

HOUSE BILL 202

I4
SB 62/09 – FIN

0lr0366

By: **Delegates Cardin, Morhaim, and Stein**
Introduced and read first time: January 22, 2010
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 10, 2010

CHAPTER _____

1 AN ACT concerning

2 **Uniform Commercial Code – Financing Statements – ~~Termination by~~**
3 **Government Employees False Filings – Prohibited**

4 FOR the purpose of ~~authorizing certain government employees to file certain~~
5 ~~termination statements with respect to certain financing statements; providing~~
6 ~~for the contents of the termination statement; requiring a certain filing office to~~
7 ~~send a copy of the termination statement to a certain secured party along with a~~
8 ~~certain notice; providing that on the filing of the termination statement, a~~
9 ~~certain financing statement ceases to be effective as to the government~~
10 ~~employee; authorizing the secured party to file an action to reinstate a financing~~
11 ~~statement under certain circumstances; requiring the secured party to provide a~~
12 ~~certain certified copy of a certain judgment to a certain filing office under~~
13 ~~certain circumstances; requiring the filing office to file the judgment in a certain~~
14 ~~manner; providing that on the filing of a certain judgment, a certain financing~~
15 ~~statement shall be effective and shall be considered never to have been~~
16 ~~ineffective as against a certain person; authorizing the secured party to file a~~
17 ~~continuation statement under certain circumstances; providing that a fee may~~
18 ~~not be charged for the filing of the termination statement; providing that the~~
19 ~~secured party shall pay the costs, reasonable attorney's fees, and expenses~~
20 ~~incurred by a government employee in a certain action under certain~~
21 ~~circumstances; making certain conforming and stylistic changes; defining a~~
22 ~~certain term; and generally relating to the termination of financing statements~~
23 ~~by government employees providing that a person who files a financing~~
24 ~~statement or an amendment to a financing statement that the person knows~~
25 ~~contains false information is subject to a certain penalty; prohibiting a person~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 from filing a financing statement or an amendment to a financing statement
2 that the person knows contains false information; providing a penalty for a
3 violation of certain provisions of this Act; and generally relating to financing
4 statements.

5 BY repealing and reenacting, with amendments,
6 Article – Commercial Law
7 Section ~~9-513 and 9-515(d)~~ 9-509
8 Annotated Code of Maryland
9 (2002 Replacement Volume and 2009 Supplement)

10 BY adding to
11 Article – Criminal Law
12 Section 9-508
13 Annotated Code of Maryland
14 (2002 Volume and 2009 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Commercial Law**

18 9-509.

19 (a) A person may file an initial financing statement, amendment that adds
20 collateral covered by a financing statement, or amendment that adds a debtor to a
21 financing statement only if:

22 (1) The debtor authorizes the filing in an authenticated record or
23 pursuant to subsection (b) or (c); or

24 (2) The person holds an agricultural lien that has become effective at
25 the time of filing and the financing statement covers only collateral in which the
26 person holds an agricultural lien.

27 (b) By authenticating or becoming bound as a debtor by a security
28 agreement, a debtor or new debtor authorizes the filing of an initial financing
29 statement, and an amendment, covering:

30 (1) The collateral described in the security agreement; and

31 (2) Property that becomes collateral under § 9-315(a)(2), whether or
32 not the security agreement expressly covers proceeds.

33 (c) By acquiring collateral in which a security interest or agricultural lien
34 continues under § 9-315(a)(1), a debtor authorizes the filing of an initial financing

1 statement, and an amendment, covering the collateral and property that becomes
2 collateral under § 9-315(a)(2).

3 (d) A person may file an amendment other than an amendment that adds
4 collateral covered by a financing statement or an amendment that adds a debtor to a
5 financing statement only if:

6 (1) The secured party of record authorizes the filing; or

7 (2) The amendment is a termination statement for a financing
8 statement as to which the secured party of record has failed to file or send a
9 termination statement as required by § 9-513, the debtor authorizes the filing, and
10 the termination statement indicates that the debtor authorized it to be filed.

11 (e) If there is more than one secured party of record for a financing
12 statement, each secured party of record may authorize the filing of an amendment
13 under subsection (d).

