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HOUSE BILL NO. 2104

Offered January 20, 1999

A BILL to amend and reenact § 8.9-402 of the Code of Virginia, relating to Uniform Commercial Code; financing statements; electronic filings.

Patron—Bennett

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 8.9-402 of the Code of Virginia is amended and reenacted as follows:

§ 8.9-402. 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 timber to be cut or minerals or the like (including oil and gas) or accounts subject to subsection (5) of § 8.9-103 or crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner and, if the secured party desires it to be indexed against such real estate, an indication to that effect indicated in capital letters at the beginning of the financing statement as required by subsection (4) of § 8.9-403. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this Commonwealth.

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

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

(b) Proceeds under § 8.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

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

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

(3) A form substantially as follows is sufficient to comply with subsection (1): (If collateral is crops, goods which are, or are to become, fixtures or timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to subsection (5) of § 8.9-103, and the secured party desires the financing statement to be indexed against such real estate,)

THE SECURED PARTY DESIRES THIS FINANCING STATEMENT TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE.

(In every case, it should include)

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

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

(Describe)

2. (If collateral is crops and the secured party desires the financing

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59
60 statement to be indexed against such real estate) The above described crops
61
62 are growing or are to be grown on:

63
64 (Describe Real Estate, Show Name of Record Owner and Indicate That
65
66 Statement Be Indexed Against Real Estate)

67
68 3. (If collateral is goods which are or are to become fixtures and
69
70 the secured party desires the financing statement to be indexed
71
72 against such real estate)

73
74 The above described goods are affixed or to be affixed to:
75
76 (Describe Real Estate, Show Name of Record Owner and Indicate That
77
78 Statement Be Indexed Against Real Estate)

79
80 4. (If products of collateral are claimed) Products of the
81
82 collateral are also covered.

83
84 (use whichever Signature of Debtor (or Assignor)
85
86 is applicable) Signature of Secured Party (or Assignee)

87
88 5. (If the collateral is timber to be cut or covers minerals or the like
89
90 (including oil and gas) or accounts subject to subsection (5) of
91
92 § 8.9-103 and the secured party desires the financing statement to
93
94 be indexed against such real estate) The above described collateral
95
96 is timber to be cut or covers minerals or the like (including oil and
97
98 gas) or accounts subject to subsection (5) of § 8.9-103 growing on,
99
100 located on or to be extracted from:

101
102 (Describe Real Estate, Show Name of Record Owner and Indicate That
103
104 Statement Be Indexed Against Real Estate)
105
106

107
108 The Commission shall prescribe a form in compliance with subsection (1) of this section which may
109 be used for filing a financing statement with the Commission.

110 (4) A financing statement may be amended by filing a writing signed by both the debtor and the
111 secured party. All amendments to financing statements shall identify the original financing statement by
112 file number. An amendment does not extend the period of effectiveness of a financing statement. If any
113 amendment adds collateral, it is effective as to the added collateral only from the filing date of the
114 amendment. In this title, unless the context otherwise requires, the term "financing statement" means the
115 original financing statement and any amendments.

116 (5) When the financing statement covers crops growing or to be grown or goods which are or are to
 117 become fixtures or timber to be cut or minerals or the like (including oil and gas) or accounts subject to
 118 subsection (5) of § 8.9-103, failure of the financing statement to contain a description of the real estate
 119 concerned or the name of the record owner thereof or both, or inaccuracy of either or both, or the
 120 failure of the financing statement to indicate that the secured party desires it to be indexed against the
 121 real estate as provided by subsection (4) of § 8.9-403 shall not render the financing statement
 122 ineffective, but the security interest created thereby shall be invalid as to any subsequent purchaser or
 123 subsequent mortgagee of the real estate who becomes such without knowledge of the security interest in
 124 such crops, fixtures, timber, minerals or the like, or accounts. For purposes of the foregoing sentence, a
 125 mortgagee making additional advances under a previously recorded mortgage shall be deemed a
 126 subsequent mortgagee as to advances made subsequent to the filing of the financing statement.

127 (6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its
 128 recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to
 129 become fixtures related to the real estate described in the mortgage, (c) the secured party is identified in
 130 the mortgage, (d) the mortgage meets the requirements of the laws of this Commonwealth for such
 131 instruments, and (e) the mortgage is duly recorded. No fee with reference to the financing statement is
 132 required other than the regular recording and satisfaction fees with respect to the mortgage.

133 (7) A financing statement sufficiently shows the name of the debtor if it gives the individual,
 134 partnership or corporate name of the debtor, whether or not it adds other trade names or the names of
 135 partners. Where the debtor so changes his name or in the case of an organization its name, identity or
 136 corporate structure that a filed financing statement becomes seriously misleading, the filing is not
 137 effective to perfect a security interest in collateral acquired by the debtor more than four months after
 138 the change, unless a new appropriate financing statement is filed before the expiration of that time. A
 139 filed financing statement remains effective with respect to collateral transferred by the debtor even
 140 though the secured party knows of or consents to the transfer.

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

143 (9) For the purpose of this section, the listing of the name in which such real estate is listed for
 144 purposes of taxation shall be in substantial compliance with the requirement of the name of the record
 145 owner.

146 (10) *Nothing in this act requires that financing statements or other filings under Part 4 of this title*
 147 *be generated or transmitted on paper to the State Corporation Commission. The Commission may adopt*
 148 *rules with respect to electronic filings under Part 4 of this title. Financing statements and other filings*
 149 *presented in accordance with rules adopted as authorized in this subsection are not ineffective or*
 150 *insufficient by reason of being generated or transmitted electronically. Other provisions of this act shall*
 151 *be construed and applied so as to carry out the policy expressed in this subsection.*

152 **2. That the first sentence of subsection (10) of § 8.9-402, as amended by this act, is declaratory of**
 153 **existing law.**

154 **3. That an emergency exists and this act is in force from its passage.**