

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 62

(Chair, Finance Committee)(By Request - Departmental -
Assessments and Taxation)

Finance

Economic Matters

**Uniform Commercial Code - Financing Statements - Termination by Government
Employees**

This departmental bill clarifies that a government employee listed as a debtor on a financing statement, due to the office or position held, is not personally responsible for the debt. The bill also allows a government official who did not authorize the initial financing statement to file a termination statement without paying a fee.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: The State Department of Assessments and Taxation (SDAT) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A termination statement is required to state that the debtor is a government employee who did not initially authorize the filing of the financing statement. Upon proper filing of a termination statement, the filing office must send a copy of the termination statement by first-class mail to the secured party of record along with a notice stating that the financing statement has been terminated. Upon filing the

termination statement, the financing statement to which it relates ceases to be effective against the government employee listed as debtor.

If the secured party has a good faith belief that the financing statement was authorized and properly filed, the secured party may file an action to reinstate the financing statement within 60 days from the mailing of the notice of termination. If the circuit court determines the financing statement should be reinstated, the secured party must give a certified copy of the final judgment to the filing office. Upon the proper filing of a final judgment that reinstates a financing statement, the financing statement is considered to be effective, without lapse, against a person that is not a purchaser of the collateral for value.

If a financing statement that has been reinstated would have lapsed during the period of termination, the secured party may file a continuation statement within 30 days after the filing of the final judgment that reinstated the financing statement. However, if the court, in an action to reinstate a financing statement, determines that the financing statement is fraudulent, the secured party of record that filed the financing statement is liable for the costs, reasonable attorney's fees, and expenses incurred by the government employee in the action.

Current Law: Title 9 of the Commercial Law Article governs transactions that create security interests in personal property or fixtures, including goods; sales of accounts, chattel paper, or promissory notes; rights in intangibles; and agricultural liens. To perfect a security interest under Title 9, a person must file a financing statement with SDAT that lists the names and addresses of the debtor and secured party and describes the secured collateral.

A secured party must send the debtor a termination statement or file a termination statement with SDAT within 20 days after the debtor demands authentication if:

- there is no obligation or commitment secured by the collateral covered by the financing statement;
- the financing statement covers accounts or chattel paper that have been sold but as to which the account debtor discharged its obligation;
- the financing statement covers goods that were consigned to the debtor but are not in the debtor's possession; or
- the debtor did not authorize the filing of the initial financing statement.

Background: SDAT recently terminated several financing statements which named elected government officials personally as debtors. SDAT terminated these filings using general statutes in absence of a specific one addressing the issue.

Additional Information

Prior Introductions: A similar bill was introduced in the 2008 session as SB 980. The bill passed the Senate and was heard by the House Economic Matters Committee. No further action was taken.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Department of Budget and Management, Allegany and Montgomery counties, Cities of Bowie and Takoma Park, Town of Thurmont, Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2009
mlm/ljm Revised - Senate Third Reader - March 24, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Uniform Commercial Code – Financing Statements – Termination by
Government Employees

BILL NUMBER: SB 62

PREPARED BY: State Department of Assessments and Taxation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.