

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 257

Short Title: UCC Article 9 Amendments-AB.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

February 27, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO REVISE ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO
3 GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT
4 FRAUDULENT FILINGS AGAINST PUBLIC EMPLOYEES OR OFFICIALS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 25-9-516(b) reads as rewritten:

7 "(b) Refusal to accept record; filing does not occur. – Filing does not occur with
8 respect to a record that a filing office refuses to accept because:

9 (1) The record is not communicated by a method or medium of
10 communication authorized by the filing ~~office~~;office.

11 (2) An amount equal to or greater than the applicable filing fee is not
12 ~~tendered~~;tendered.

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

14 a. In the case of an initial financing statement, the record does not
15 provide a name for the debtor;

16 b. In the case of an amendment or correction statement, the record:
17 1. Does not identify the initial financing statement as
18 required by G.S. 25-9-512 or G.S. 25-9-518, as
19 applicable; or
20 2. Identifies an initial financing statement whose
21 effectiveness has lapsed under G.S. 25-9-515;

22 c. In the case of an initial financing statement that provides the
23 name of a debtor identified as an individual or an amendment
24 that provides a name of a debtor identified as an individual
25 which was not previously provided in the financing statement to
26 which the record relates, the record does not identify the
27 debtor's last name; or

- 1 d. In the case of a record filed in the filing office described in G.S.
2 25-9-501(a)(1), the record does not provide a sufficient
3 description of the real property to which it ~~relates;~~relates.
- 4 (4) In the case of an initial financing statement or an amendment that adds
5 a secured party of record, the record does not provide a name and
6 mailing address for the secured party of ~~record;~~record.
- 7 (5) In the case of an initial financing statement or an amendment that
8 provides a name of a debtor which was not previously provided in the
9 financing statement to which the amendment relates, the record does
10 not:
11 a. Provide a mailing address for the debtor;
12 b. Indicate whether the debtor is an individual or an organization;
13 or
14 c. If the financing statement indicates that the debtor is an
15 organization, provide:
16 1. A type of organization for the debtor;
17 2. A jurisdiction of organization for the debtor; or
18 3. An organizational identification number for the debtor or
19 indicate that the debtor has ~~none;~~none.
- 20 (6) In the case of an assignment reflected in an initial financing statement
21 under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b),
22 the record does not provide a name and mailing address for the
23 ~~assignee;~~or assignee.
- 24 (7) In the case of a continuation statement, the record is not filed within
25 the six-month period prescribed by G.S. 25-9-515(d).
- 26 (8) In the case of a record presented for filing at the Office of the
27 Secretary of State, the Secretary of State determines that (i) the record
28 identifies as a debtor any person who is currently an employee of the
29 United States of America, or any state, county, or local government
30 thereof, and (ii) the record is not related to a ~~facially valid~~ security
31 agreement that is valid on its face or is otherwise intended for an
32 improper purpose, such as to hinder or harass the employee, or to
33 interfere with the employee in the performance of a public duty."

34 **SECTION 2.** G.S. 25-9-518(b)(3) reads as rewritten:

- 35 "(3) Provide the basis for the person's belief that the record is inaccurate
36 and indicate the manner in which the person believes the record should
37 be amended to cure any inaccuracy or provide the basis for the
38 person's belief that the record was wrongfully filed. A correction
39 statement that is subject to the provisions of subsection (b1) of this
40 section shall include a written certification, under oath, by the
41 employee that the contents of the correction statement are true and
42 accurate to the best of the employee's knowledge."

43 **SECTION 3.** G.S. 25-9-518 is amended by adding a new subsection to read:

1 "(b1) In the case of a correction statement alleging that a previously filed record
2 was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8),
3 the Secretary of State shall, without undue delay, determine whether the contested
4 record was wrongfully filed and should have been rejected. If the Secretary of State
5 finds that the record was wrongfully filed and should have been rejected under G.S. 25-
6 9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no
7 effect."

8 **SECTION 4.** G.S.25-9-520 reads as rewritten:

9 "**§ 25-9-520. ~~Acceptance and refusal to accept record.~~Acceptance, refusal to accept**
10 **record and cancellation of record.**

11 (a) **Mandatory refusal to accept record.** – A filing office shall refuse to accept a
12 record for filing for a reason set forth in G.S. 25-9-516(b) and may refuse to accept a
13 record for filing only for a reason set forth in G.S. 25-9-516(b).

14 (b) **Communication concerning refusal.** – If a filing office refuses to accept a
15 record for filing, it shall communicate to the person that presented the record the fact of
16 and reason for the refusal and the date and time the record would have been filed had
17 the filing office accepted it. The communication must be made at the time and in the
18 manner prescribed by filing-office rule but in no event more than three business days
19 after the filing office receives the record.

20 (c) **When filed financing statement effective.** – A filed financing statement
21 satisfying G.S. 25-9-502(a) and (b) is effective, even if the filing office is required to
22 refuse to accept it for filing under subsection (a) of this section. However, G.S.
23 25-9-338 applies to a filed financing statement providing information described in G.S.
24 25-9-516(b)(5) which is incorrect at the time the financing statement is filed.

25 (d) **Separate application to multiple debtors.** – If a record communicated to a
26 filing office provides information that relates to more than one debtor, this Part applies
27 as to each debtor separately.

28 (e) **Appeal.**

29 (1) If the Secretary of State refuses to accept a record for filing pursuant to
30 G.S. 25-9-516(b)(8), or cancels a wrongfully filed record pursuant to
31 G.S. 25-9-518(b1), the secured party may file an appeal within 30 days
32 after the refusal or cancellation in the Superior Court of Wake County.
33 Filing a petition requesting to be allowed to file the document
34 commences the appeal. The petition shall be filed with the court and
35 with the Secretary of State and shall have the record attached to it.
36 Upon the commencement of an appeal, it shall be set for hearing at the
37 earliest possible time and shall take precedence over all matters except
38 older matters of the same character. The appeal to the Superior Court
39 is not governed by Article 3, 3A, or 4 of Chapter 150B of the General
40 Statutes, and shall be determined upon such further notice and
41 opportunity to be heard, if any, as the court may deem appropriate
42 under the circumstances. The court shall permit the joinder of any
43 interested party that would be allowed under the Rules of Civil
44 Procedure.

- 1 (2) Upon consideration of the petition and other appropriate pleadings, the
2 court may order the Secretary of State to file the record or take other
3 action the court considers appropriate, including the entry of orders
4 affirming, reversing, or otherwise modifying the decision of the
5 Secretary of State. The court may order any other relief, including
6 equitable relief, as may be appropriate.
7 (3) The court's final decision may be appealed as in other civil
8 proceedings.
9 (4) The court shall not enter an order awarding costs and attorneys' fees
10 against the Secretary of State."

11 **SECTION 5.** This act becomes effective October 1, 2001, and applies to
12 documents filed on or after that date.