to enter a certain order and a certain party to provide a copy of the order to the filing office under certain circumstances; requiring the filing office to take certain actions on receipt of a certain court order; authorizing the court to award to the prevailing party certain damages, fees, and costs; prohibiting a filing office from charging or refunding certain fees; authorizing the Department to adopt certain

regulations; defining ~~certain terms~~ a certain term; providing for the application of this Act; and generally relating to secured transactions.

BY adding to

Article – Commercial Law

Section 9–501.1

Annotated Code of Maryland

(2013 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

9–501.1.

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(2) “RECORD” INCLUDES A FINANCING STATEMENT.~~

~~(3) (I) “REGULATED FINANCIAL INSTITUTION” MEANS A FINANCIAL INSTITUTION SUBJECT TO REGULATORY OVERSIGHT OR EXAMINATION BY A STATE OR FEDERAL AGENCY.~~

~~(H) “REGULATED FINANCIAL INSTITUTION” INCLUDES A BANK, A SAVINGS BANK, A SAVINGS ASSOCIATION, A BUILDING AND LOAN ASSOCIATION, A CREDIT UNION, A CONSUMER FINANCE COMPANY, AN INDUSTRIAL BANK, AN INDUSTRIAL LOAN COMPANY, AN INSURANCE COMPANY, AN INVESTMENT COMPANY, AN INVESTMENT FUND, AN INSTALLMENT SELLER, A MORTGAGE SERVICER, A SALES FINANCIAL COMPANY, AND A LEASING COMPANY.~~

~~(B) EXCEPT AS PROVIDED IN SUBSECTION (F)(2) OF THIS SECTION, THIS SECTION DOES NOT APPLY TO A RECORD FILED OR RECORDED BY A REGULATED FINANCIAL INSTITUTION OR A REPRESENTATIVE OF A REGULATED FINANCIAL INSTITUTION.~~

~~(C) A PERSON MAY NOT CAUSE TO BE FILED OR RECORDED UNDER THIS TITLE A RECORD THAT THE PERSON KNOWS OR REASONABLY SHOULD KNOW:~~

~~(1) IS FALSE;~~

~~(2) CONTAINS OR IS BASED ON A MATERIALLY FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION;~~

~~(3) IS NOT AUTHORIZED TO BE FILED OR RECORDED UNDER THIS TITLE; OR~~

~~(4) IS NOT RELATED TO A VALID EXISTING OR POTENTIAL COMMERCIAL OR FINANCIAL TRANSACTION, AGRICULTURAL OR OTHER LIEN, SECURITY INTEREST, OR OTHER DEBT OR OBLIGATION.~~

~~(D) A FILING OFFICE MAY REFUSE TO ACCEPT A RECORD FOR FILING OR RECORDING IF THE FILING OFFICE HAS REASON TO BELIEVE THE RECORD IS IN VIOLATION OF SUBSECTION (C) OF THIS SECTION.~~

~~(E) (1) A PERSON IDENTIFIED AS A DEBTOR IN A FILED RECORD THAT THE PERSON BELIEVES WAS CAUSED TO BE COMMUNICATED TO THE FILING OFFICE IN VIOLATION OF SUBSECTION (C) OF THIS SECTION MAY FILE WITH THE FILING OFFICE A REQUEST TO TERMINATE THE RECORD.~~

~~(2) THE REQUEST SHALL BE ACCOMPANIED BY AN AFFIDAVIT STATING THE BASIS FOR THE PERSON'S BELIEF THAT THE RECORD WAS COMMUNICATED TO THE FILING OFFICE IN VIOLATION OF SUBSECTION (C) OF THIS SECTION.~~

~~(3) THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION SHALL ADOPT BY REGULATION AND MAKE AVAILABLE A REQUEST FORM AND AFFIDAVIT FOR USE UNDER THIS SECTION.~~

~~(F) ON A FILING OFFICE'S REFUSAL TO ACCEPT A RECORD UNDER SUBSECTION (D) OF THIS SECTION OR ON RECEIPT OF A REQUEST FILED UNDER SUBSECTION (E) OF THIS SECTION, THE FILING OFFICE SHALL SEND TO THE SECURED PARTY OF RECORD AND TO THE PERSON THAT FILED OR RECORDED THE RECORD, IF THE PERSON'S IDENTITY AND ADDRESS ARE KNOWN TO THE FILING OFFICE, A REQUEST TO PROVIDE, WITHIN 30 DAYS, ADDITIONAL INFORMATION SUPPORTING:~~

~~(1) THE VALIDITY OF THE RECORD; OR~~

~~(2) THAT THE RECORD WAS FILED OR RECORDED BY A REGULATED FINANCIAL INSTITUTION OR A REPRESENTATIVE OF A REGULATED FINANCIAL INSTITUTION.~~

