

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SENATE BILL 257
RATIFIED BILL**

AN ACT TO AMEND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO
GIVE THE SECRETARY OF STATE THE AUTHORITY TO PREVENT
FRAUDULENT FILINGS AND TO MAKE CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

PART I. PREVENT FRAUDULENT FILINGS.

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

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

- (1) The record is not communicated by a method or medium of communication authorized by the filing office;
- (2) An amount equal to or greater than the applicable filing fee is not tendered;
- (3) The filing office is unable to index the record because:
 - a. In the case of an initial financing statement, the record does not provide a name for the debtor;
 - b. In the case of an amendment or correction statement, the record:
 1. Does not identify the initial financing statement as required by G.S. 25-9-512 or G.S. 25-9-518, as applicable; or
 2. Identifies an initial financing statement whose effectiveness has lapsed under G.S. 25-9-515;
 - c. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - d. In the case of a record filed in the filing office described in G.S. 25-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - a. Provide a mailing address for the debtor;
 - b. Indicate whether the debtor is an individual or an organization; or
 - c. If the financing statement indicates that the debtor is an organization, provide:
 1. A type of organization for the debtor;
 2. A jurisdiction of organization for the debtor; or

3. An organizational identification number for the debtor or indicate that the debtor has none;
- (6) In the case of an assignment reflected in an initial financing statement under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b), the record does not provide a name and mailing address for the assignee; ~~or~~
- (7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by ~~G.S. 25-9-515(d)~~ G.S. 25-9-515(d); ~~or~~
- (8) In the case of a record presented for filing at the Department of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person."

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

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

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

"(b1) In the case of a correction statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected. In order to determine whether the record was wrongfully filed, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State, including an original or a copy of any security agreement that is related to the record. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under G.S. 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect."

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

§ 25-9-520. Acceptance and refusal to accept record. Acceptance, refusal to accept record, and cancellation of record.

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

(b) Communication concerning refusal. – If a filing office refuses to accept a record for ~~filing~~, filing or cancels a record under G.S. 25-9-518(b1), it shall communicate to the person that presented the record the fact of and reason for the refusal or cancellation and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than three business days after the filing office receives or cancels the record.

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

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

(e) Appeal.

- (1) If the Secretary of State refuses to accept a record for filing pursuant to G.S. 25-9-516(b)(8) or cancels a wrongfully filed record pursuant to G.S. 25-9-518(b1), the secured party may file an appeal within 30 days after the refusal or cancellation in the Superior Court of Wake County. Filing a petition requesting to be allowed to file the document commences the appeal. The petition shall be filed with the court and with the Secretary of State and shall have the record attached to it. Upon the commencement of an appeal, it shall be set for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character. The appeal to the Superior Court is not governed by Article 3, 3A, or 4 of Chapter 150B of the General Statutes and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The court shall permit the joinder of any interested party that would be allowed under the Rules of Civil Procedure.
- (2) Upon consideration of the petition and other appropriate pleadings, the court may order the Secretary of State to file the record or take other action the court considers appropriate, including the entry of orders affirming, reversing, or otherwise modifying the decision of the Secretary of State. The court may order any other relief, including equitable relief, as may be appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings."

SECTION 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-401.19. Filing false security agreements.

It shall be unlawful for any person, firm, corporation, or any other association of persons in this State, under whatever name styled, to present a record for filing under the provisions of Article 9 of Chapter 25 of the General Statutes with knowledge that the record is not related to a valid security agreement or with the intention that the record be filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. A violation of this section shall be a Class 2 misdemeanor."

PART II. CLARIFY PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

SECTION 6. G.S. 25-9-707 reads as rewritten:

"§ 25-9-707. Amendment of pre-effective-date financing statement.

(a) 'Pre-effective-date financing statement'. – In this section, 'pre-effective-date financing statement' means a financing statement filed before July 1, 2001.

(b) Applicable law. – After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. – Except as otherwise provided in subsection (d) of this section, if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2001 only if:

- (1) The pre-effective-date financing statement and an amendment are filed in the office specified in G.S. 25-9-501;

- (2) An amendment is filed in the office specified in G.S. 25-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies G.S. 25-9-706(c); or
- (3) An initial financing statement that provides the information as amended and satisfies G.S. 25-9-706(c) is filed in the office specified in G.S. 25-9-501.

(d) Method of amending: continuation. – If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under G.S. 25-9-705(d) and (f) or G.S. 25-9-706.

(e) Method of amending: additional termination rule. – Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies G.S. 25-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this Article as the office in which to file a financing statement. However, a termination statement shall not be filed under this section in the register of deeds office unless it is the office specified in G.S. 25-9-501.

~~(f) Method of amending: termination. – If the law of this State governs perfection of a security interest, the effectiveness of a pre effective date financing statement may be terminated after July 1, 2001 only if:~~

- ~~(1) The pre effective date financing statement and a termination statement are filed in the office specified in G.S. 25-9-501; or~~
- ~~(2) A termination statement is filed in the office specified in G.S. 25-9-501 concurrently with the filing in that office of an initial financing statement that satisfies G.S. 25-9-706(c). Under this subsection, no separate fee shall be charged for the filing or indexing of the termination statement.~~

No additional fee. – No separate fee shall be charged for the filing or indexing of a concurrently filed termination statement under subdivision (c)(2) of this section."

SECTION 7. G.S. 25-9-710 reads as rewritten:

"§ 25-9-710. Special transitional provision for maintaining and searching local-filing office records.

(a) In this section:

(1) 'Former-Article-9 records' means:

- a. Financing statements and other records that have been filed in the local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of June 30, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and
- b. The index as of June 30, 2001.

The term does not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.

(2) 'Local-filing office' means a filing office, other than the office of the Secretary of State, that is designated as the proper place to file a financing statement under G.S. 25-9-401(1) of former Article 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(b) A local-filing office must not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001. This subsection does not apply, with respect to

financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

- (1) The collateral is timber to be cut or as-extracted collateral; or
- (2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures.

(c) Until July 1, 2008, each local-filing office must maintain all ~~former Article 9~~ ~~former-Article-9~~ records in accordance with former Article 9. A ~~former Article 9~~ ~~former-Article-9~~ record that is not reflected on the index maintained at June 30, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(d) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to ~~former Article 9~~ ~~former-Article-9~~ records relating to a debtor and issue certificates, in accordance with former Article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former-Article-9 records must be the fees in effect under former Article 9 on June 30, 2001.

(e) After June 30, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this State, all former-Article-9 records, including the related index.

~~(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:~~

- ~~(1) The collateral is timber to be cut or as-extracted collateral, or~~
- ~~(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures."~~

PART III. EFFECTIVE DATE.

SECTION 8. Section 5 of this act becomes effective December 1, 2001, and applies to documents presented for filing on or after that date. The remainder of this act becomes effective July 1, 2001. Sections 1 through 4 of this act apply to documents filed on or after July 1, 2001.

In the General Assembly read three times and ratified this the 11th day of June, 2001.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2001