

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1412

97TH GENERAL ASSEMBLY

5204H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 400.9-501 and 400.9-516, RSMo, and to enact in lieu thereof two new sections relating to the filing of fraudulent documents, with penalty provisions.

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Section A. Sections 400.9-501 and 400.9-516, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 400.9-501 and 400.9-516, to read as follows: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 state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

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

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

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

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

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

(c) **A person shall not knowingly or intentionally file, attempt to file, or record any document related to real property with a recorder of deeds under chapter 59 or a financing**

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.

18 **statement with the secretary of state under subdivision (2) of subsection (a) or subsection**
19 **(b) of this section, with the intent that such document or statement be used to harass or**
20 **defraud any other person or knowingly or intentionally file, attempt to file, or record such**
21 **a document or statement that is materially false or fraudulent.**

22 **(1) A person who violates this subsection shall be guilty of a class D felony.**

23 **(2) If a person is convicted of a violation under this subsection, the court may order**
24 **restitution.**

25 **(d) In the alternative to the provisions of sections 428.105 through 428.135, if a**
26 **person files a false or fraudulent financing statement with the secretary of state under**
27 **subdivision (2) of subsection (a) or subsection (b) of this section, a debtor named in that**
28 **financing statement may file an action against the person that filed the financing statement**
29 **seeking appropriate equitable relief, actual damages, or punitive damages, including, but**
30 **not limited to, reasonable attorney 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 shall be presumed to be materially false or**
56 **fraudulent if the document, instrument, or record is filed by an offender or on behalf of**
57 **an 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 into a**

60 security agreement with the offender and authorized the filing of the instrument as
61 provided in section 400.9-509. For the purposes of this subdivision the term "offender"
62 shall have the same definition as provided in section 217.010, except, it shall only include
63 inmates in the custody of the 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) In the alternative to the provisions of sections 428.105 through 428.135, if an
69 information statement filed with the secretary of state under section 400.9-518 alleges that
70 a previously filed record was wrongfully filed, the secretary of state shall, without undue
71 delay, determine whether the contested record was wrongfully filed. To determine whether
72 the record was wrongfully filed, the secretary of state may require the person who filed the
73 information statement or the secured party to provide any additional relevant information,
74 including an original or copy of a security agreement that is related to the record. If the
75 secretary of state finds that the record was wrongfully filed, the secretary of state shall
76 terminate the record and the record shall be void and ineffective. The secretary of state
77 shall notify the secured party named in the contested record of the termination.

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