~~(G) AFTER EXPIRATION OF THE 30 DAY PERIOD UNDER SUBSECTION (F) OF THIS SECTION, THE FILING OFFICE MAY TERMINATE THE RECORD IF, BASED ON THE DOCUMENTATION PROVIDED, THERE IS A REASONABLE BASIS FOR CONCLUDING THAT THE RECORD IS IN VIOLATION OF SUBSECTION (C) OF THIS SECTION.~~

~~(H) A FILING OFFICE MAY NOT:~~

~~(1) CHARGE A FEE TO FILE A REQUEST UNDER THIS SECTION; OR~~

~~(2) REFUND ANY FEE PAID FOR FILING A RECORD TERMINATED UNDER THIS SECTION.~~

~~(I) A FILING OFFICE SHALL PROMPTLY NOTIFY THE PARTIES NAMED IN A FILED RECORD AND THE PERSON THAT COMMUNICATED THE RECORD TO THE FILING OFFICE, AT THE ADDRESSES KNOWN TO THE FILING OFFICE, OF ITS DECISION TO TERMINATE THE RECORD OR TO DENY THE REQUEST TO TERMINATE THE RECORD.~~

~~(J) (1) THE SOLE REMEDY OF A PARTY AGGRIEVED BY A DECISION OF A FILING OFFICE SHALL BE TO FILE A PETITION IN THE CIRCUIT COURT FOR THE COUNTY WHERE ANY AFFECTED PROPERTY IS LOCATED SEEKING A DETERMINATION OF THE VALIDITY OF THE FILED RECORD.~~

~~(2) (I) THE PARTIES TO A PROCEEDING UNDER THIS SUBSECTION SHALL INCLUDE THE PARTIES NAMED IN THE FILED RECORD.~~

~~(H) THE FILING OFFICE MAY NOT BE JOINED AS A PARTY TO A PROCEEDING UNDER THIS SUBSECTION.~~

~~(3) IF THE COURT DETERMINES THAT A FILED RECORD TERMINATED UNDER THIS SECTION SHOULD BE REINSTATED OR ACCEPTED OR THAT A RECORD ACCEPTED FOR FILING SHOULD BE TERMINATED, THE PREVAILING PARTY SHALL PROVIDE A COPY OF THE COURT ORDER TO THE FILING OFFICE.~~

~~(K) (1) ON RECEIPT OF A COURT ORDER REINSTATING A TERMINATED RECORD, THE FILING OFFICE SHALL REFILE THE RECORD ALONG WITH A NOTICE INDICATING THAT THE RECORD WAS REFILED IN ACCORDANCE WITH A COURT ORDER AND THE ORIGINAL FILING DATE OF THE RECORD.~~

~~(2) ON RECEIPT OF A COURT ORDER REQUIRING A FILED RECORD TO BE TERMINATED, THE FILING OFFICE SHALL TERMINATE THE RECORD AND FILE A NOTICE INDICATING THAT THE FILED RECORD WAS TERMINATED IN ACCORDANCE WITH A COURT ORDER.~~

~~(A) (1) IN THIS SECTION, "FILING OFFICE" MEANS AN OFFICE DESCRIBED IN § 9-501(A).~~

(2) "FILING OFFICE" INCLUDES THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

(B) THIS SECTION DOES NOT APPLY TO A FINANCING STATEMENT THAT IS A MORTGAGE OR DEED OF TRUST.

(C) A PERSON MAY NOT CAUSE TO BE FILED OR RECORDED UNDER THIS TITLE A FINANCING STATEMENT THAT THE PERSON KNOWS IS:

(1) FALSE;

(2) NOT AUTHORIZED TO BE FILED OR RECORDED UNDER THIS TITLE;

OR

(3) NOT RELATED TO A VALID EXISTING OR POTENTIAL COMMERCIAL OR FINANCIAL TRANSACTION.

(D) (1) IF A FILING OFFICE RECEIVES FOR FILING A FINANCING STATEMENT THAT THE FILING OFFICE HAS REASON TO BELIEVE IS BEING FILED BY A PERSON IN VIOLATION OF SUBSECTION (C), THE FILING OFFICE SHALL:

(A) ACCEPT FOR FILING THE FINANCING STATEMENT IF IT OTHERWISE MEETS ALL FILING REQUIREMENTS; AND

(B) SEND A NOTICE TO THE PERSONS SPECIFIED IN PARAGRAPH (2) THAT:

(i) IDENTIFIES THE PERSONS NAMED IN THE FINANCING STATEMENT;

(ii) INDICATES THE DATE OF FILING AND FILING NUMBER OF THE FINANCING STATEMENT;

(iii) STATES THE PROHIBITION UNDER SUBSECTION (C);

