

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Assessments and Taxation
(DLS Control No. 15-185)**

Overview and Legal and Fiscal Impact

This regulation amends an existing regulation that specifies which forms are acceptable for the filing of financing statements with the State Department of Assessments and Taxation. The regulation adds to the list of acceptable forms an affidavit form required by § 9-501.1(f) of the Commercial Law Article. The regulation also makes a technical change to the statutory authority provided in COMAR 18.14.01 General Provisions.

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Assessments and Taxation:

Uniform Commercial Code: General Provisions: COMAR 18.14.01.05

Legal Analysis

Background

Under the Maryland Uniform Commercial Code, a person files a financing statement with the department to provide notice that a named debtor has pledged personal property to secure a debt. Properly filed financing statements perfect a security interest, establishing priority among creditors with respect to the property described in the statement. In response to the rise in the filing of fraudulent financing statements, § 9-501.1 of the Commercial Law Article (Ch. 8 of 2015) prohibits a person from knowingly filing a fraudulent financing statement and requires the department to adopt regulations to make an affidavit form available for persons identified in a financing statement who believe the statement does not comply with the law. If the affidavit is filed and the department has reason to believe the financing statement is unlawful, the department has to provide notice to certain interested parties, affording an opportunity to rebut the allegations in the affidavit.

Summary of Regulation

This regulation amends Regulation 18.14.01 General Provisions to include § 9-501.1 of the Commercial Law Article as statutory authority for the regulations. The regulation also renumbers existing Regulation .05 as .05A. New section .05B adopts and makes available the

affidavit form required by § 9-501.1 of the Commercial Law Article (Ch. 8 of 2015). The affidavit form, which must be sworn to under penalties of perjury, requires the person filing the affidavit to provide a factual basis for the certification that the financing statement does or does not comply with § 9-501.1(c) of the Commercial Law Article.

Statutory Authority and Legislative Intent

The department cites §§ 9-501.1 and 9-526 of the Commercial Law Article and §§ 1-203 and 1-203.2 of the Corporations and Associations Article as legal authority for this regulation. Although relevant to the general regulations governing the filing of financing statements with the department, only § 9-501.1 of the Commercial Law Article specifically requires the department to adopt by regulation and make available the affidavit form that is the subject of this regulation. Section 9-526 of the Commercial Law Article requires the department to adopt and publish rules to implement the subtitle. Sections 1-203 and 1-203.2 of the Corporations and Associations Article require the department to adopt regulations specifying the conditions under which corporate filing fees may be nonrefundable or applied to resubmitted documents and governing the expedited filing and processing of corporate documents, respectively.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

The department incorrectly cited § 9-105.1 of the Commercial Law Article as statutory authority for this regulation. Section 9-501.1 of the Commercial Law Article is the correct statutory authority and the department has agreed to amend this regulation to correct the technical error. This analysis reflects that correction.

The existing COMAR 18.14.01 General Provisions incorrectly cites § 1-203(8) of the Corporations and Associations Article as authority for the regulations in the chapter. The department has been advised of this technical error. This analysis refers to § 1-203 of the Corporations and Associations Article as the correct authority.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation implements a provision of Chapter 8 of 2015 (Senate Bill 77), which required the department to adopt regulations to make an affidavit form available for specified purposes regarding suspected fraudulent financing statements. Any fiscal impact has already been assumed under the fiscal and policy note for Senate Bill 77.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Charity L. Scott – (410) 946/(301) 970-5350

Fiscal Analysis: Sasika Subramaniam – (410) 946/(301) 970-5510