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Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 312

(Chair, Economic Matters Committee)(By Request -
Maryland Judicial Conference)

Economic Matters

Finance

Commercial Law - Secured Transactions - False Financing Statements

This bill prohibits a person from causing the filing or recording of a false financing statement with a filing office under the Maryland Uniform Commercial Code (MUCC). The bill authorizes a filing office to terminate a financing statement if the filing office has reason to believe that the financing statement is false. It likewise authorizes a debtor to request that the filing office terminate a financing statement if the debtor believes the financing statement is false. The State Department of Assessments and Taxation (SDAT) is a filing office under the bill; SDAT must adopt regulations to make an affidavit form available for specified purposes. The bill also authorizes SDAT to adopt additional regulations to implement the bill.

Fiscal Summary

State Effect: The bill's requirements can likely be handled with existing resources, as discussed below. Revenues are not affected.

Local Effect: Any impact on local government operations and finances is expected to be absorbed with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill's prohibitions do not apply to a financing statement that is a mortgage or a deed of trust.

A person may not cause a financing statement to be filed or recorded with a filing office if the person knows that the financing statement (1) is false; (2) is not authorized to be filed or recorded under MUCC; or (3) is not related to a valid existing or potential commercial or financial transaction.

If a filing office receives a financing statement for filing that the filing office has reason to believe is in violation of the bill's requirements, the office must accept the financing statement (as long as it also meets all other filing requirements) but must send notice by certified mail, return receipt requested, to specified persons that (1) identifies the persons named in the financing statement; (2) indicates the date of filing and filing number of the financing statement; (3) states the prohibition against a false financing statement; (4) states the factual basis of the filing office's belief that the financing statement is invalid under the bill's requirements; and (5) advises that the financing statement may be terminated within 45 days after the notice is sent unless the filing office receives an affidavit from a notified person attesting to the financing statement's compliance with the bill's provisions.

A person identified as a debtor in a filed financing statement may file an affidavit with a filing office if the person believes that the filed financing statement is in violation of the bill's requirements; the affidavit must state the factual basis for the person's belief. Upon receipt of the affidavit, the filing office must send the aforementioned required notices.

If a filing office reasonably believes that the financing statement violates the bill's provisions and the filing office does not receive the requested affidavits within 45 days after sending the required notices, the filing office may terminate the financing statement. The filing office must send notice of the termination to the same persons who were sent the initial notices.

If a filing office does receive the requested affidavits within the required time period, the filing office must review the affidavits; if the filing office reasonably believes that the financing statement was filed in violation of the bill's requirements, the filing office must send a final notice to the same persons who received the initial notices as well as any other person who responded to the notices. The final notice must (1) include a copy of the initial notice; (2) state the filing office's determination that the financing statement is false; and (3) state that the filing office may terminate the financing statement 45 days after the final notice is sent unless a person identified in the financing statement files a petition for judicial determination of the financing statement's validity.

Within the same 45-day time period, if a person identified in the financing statement disagrees with the filing office's decision, the person may file a petition in the circuit court of the county where the debtor is located (or, if the debtor is located outside of the State, where any affected property is located) seeking judicial determination of the financing statement's validity. The parties named in the financing statement must be included in the

judicial proceedings; however, the filing office that issued the decision may not be joined as a party to the proceedings. Service of process may be sent by certified mail, return receipt requested. A copy of the filed petition must be mailed to the filing office within the same 45-day time period; if the filing office does not receive a copy of the petition, the filing office may terminate the financing statement.

On receipt of a court order requiring termination of a financing statement, the filing office must terminate the financing statement and file a record indicating that the financing statement was terminated. The court may also award damages and reasonable attorney's fees and costs to the prevailing party.

A filing office may not charge a fee for fulfilling its obligations under the bill (including for sending the bill's required notices) nor may a filing office refund a filing fee if a financing statement is subsequently terminated.

Current Law: Title 9 of the Commercial Law Article (also referred to as MUCC-Secured Transactions) 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. A person files a financing statement with SDAT to provide notice that a named debtor has pledged personal property to secure a debt. Properly filed financing statements establish priority among creditors with respect to the property described in the financing statement.

