

SB0077/997172/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 77
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Records” and substitute “Financing Statements”; in line 3, strike “record” and substitute “financing statement”; strike beginning with “authorizing” in line 4 down through “order;” in line 19 and substitute “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;” and in line 19, strike “certain terms” and substitute “a certain term”.

(Over)

AMENDMENT NO. 2

On pages 2 through 4, strike in their entirety the lines beginning with line 2 on page 2 through line 22 on page 4, inclusive, and substitute:

“(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:

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(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

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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.”.**