

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1021  
Senate Judiciary II Committee Substitute Adopted 6/1/99

Short Title: Revise UCC Filings Procedures.

(Public)

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Sponsors:

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Referred to:

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April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO  
THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-402 reads as rewritten:

**"§ 25-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.**

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must indicate that the collateral is or includes crops, must contain a description of the real estate concerned, and must contain the county of the debtor's residence, or where the debtor is not a resident of this State the county where the crops are growing or to be grown. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-

1 313) and the collateral is goods which are or are to become fixtures, the statement must  
2 also comply with subsection (5). A copy of the security agreement is sufficient as a  
3 financing statement if it contains the above information and is signed by the debtor. A  
4 carbon, photographic or other reproduction of a security agreement or a financing  
5 statement is sufficient as a financing statement if the security agreement so provides or if  
6 the original has been filed in this State.

7 (2) A financing statement which otherwise complies with subsection (1) is  
8 sufficient when it is signed by the secured party instead of the debtor if it is filed to  
9 perfect a security interest in

10 (a) Collateral already subject to a security interest in another jurisdiction  
11 when it is brought into this State, or when the debtor's location is  
12 changed to this State. Such a financing statement must state that the  
13 collateral was brought into this State or that the debtor's location was  
14 changed to this State under such circumstances; or

15 (b) Proceeds under G.S. 25-9-306 if the security interest in the original  
16 collateral was perfected. Such a financing statement must describe the  
17 original collateral; or

18 (c) Collateral as to which the filing has lapsed; or

19 (d) Collateral acquired after a change of name, identity or corporate  
20 structure of the debtor (subsection (7)).

21 (3) ~~A form substantially as follows is sufficient to comply with subsection (1):~~ A  
22 financing statement complies with subsection (1) of this section if it is filed (i)  
23 electronically in a format acceptable to the filing officer or (ii) on 8 1/2"x 11" paper that is  
24 carbonized or the original statement is accompanied by carbon copies and the form is  
25 substantially as follows:

26 Name of debtor (or assignor) .....

27 Address .....

28 Name of secured party (or assignee) .....

29 Address .....

30 1. This financing statement covers the following types (or items) of  
31 property:(Describe) .....

32 2. (If collateral is crops) The above described crops are growing or are to be grown  
33 on:

34 (Describe Real Estate) .....

35 3. (If applicable) The above goods are to become fixtures on\* .....

36 \*Where appropriate substitute either "The above timber is standing on ....." or "The  
37 above minerals or the like (including oil and gas) or accounts will be financed at the  
38 wellhead or minehead of the well or mine located on ....."

39 (Describe Real Estate) .....

40 (If the debtor does not have an interest of record) The name of a record  
41 owner is .....

42 4. (If products of collateral are claimed) Products of the collateral are also covered.

43 (use .....

1           whichever       Signature of Debtor (or Assignor)  
 2                    is .....  
 3 applicable)       Signature of Secured Party (or Assignee)

4       (4)   A financing statement may be amended by filing a writing signed by both the  
 5 debtor and the secured party. An amendment does not extend the period of effectiveness  
 6 of a financing statement. If any amendment adds collateral, it is effective as to the added  
 7 collateral only from the filing date of the amendment. In this Article, unless the context  
 8 otherwise requires, the term "financing statement" means the original financing statement  
 9 and any amendments. Amendments shall be accompanied by a copy of the original  
 10 financing statement when filed to be effective.

11       (5)   A financing statement covering timber to be cut or covering minerals or the  
 12 like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or a  
 13 financing statement filed as a fixture filing (G.S. 25-9-313) must contain a description of  
 14 the real estate. If the debtor does not have an interest of record in the real estate, the  
 15 financing statement must show the name of a record owner. A financing statement filed  
 16 as a fixture filing (G.S. 25-9-313) on a form shall have the appropriate box checked to  
 17 indicate that the collateral is, or includes, fixtures. If (a) a copy of a security agreement is  
 18 filed as a financing statement, as authorized by G.S. 25-9-402, or (b) a nonstandard form  
 19 is filed, to perfect security interests in fixtures, the secured party or other filer shall attach  
 20 thereto a form financing statement with the appropriate block checked to indicate that the  
 21 collateral is, or includes, fixtures. If a financing statement is not marked as required by  
 22 this subsection, it shall not be required to be indexed pursuant to G.S. 25-9-403(7).

