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HOUSE BILL NO. 2102

House Amendments in [] — January 29, 2013

A BILL to amend and reenact §§ 8.9A-516 and 12.1-21.1 of the Code of Virginia, relating to the Uniform Commercial Code - Secured Transactions; filing of documents.

Patron Prior to Engrossment—Delegate Cline

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.9A-516 and 12.1-21.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.9A-516. What constitutes filing; effectiveness of filing.

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

(b) Refusal to accept record; filing does not occur. Filing does not occur with respect to a record that a filing office refuses or [~~should~~ may] have refused 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 information statement, the record:

(i) does not identify the initial financing statement as required by § 8.9A-512 or 8.9A-518, as applicable;

(ii) identifies an initial financing statement whose effectiveness has lapsed under § 8.9A-515; or

(iii) in the case of a record filed or recorded in the filing office described in § 8.9A-501(a)(1), does not provide the name and mailing address of the debtor;

(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 surname; or

(D) in the case of a record filed or recorded in the filing office described in § 8.9A-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; or

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

(6) in the case of an assignment reflected in an initial financing statement under § 8.9A-514(a) or an amendment filed under § 8.9A-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 § 8.9A-515(d); or

(8) in the case of an initial financing statement or amendment [; it appears to the filing communicated to the office of the State Corporation Commission, it appears to such] office that the record:

(A) is not created pursuant to this title;

(B) is presented for filing for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with a person or promote or conduct an illegitimate object or purpose;

(C) is materially false or fraudulent; or

(D) indicates that the debtor and the secured party are substantially the same person or that an individual debtor is a transmitting utility.

(c) Rules applicable to subsection (b). For purposes of subsection (b):

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

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59 (2) a record that does not indicate that it is an amendment or identify an initial financing statement
60 to which it relates, as required by § 8.9A-512, 8.9A-514, or 8.9A-518, is an initial financing statement;
61 and

62 (3) *if the filing office becomes aware that a record may have been wrongfully filed because it should*
63 *have been rejected under subdivision (b) (8), the filing office may review the record and relevant*
64 *circumstances and, if it determines that the record was wrongfully filed and should have been rejected*
65 *under subdivision (b) (8):*

66 (A) *the record shall be deemed void and ineffective; and*

67 (B) *the filing office shall remove the record from the index and communicate the foregoing to the*
68 *person that presented the wrongfully filed record and to other persons, as appropriate.*

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

73 **§ 12.1-21.1. Fees to be charged by clerk for certain information and certificates.**

74 A. When a request made under subdivision A 3 of § 12.1-19 or under § 12.1-20 relates to the
75 Uniform Commercial Code, or when a request for information is made under Title 8.9A, the clerk of the
76 Commission shall charge and collect, except as otherwise provided in subsection C of § 12.1-21.2,
77 reasonable fees as are fixed by Commission order or rule.

78 B. Any response or certificate shall be signed by the clerk or a member of his staff. Any signature
79 may be a facsimile.

80 C. Any certificate to which the seal of the Commission, or a facsimile thereof, is affixed shall be
81 admitted in evidence in all cases, civil and criminal, as prima facie evidence of the facts contained in it.

82 D. No action shall be brought against the Commission or any member of its staff claiming damages
83 for alleged errors or omissions in any response or certificate.

84 E. Notwithstanding the provisions of § 8.9A-525, if the Commission determines that a person was
85 falsely identified as a debtor ~~on~~ in a financing statement filed in the office of its clerk, it may waive
86 payment of the fees for that person to file a termination statement pursuant to subdivision (d) (2) of
87 § 8.9A-509 and a ~~correction~~ *an information* statement pursuant to § 8.9A-518.