(iv) STATES THAT THE FILING OFFICE HAS REASON TO BELIEVE THAT THE FINANCING STATEMENT HAS BEEN FILED IN VIOLATION OF SUBSECTION (C) AND DESCRIBES THE FACTUAL BASIS FOR THAT BELIEF; AND

(v) ADVISES THAT THE FINANCING STATEMENT MAY BE TERMINATED BY THE FILING OFFICE UNLESS, WITHIN 45 DAYS AFTER THE NOTICE IS SENT BY THE FILING OFFICE, A PERSON WHO RECEIVES THE NOTICE SENT BY THE FILING OFFICE UNDER PARAGRAPH (2) SUBMITS TO THE FILING OFFICE AN AFFIDAVIT THAT STATES THE PERSON'S BELIEF THAT THE FINANCING STATEMENT

DOES NOT VIOLATE SUBSECTION (C) AND PROVIDES THE FACTUAL BASIS FOR THAT BELIEF.

(2) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL, TO:

(A) THE PERSON IDENTIFIED AS THE SECURED PARTY, AT THE ADDRESS PROVIDED FOR THE PERSON IN THE FINANCING STATEMENT;

(B) THE PERSON IDENTIFIED AS THE DEBTOR, AT THE ADDRESS PROVIDED FOR THE PERSON IN THE FINANCING STATEMENT; AND

(C) IF DIFFERENT FROM THE PERSON IDENTIFIED AS THE SECURED PARTY, THE PERSON WHO SUBMITTED THE FINANCING STATEMENT FOR FILING, PROVIDED THAT THE PERSON'S IDENTITY AND ADDRESS ARE KNOWN TO THE FILING OFFICE.

(E) (1) A PERSON IDENTIFIED AS A DEBTOR IN A FINANCING STATEMENT FILED WITH THE FILING OFFICE WHO BELIEVES THAT THE FINANCING STATEMENT WAS FILED IN VIOLATION OF SUBSECTION (C) MAY SUBMIT TO THE FILING OFFICE AN AFFIDAVIT STATING THE FACTUAL BASIS FOR THE PERSON'S BELIEF.

(2) IF THE FILING OFFICE RECEIVES AN AFFIDAVIT FROM A PERSON UNDER PARAGRAPH (1) AND HAS REASON TO BELIEVE THAT THE FINANCING STATEMENT REFERENCED IN THE AFFIDAVIT WAS FILED IN VIOLATION OF SUBSECTION (C), THE FILING OFFICE SHALL SEND THE NOTICE REQUIRED UNDER SUBSECTION (D).

(F) (1) THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION SHALL ADOPT BY REGULATION AND MAKE AVAILABLE A FORM OF AFFIDAVIT THAT SHALL BE USED FOR THE PURPOSES DESCRIBED IN SUBSECTIONS (D) AND (E).

(2) THE FORM SHALL REQUIRE THAT THE AFFIDAVIT BE SWORN UNDER THE PENALTIES OF PERJURY.

(G) (1) A FILING OFFICE MAY TERMINATE A FINANCING STATEMENT AFTER THE EXPIRATION OF THE 45-DAY PERIOD SPECIFIED IN THE NOTICE REQUIRED UNDER SUBSECTION (D) IF THE FILING OFFICE:

(A) DOES NOT RECEIVE FROM A PERSON WHO RECEIVED THE NOTICE SENT BY THE FILING OFFICE UNDER SUBSECTION (D) AN AFFIDAVIT THAT STATES THE PERSON'S BELIEF THAT THE FINANCING STATEMENT DOES NOT

VIOLATE SUBSECTION (C) AND PROVIDES THE FACTUAL BASIS FOR THAT BELIEF;
AND

(B) REASONABLY BELIEVES THAT THE FINANCING STATEMENT
WAS FILED IN VIOLATION OF SUBSECTION (C).

(2) A FILING OFFICE THAT TERMINATES A FINANCING STATEMENT
UNDER THIS SUBSECTION SHALL PROMPTLY SEND NOTICE OF THE TERMINATION IN
THE SAME MANNER AND TO THE SAME PERSONS REQUIRED FOR THE NOTICE SENT
UNDER SUBSECTION (D)(2).

(H) (1) IF A FILING OFFICE RECEIVES AN AFFIDAVIT IN RESPONSE TO THE
NOTICE SENT BY THE FILING OFFICE UNDER SUBSECTION (D), THE FILING OFFICE
SHALL REVIEW THE AFFIDAVIT TO CONSIDER WHETHER THE FINANCING
STATEMENT WAS FILED IN VIOLATION OF SUBSECTION (C).