Chapter 58 of 2014 requires a filing office to provide written notice of the filing of a financing statement to a debtor (if the debtor and the secured party are individuals). The notice must include the remedies available to the debtor if the debtor believes that the financing statement was erroneously or fraudulently filed.

Under MUCC, if a person believes a record indexed under the person's name is inaccurate or wrongfully filed, a person may file an information statement with the filing office. The information statement must include specified information, including the basis for the person's belief that the record is inaccurate or wrongfully filed and the manner in which the person believes the record should be amended to correct the inaccuracy. The filing of an information statement does not affect the effectiveness of the initial financing statement or other filed records. For consumer goods, if the debtor did not authorize the filing of the initial financing statement, a secured party must file a termination statement; for other cases, if the debtor did not authorize the filing of the initial financing statement, a secured party must either file a termination statement or send a termination statement to the debtor within 20 days after receiving an authenticated demand from the debtor.

MUCC also requires a filing office to refuse to accept a record for filing if (1) the record is not communicated by an authorized method; (2) the filing fee is not paid; (3) the filing

office is unable to index the record due to specified missing or incorrect information; (4) depending on the type of record being filed, the record does not have specified contact information for the secured party, debtor, and/or assignee; (5) a continuation statement record is not filed within the specified time period; or (6) the record of a fixture filing does not include information about the recordation tax or the tax is not paid.

Under the Criminal Law Article, a person may not file a financing statement or an amendment to a financing statement that the person knows contains false information. Violators are guilty of a misdemeanor and are subject to a fine of up to \$500.

Background: According to the National Association of Secretaries of State (NASS), fraudulent financing statement filings are on the rise across the country. Individuals have been known to file fraudulent financing statements for the purpose of harassing another person. In particular, a growing anti-government movement known as the “sovereign citizen movement” uses fraudulent UCC filings to take retaliatory action against the government and government officials. These filings often share common characteristics, such as references to the U.S. Constitution, signatures followed by the words “Sovereign Living Soul,” and names written in all capital letters.

Although a fraudulent financing statement does not create any legal liability for the named debtor, it can cause the named debtor economic harm. When a fraudulent financing statement purports to relate to a large outstanding debt, a prospective lender that discovers the financing statement may be unwilling to extend credit to the person named in the financing statement. A fraudulent financing statement, therefore, can impair an individual’s capacity to obtain credit. Also, it can be costly and time-consuming for a person named in a fraudulent financing statement to remove the financing statement from the public records.

The Uniform Commercial Code (UCC) is a uniform act that serves as a national model for states to adopt. In official comments to Revised UCC Article 9, UCC drafters highlighted the problem of fraudulent financing statements and noted that a judicial procedure for correcting the public record may be more effective than requiring action by filing and recording offices. In 2006, NASS and the International Association of Commercial Administrators recommended that states allow individuals named as debtors in an unauthorized financing statement to file a motion for judicial review without having to pay a fee; after reviewing documentation submitted by the relevant parties, a court may then order the filing office to remove fraudulent financing statements from the record.

NASS reports that at least 19 states grant the filing office broad discretion to reject a materially false or fraudulent UCC record for filing, at least 14 states authorize the filing office to take corrective action for existing financing statements, and at least 9 states do

not charge a fee to authorize corrective action through an accelerated judicial review process.

State Expenditures: SDAT advises that it expects to receive fewer than 100 financing statements per year that would be subject to the bill; these financing statements would likely come from “sovereign citizens” and so would likely contain information that would enable SDAT to easily identify the financing statements as fraudulent under the bill. Accordingly, SDAT advises that the bill’s requirements can be handled with existing resources; however, SDAT notes that, depending on the volume of qualifying financing statements actually received, costs to mail required notices may increase in future years.

Similarly, the Judiciary estimates that about 200 to 300 financing statements per year would be subject to the bill and that only a small portion of these cases would be litigated. Therefore, any increase in the Judiciary’s workload can likely be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 77 (Chair, Finance Committee)(By Request - Maryland Judicial Conference) - Finance.

Information Source(s): State Department of Assessments and Taxation; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; National Association of Secretaries of State; Department of Legislative Services

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