

SECOND REGULAR SESSION

# HOUSE BILL NO. 1412

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES PHILLIPS (Sponsor), HINSON,  
RHOADS AND SHULL (Co-sponsors).

5204H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 400.9-501 and 400.9-516, RSMo, and to enact in lieu thereof two new sections relating to fraudulent financing statements, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 400.9-501 and 400.9-516, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 400.9-501 and 400.9-516, to read as follows:

400.9-501. (a) Except as otherwise provided in subsection (b), if the local law of this  
2 state governs perfection of a security interest or agricultural lien, the office in which to file a  
3 financing statement to perfect the security interest or agricultural lien is:

4 (1) The office designated for the filing or recording of a record of a mortgage on the  
5 related real property, if:

6 (A) The collateral is as-extracted collateral or timber to be cut; or

7 (B) The financing statement is filed as a fixture filing and the collateral is goods that are  
8 or are to become fixtures; or

9 (2) The office of the secretary of state in all other cases, including a case in which the  
10 collateral is goods that are or are to become fixtures and the financing statement is not filed as  
11 a fixture filing.

12 (b) The office in which to file a financing statement to perfect a security interest in  
13 collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The  
14 financing statement also constitutes a fixture filing as to the collateral indicated in the financing  
15 statement which is or is to become fixtures.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended  
to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           (c) A person shall not knowingly or intentionally file or attempt to file with the  
17 secretary of state under subsection (a)(2) or (b) a financing statement with the intent that  
18 it be used to harass or defraud any other person, or a materially false or fraudulent  
19 financing statement.

20           (1) Except as provided in subdivision (2) of this subsection, in addition to any other  
21 penalty provided by law, a violation of this subsection is a class A misdemeanor.

22           (2) A person who violates this subsection is guilty of a class C felony if the person  
23 commits the offense with the intent to influence or retaliate against a current or former  
24 employee or officer of a federal, state, county, or other local governmental unit because of  
25 that employee or officer's performance of his or her public duties.

26           (3) If a person is convicted of a violation under this subsection, the court may find  
27 that the financing statement is ineffective and may order the secretary of state to terminate  
28 the financing statement. The court also may order restitution.

29           (d) If a person files a false or fraudulent financing statement with the secretary of  
30 state under subsection (a)(2) or (b), a debtor named in that financing statement may file  
31 an action against the person that filed the financing statement seeking appropriate  
32 equitable relief or damages including, but not limited to, an order declaring the financing  
33 statement ineffective and ordering the secretary of state to terminate the financing  
34 statement and reasonable attorney's fees.

          400.9-516. (a) Except as otherwise provided in subsection (b), communication of a  
2 record to a filing office and tender of the filing fee or acceptance of the record by the filing office  
3 constitutes filing.

4           (b) Filing does not occur with respect to a record that a filing office refuses to accept  
5 because:

6           (1) The record is not communicated by a method or medium of communication  
7 authorized by the filing office;

8           (2) An amount equal to or greater than the applicable filing fee is not tendered;

9           (3) The filing office is unable to index the record because:

10          (A) In the case of an initial financing statement, the record does not provide a name for  
11 the debtor;

12          (B) In the case of an amendment or correction statement, the record:

13           (i) Does not identify the initial financing statement as required by section 400.9-512 or  
14 400.9-518, as applicable; or

15           (ii) Identifies an initial financing statement whose effectiveness has lapsed under section  
16 400.9-515;

17 (C) In the case of an initial financing statement that provides the name of a debtor  
18 identified as an individual or an amendment that provides a name of a debtor identified as an  
19 individual which was not previously provided in the financing statement to which the record  
20 relates, the record does not identify the debtor's last name; or

21 (D) In the case of a record filed or recorded in the filing office described in section  
22 400.9-501(a)(1), the record does not provide a sufficient description of the real property to which  
23 it relates;

24 (4) In the case of an initial financing statement or an amendment that adds a secured  
25 party of record, the record does not provide a name and mailing address for the secured party of  
26 record;

27 (5) In the case of an initial financing statement or an amendment that provides a name  
28 of a debtor which was not previously provided in the financing statement to which the  
29 amendment relates, the record does not:

30 (A) Provide a mailing address for the debtor; or

31 (B) Indicate whether the name provided as the name of the debtor is the name of an  
32 individual or an organization;

33 (6) In the case of an assignment reflected in an initial financing statement under section  
34 400.9-514(a) or an amendment filed under section 400.9-514(b), the record does not provide a  
35 name and mailing address for the assignee; [or]

36 (7) In the case of a continuation statement, the record is not filed within the six-month  
37 period prescribed by section 400.9-515(d);

38 **(8) The secretary of state has reasonable cause to believe the record is materially**  
39 **false or fraudulent; or**

40 **(9) The record on its face reveals, based on factors such as whether the debtor and**  
41 **the secured party are substantially the same person, the individual debtor is a transmitting**  
42 **utility, or whether the collateral described is within the scope of this chapter, that the**  
43 **record is being filed for a purpose other than a transaction that is within the scope of this**  
44 **chapter. This includes a record that asserts a claim against a current or former employee**  
45 **or officer of a federal, state, county, or other local governmental unit that relates to the**  
46 **performance of the officer's or employee's public duties, and for which the filer does not**  
47 **hold a properly executed security agreement or judgment from a court of competent**  
48 **jurisdiction.**

49 (c) For purposes of subsection (b):

50 (1) A record does not provide information if the filing office is unable to read or decipher  
51 the information; and

52 (2) A record that does not indicate that it is an amendment or identify an initial financing  
53 statement to which it relates, as required by section 400.9-512, 400.9-514 or 400.9-518, is an  
54 initial financing statement; and

55 (3) A document, instrument, or record is presumed to be materially false or  
56 fraudulent if the document, instrument or record is filed by an offender or on behalf of an  
57 offender. This presumption may be rebutted by providing the secretary of state the  
58 original or a copy of a sworn and notarized document signed by the obligor, debtor, or  
59 owner of the property designated as collateral stating that the person entered in to a  
60 security agreement with the offender and authorized the filing of the instrument as  
61 provided by section 400.9-509. "Offender" has the same definition as provided in section  
62 217.010 except, for purposes of this section, it only means inmates in the custody of the  
63 department of corrections.

64 (d) A record that is communicated to the filing office with tender of the filing fee, but  
65 which the filing office refuses to accept for a reason other than one set forth in subsection (b),  
66 is effective as a filed record except as against a purchaser of the collateral which gives value in  
67 reasonable reliance upon the absence of the record from the files.

68 (e) If an information statement filed with the secretary of state under section 400.9-  
69 518 alleges that a previously filed record was wrongfully filed, the secretary of state shall,  
70 without undue delay, determine whether the contested record was wrongfully filed. To  
71 determine whether the record was wrongfully filed, the secretary of state may require the  
72 person who filed the information statement or the secured party to provide any additional  
73 relevant information requested by the secretary of state, including an original or copy of  
74 a security agreement that is related to the record. If the secretary of state finds that the  
75 record was wrongfully filed, the secretary of state shall terminate the record and the record  
76 is void and ineffective. The secretary of state shall notify the secured party named in the  
77 contested record of the termination.

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