(2) IF, AFTER REVIEWING THE AFFIDAVIT, A FILING OFFICE
REASONABLY BELIEVES THAT A FINANCING STATEMENT WAS FILED IN VIOLATION
OF SUBSECTION (C), THE FILING OFFICE SHALL SEND TO THE PERSONS SPECIFIED
IN PARAGRAPH (3) A FINAL NOTICE THAT:

(A) INCLUDES A COPY OF THE NOTICE SENT BY THE FILING
OFFICE UNDER SUBSECTION (D);

(B) STATES THAT THE FILING OFFICE REASONABLY BELIEVES
THAT THE FINANCING STATEMENT HAS BEEN FILED IN VIOLATION OF SUBSECTION
(C); AND

(C) STATES THAT THE FILING OFFICE MAY TERMINATE THE
FINANCING STATEMENT 45 DAYS AFTER THE FINAL NOTICE IS SENT BY THE FILING
OFFICE UNLESS A PERSON IDENTIFIED IN THE FINANCING STATEMENT FILES A
PETITION FOR JUDICIAL DETERMINATION OF THE VALIDITY OF THE FINANCING
STATEMENT UNDER SUBSECTION (I).

(3) THE FINAL NOTICE SHALL BE SENT IN THE SAME MANNER
REQUIRED FOR THE NOTICE SENT UNDER SUBSECTION (D)(2) TO:

(A) THE SAME PERSONS REQUIRED FOR THE NOTICE SENT
UNDER SUBSECTION (D)(2); AND

(B) ANY OTHER PERSON WHO RESPONDED IN WRITING TO THE
NOTICE SENT UNDER SUBSECTION (D).

(i) (1) A PERSON WHO IS IDENTIFIED IN A FINANCING STATEMENT AND DISAGREES WITH A DETERMINATION MADE BY A FILING OFFICE UNDER SUBSECTION (H)(2) MAY FILE A PETITION IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE DEBTOR IS LOCATED OR, IF THE DEBTOR IS NOT LOCATED IN MARYLAND, WHERE ANY AFFECTED PROPERTY IS LOCATED, SEEKING A DETERMINATION OF THE VALIDITY OF THE FINANCING STATEMENT.

(2) A PETITION FILED UNDER THIS SUBSECTION SHALL BE FILED WITHIN THE 45-DAY PERIOD DESCRIBED IN THE FINAL NOTICE REQUIRED UNDER SUBSECTION (H).

(3) (A) THE PARTIES TO A PROCEEDING UNDER THIS SUBSECTION SHALL INCLUDE ALL PERSONS NAMED IN THE FINANCING STATEMENT.

(B) A FILING OFFICE MAY NOT BE JOINED AS A PARTY TO A PROCEEDING UNDER THIS SUBSECTION.

(4) (A) SERVICE OF PROCESS OF A PROCEEDING UNDER THIS SUBSECTION MAY BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESSES OF THE PARTIES TO BE SERVED.

(B) A COPY OF A PETITION FILED UNDER THIS SUBSECTION SHALL BE MAILED TO THE FILING OFFICE AFTER THE PETITION HAS BEEN FILED AND WITHIN THE 45-DAY PERIOD DESCRIBED IN THE FINAL NOTICE REQUIRED UNDER SUBSECTION (H).

(5) IF THE FILING OFFICE DOES NOT RECEIVE A COPY OF THE PETITION WITHIN THE 45-DAY PERIOD DESCRIBED IN THE FINAL NOTICE REQUIRED UNDER SUBSECTION (H), THE FILING OFFICE MAY TERMINATE THE FINANCING STATEMENT.

(6) (A) IF THE COURT DETERMINES THAT THE FINANCING STATEMENT WAS FILED IN VIOLATION OF SUBSECTION (C):

(i) THE COURT SHALL ORDER THAT THE FILED FINANCING STATEMENT BE TERMINATED; AND

(ii) THE PREVAILING PARTY SHALL PROVIDE A COPY OF THE ORDER TO THE FILING OFFICE.

(B) ON RECEIPT OF A COURT ORDER REQUIRING TERMINATION OF A FILED FINANCING STATEMENT, THE FILING OFFICE SHALL:

(I) TERMINATE THE FINANCING STATEMENT; AND

(II) FILE A RECORD INDICATING THAT THE FINANCING STATEMENT WAS TERMINATED IN ACCORDANCE WITH A COURT ORDER.

(7) THE COURT MAY AWARD TO THE PREVAILING PARTY:

(A) DAMAGES SUSTAINED BY THE PREVAILING PARTY; AND

(B) REASONABLE ATTORNEY'S FEES AND COSTS.

(J) A FILING OFFICE MAY NOT:

(1) CHARGE A FEE TO CARRY OUT ITS OBLIGATIONS UNDER THIS SECTION, INCLUDING FOR THE SENDING OF ANY NOTICES REQUIRED UNDER THIS SECTION; OR

(2) REFUND ANY FEE PAID FOR FILING A FINANCING STATEMENT TERMINATED UNDER THIS SECTION.

(K) THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, April 14, 2015.