14 **(F) A PERSON WHO FILES A FINANCING STATEMENT OR AN AMENDMENT**
15 **TO A FINANCING STATEMENT THAT THE PERSON KNOWS CONTAINS FALSE**
16 **INFORMATION IS SUBJECT TO THE PENALTY PROVIDED IN § 9-508 OF THE**
17 **CRIMINAL LAW ARTICLE.**

18 **Article – Criminal Law**

19 **9-508.**

20 **(A) IN THIS SECTION, “FINANCING STATEMENT” HAS THE MEANING**
21 **STATED IN § 9-102 OF THE COMMERCIAL LAW ARTICLE.**

22 **(B) A PERSON MAY NOT FILE A FINANCING STATEMENT OR AN**
23 **AMENDMENT TO A FINANCING STATEMENT THAT THE PERSON KNOWS CONTAINS**
24 **FALSE INFORMATION.**

25 **(C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
26 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
27 **\$500.**

28 **(2) EACH ACT OF FILING A FINANCING STATEMENT OR AN**
29 **AMENDMENT TO A FINANCING STATEMENT IS A SEPARATE VIOLATION.**

30 ~~9-513.~~

31 ~~(a) A secured party shall cause the secured party of record for a financing~~
32 ~~statement to file a termination statement for the financing statement if the financing~~
33 ~~statement covers consumer goods and:~~

1 ~~(1) There is no obligation secured by the collateral covered by the~~
 2 ~~financing statement and no commitment to make an advance, incur an obligation, or~~
 3 ~~otherwise give value; or~~

4 ~~(2) The debtor did not authorize the filing of the initial financing~~
 5 ~~statement.~~

6 ~~(b) To comply with subsection (a), a secured party shall cause the secured~~
 7 ~~party of record to file the termination statement;~~

8 ~~(1) Within 1 month after there is no obligation secured by the~~
 9 ~~collateral covered by the financing statement and no commitment to make an advance,~~
 10 ~~incur an obligation, or otherwise give value; or~~

11 ~~(2) If earlier, within 20 days after the secured party receives an~~
 12 ~~authenticated demand from a debtor.~~

13 ~~(e) In cases not governed by subsection (a), within 20 days after a secured~~
 14 ~~party receives an authenticated demand from a debtor, the secured party shall cause~~
 15 ~~the secured party of record for a financing statement to send to the debtor a~~
 16 ~~termination statement for the financing statement or file the termination statement in~~
 17 ~~the filing office if:~~

18 ~~(1) Except in the case of a financing statement covering accounts or~~
 19 ~~chattel paper that has been sold or goods that are the subject of a consignment, there~~
 20 ~~is no obligation secured by the collateral covered by the financing statement and no~~
 21 ~~commitment to make an advance, incur an obligation, or otherwise give value;~~

22 ~~(2) The financing statement covers accounts or chattel paper that has~~
 23 ~~been sold but as to which the account debtor or other person obligated has discharged~~
 24 ~~its obligation;~~

25 ~~(3) The financing statement covers goods that were the subject of a~~
 26 ~~consignment to the debtor but are not in the debtor's possession; or~~

27 ~~(4) The debtor did not authorize the filing of the initial financing~~
 28 ~~statement.~~

29 ~~(D) (1) IN THIS SUBSECTION, "GOVERNMENT EMPLOYEE" MEANS:~~

30 ~~(A) AN ELECTED OR APPOINTED OFFICIAL OF THE STATE~~
 31 ~~OR A POLITICAL SUBDIVISION OF THE STATE;~~

32 ~~(B) AN EMPLOYEE OF:~~

33 ~~(i) THE STATE;~~

1 ~~(H) A COUNTY, MUNICIPAL CORPORATION, OR OTHER~~
2 ~~POLITICAL SUBDIVISION OF THE STATE; OR~~

3 ~~(II) A UNIT OF THE STATE GOVERNMENT OR OF A~~
4 ~~POLITICAL SUBDIVISION OF THE STATE; OR~~

5 ~~(C) A MEMBER OF AN AUTHORITY, BOARD, OR COMMISSION~~
6 ~~ESTABLISHED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.~~

7 ~~(2) A GOVERNMENT EMPLOYEE WHO IS LISTED AS A DEBTOR ON A~~
8 ~~FINANCING STATEMENT BECAUSE OF THE OFFICE OR POSITION HELD BY THE~~
9 ~~GOVERNMENT EMPLOYEE, AND WHO DID NOT AUTHORIZE THE FILING OF THE~~
10 ~~FINANCING STATEMENT, MAY FILE A TERMINATION STATEMENT FOR THE~~
11 ~~FINANCING STATEMENT.~~

12 ~~(3) A TERMINATION STATEMENT FILED UNDER THIS SUBSECTION~~
13 ~~SHALL STATE THAT:~~

14 ~~(A) THE DEBTOR IS A GOVERNMENT EMPLOYEE; AND~~

15 ~~(B) THE GOVERNMENT EMPLOYEE DID NOT AUTHORIZE THE~~
16 ~~FILING OF THE FINANCING STATEMENT.~~

17 ~~(4) ON THE FILING OF A TERMINATION STATEMENT UNDER THIS~~
18 ~~SUBSECTION, THE FILING OFFICE SHALL SEND A COPY OF THE TERMINATION~~
19 ~~STATEMENT BY FIRST CLASS MAIL TO THE SECURED PARTY OF RECORD FOR~~
20 ~~THE FINANCING STATEMENT ALONG WITH A NOTICE STATING THAT THE~~
21 ~~FINANCING STATEMENT HAS BEEN TERMINATED.~~