23       (6)   A mortgage or deed of trust is effective as a financing statement filed as a  
 24 fixture filing from the date of its recording if

- 25           (a)   The goods are described in the mortgage or deed of trust by item or
- 26                    type; and
- 27           (b)   The goods are or are to become fixtures related to the real estate
- 28                    described in the mortgage or deed of trust; and
- 29           (c)   The mortgage or deed of trust complies with the requirements for a
- 30                    financing statement in this section; and
- 31           (d)   The mortgage or deed of trust is duly recorded in the real estate records.
- 32                    Such a mortgage or deed of trust shall not be indexed or filed in the
- 33                    Uniform Commercial Code files. No fee with reference to such a
- 34                    mortgage or deed of trust is required other than the regular recording
- 35                    and satisfaction fees with respect to the mortgage or deed of trust.

36       (7)   A financing statement sufficiently shows the name of the debtor if it gives the  
 37 individual, partnership or corporate name of the debtor, whether or not it adds other trade  
 38 names or names of partners. Where the debtor so changes his name or in the case of an  
 39 organization its name, identity or corporate structure that a filed financing statement  
 40 becomes seriously misleading, the filing is not effective to perfect a security interest in  
 41 collateral acquired by the debtor more than four months after the change, unless a new  
 42 appropriate financing statement is filed before the expiration of that time. A filed

1 financing statement remains effective with respect to collateral transferred by the debtor  
2 even though the secured party knows of or consents to the transfer.

3 (8) A financing statement substantially complying with the requirements of this  
4 section is effective even though it contains minor errors which are not seriously  
5 misleading.

6 (9) The Secretary of State shall have the authority to promulgate, issue and  
7 prescribe such financing statement forms and such other forms as he deems necessary to  
8 be used as standard forms for any filing contemplated by any section of this Article.”

9 Section 2. G.S. 25-9-403(3) reads as rewritten:

10 "(3) A continuation statement may be filed by the secured party within six months  
11 prior to the expiration of the five-year period specified in subsection (2). Any such  
12 continuation statement must be signed by the secured party, be accompanied by a copy of  
13 the original financing statement, identify the original statement by file number and also  
14 by the most current file number if any continuation was filed and state that the original  
15 statement is still effective. A continuation statement signed by a person other than the  
16 secured party of record must be accompanied by a separate written statement of  
17 assignment signed by the secured party of record and complying with subsection (2) of  
18 G.S. 25-9-405, including payment of the required fee. Upon timely filing of the  
19 continuation statement, the effectiveness of the original statement is continued for five  
20 years after the last date to which the filing was effective whereupon it lapses in the same  
21 manner as provided in subsection (2) unless another continuation statement is filed prior  
22 to such lapse. Succeeding continuation statements may be filed in the same manner to  
23 continue the effectiveness of the original statement. Unless a statute on disposition of  
24 public records provides otherwise, the filing officer may remove a lapsed statement from  
25 the files and destroy it immediately if he has retained a microfilm or other photographic  
26 record, or in other cases after one year after the lapse record. In any event, one year after  
27 a financing or continuation statement has lapsed, the filing officer may remove the lapsed  
28 statement from any files, including computer files, and destroy it immediately. The filing  
29 officer shall so arrange matters by physical annexation of financing statements to  
30 continuation statements or other related filings, or by other means, that if he physically  
31 destroys the financing statements of a period more than five years past, those which have  
32 been continued by a continuation statement or which are still effective under subsection  
33 (6) shall be retained. Any continuation statement which is not filed in accordance with  
34 the requirements set forth herein and during the stated time periods set forth above shall  
35 be invalid."

36 Section 3. Any register of deeds office in this State that has had computer files  
37 for a period of at least five years is not required to cancel financing statements manually.

38 Section 4. This act becomes effective January 1, 2000.