22 ~~(5) ON THE FILING OF A TERMINATION STATEMENT UNDER THIS~~
23 ~~SUBSECTION, THE FINANCING STATEMENT TO WHICH THE TERMINATION~~
24 ~~STATEMENT RELATES CEASES TO BE EFFECTIVE AS TO THE GOVERNMENT~~
25 ~~EMPLOYEE.~~

26 ~~(6) (A) IF THE SECURED PARTY BELIEVES IN GOOD FAITH THAT~~
27 ~~THE FINANCING STATEMENT WAS AUTHORIZED AND PROPERLY FILED, THE~~
28 ~~SECURED PARTY, WITHIN 60 DAYS AFTER THE DATE THE NOTICE OF~~
29 ~~TERMINATION IS SENT, MAY FILE AN ACTION TO REINSTATE THE FINANCING~~
30 ~~STATEMENT IN THE CIRCUIT COURT WHERE THE FILING OFFICE IS LOCATED OR~~
31 ~~WHERE THE GOVERNMENT EMPLOYEE RESIDES.~~

32 ~~(B) IF THE COURT DETERMINES THAT THE FINANCING~~
33 ~~STATEMENT SHOULD BE REINSTATED, THE SECURED PARTY SHALL PROVIDE A~~
34 ~~CERTIFIED COPY OF THE FINAL JUDGMENT TO THE FILING OFFICE.~~

1 ~~(C) ON RECEIPT, THE FILING OFFICE SHALL FILE THE~~
2 ~~JUDGMENT IN A MANNER THAT IDENTIFIES THE FINANCING STATEMENT TO~~
3 ~~WHICH THE FINAL JUDGMENT RELATES AND INDICATES THAT THE FINANCING~~
4 ~~STATEMENT HAS BEEN REINSTATED.~~

5 ~~(7) (A) ON THE FILING OF A FINAL JUDGMENT REINSTATING A~~
6 ~~FINANCING STATEMENT UNDER PARAGRAPH (6) OF THIS SUBSECTION, THE~~
7 ~~FINANCING STATEMENT SHALL BE EFFECTIVE AND SHALL BE CONSIDERED~~
8 ~~NEVER TO HAVE BEEN INEFFECTIVE AS AGAINST A PERSON THAT IS NOT A~~
9 ~~PURCHASER OF THE COLLATERAL FOR VALUE.~~

10 ~~(B) IF A FINANCING STATEMENT THAT IS REINSTATED~~
11 ~~WOULD HAVE LAPSED DURING THE PERIOD OF TERMINATION, THE SECURED~~
12 ~~PARTY MAY FILE A CONTINUATION STATEMENT WITHIN 30 DAYS AFTER THE~~
13 ~~FINAL JUDGMENT OF THE COURT REINSTATING THE FINANCING STATEMENT IS~~
14 ~~FILED.~~

15 ~~(8) A FEE MAY NOT BE CHARGED FOR A FILING OF A~~
16 ~~TERMINATION STATEMENT UNDER THIS SUBSECTION.~~

17 ~~(9) IF THE COURT IN AN ACTION TO REINSTATE A FINANCING~~
18 ~~STATEMENT DETERMINES THAT THE FINANCING STATEMENT IS FRAUDULENT,~~
19 ~~THE SECURED PARTY OF RECORD THAT FILED THE FINANCING STATEMENT~~
20 ~~SHALL PAY THE COSTS, REASONABLE ATTORNEY'S FEES, AND EXPENSES~~
21 ~~INCURRED BY THE GOVERNMENT EMPLOYEE IN THE ACTION.~~

22 ~~[(d)] (E) Except as otherwise provided in § 9-510, AND SUBJECT TO~~
23 ~~SUBSECTION (D)(5) OF THIS SECTION, [upon] ON the filing of a termination~~
24 ~~statement with the filing office, the financing statement to which the termination~~
25 ~~statement relates ceases to be effective. Except as otherwise provided in § 9-510, for~~
26 ~~purposes of §§ 9-519(f), 9-522(a), and 9-523(b), the filing with the filing office of a~~
27 ~~termination statement relating to a financing statement that indicates that the debtor~~
28 ~~is a transmitting utility also causes the effectiveness of the financing statement to~~
29 ~~lapse.~~

30 ~~9-515.~~

31 ~~(d) [A] EXCEPT AS PROVIDED IN § 9-513(D), A continuation statement~~
32 ~~may be filed only within six months before the expiration of the five-year period~~
33 ~~specified in subsection (a), the 30-year period specified in subsection (b), or the date~~
34 ~~the financing statement ceases to be effective under § 9-705(e) of this title, whichever~~
35 ~~is applicable.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.