

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

819Z0816

HOUSE STATE AFFAIRS
ENGROSSED NO. **HB 1248** - 2/12/2018

Introduced by: Representative Bartels and Senator White

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding filing and recording
2 secured transaction records with the Office of the Secretary of State.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 57A-9-516 be amended to read:

5 57A-9-516. (a) Except as otherwise provided in subsection (b), communication of a record
6 to a filing office and tender of the filing fee or acceptance of the record by the filing office
7 constitutes filing.

8 (b) Filing does not occur with respect to a record that a filing office refuses to accept
9 because:

10 (1) The record is not communicated by a method or medium of communication
11 authorized by the filing office;

12 (2) An amount equal to or greater than the applicable filing fee is not tendered;

13 (3) The filing office is unable to index the record because:

14 (A) In the case of an initial financing statement, the record does not provide a
15 name for the debtor;



- 1 (B) In the case of an amendment or information statement, the record:
 - 2 (i) Does not identify the initial financing statement as required by § 57A-9-
 - 3 512 or 57A-9-518, as applicable; or
 - 4 (ii) Identifies an initial financing statement whose effectiveness has lapsed
 - 5 under § 57A-9-515;
- 6 (C) In the case of an initial financing statement that provides the name of a debtor
- 7 identified as an individual or an amendment that provides a name of a debtor
- 8 identified as an individual which was not previously provided in the financing
- 9 statement to which the record relates, the record does not identify the debtor's
- 10 surname; or
- 11 (D) In the case of a record filed or recorded in the filing office described in § 57A-
- 12 9-501(a)(1), the record does not provide a sufficient description of the real
- 13 property to which it relates;
- 14 (4) In the case of an initial financing statement or an amendment that adds a secured
- 15 party of record, the record does not provide a name and mailing address for the
- 16 secured party of record;
- 17 (5) In the case of an initial financing statement or an amendment that provides a name
- 18 of a debtor which was not previously provided in the financing statement to which
- 19 the amendment relates, the record does not:
 - 20 (A) Provide a mailing address for the debtor; or
 - 21 (B) Indicate whether the name provided as the name of the debtor is the name of
 - 22 an individual or an organization;
- 23 (6) In the case of an assignment reflected in an initial financing statement under § 57A-9-
- 24 514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a

1 name and mailing address for the assignee; or

2 (7) In the case of a continuation statement, the record is not filed within the six-month
3 period prescribed by § 57A-9-515(d).

4 (c) For purposes of subsection (b):

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

7 (2) A record that does not indicate that it is an amendment or identify an initial financing
8 statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518,
9 is an initial financing statement.

10 (d) If a person presents a financing statement to the secretary of state for filing or recording,
11 the secretary of state may refuse to accept or reject the financing statement for filing or
12 recording if:

13 (1) The financing statement is not required or authorized to be filed or recorded with the
14 secretary of state; or

15 (2) The secretary of state has reasonable cause to believe the financing statement is
16 materially false or fraudulent.

17 (e) A fraudulent financing statement that the secretary of state may refuse to accept or reject
18 includes the following:

19 (1) Any financing statement that has the same name listed as both the debtor and the
20 secured party;

21 (2) Any financing statement that identifies an individual debtor as a transmitting utility;

22 (3) Any financing statement that is determined to be intended for an improper purpose,
23 such as hindering, harassing, or wrongfully interfering with another person or entity;

24 or

1 (4) Any financing statement that is filed:

2 (A) Without the consent or participation of the:

3 (i) Obligor named in the financing statement;

4 (ii) The person named in the financing statement as debtor; and

5 (iii) The owner of collateral described or indicated in the financing
6 statement; or

7 (B) By consent of an agent, a fiduciary, or another representative of the secured
8 party of record without the consent of the secured party; or

9 (5) Any financing statement that is forged.

10 (f) The secretary of state does not have a duty to inspect, evaluate, or investigate a financing
11 statement that is presented for filing or recording.

12 (g) A record that is communicated to the filing office with tender of the filing fee, but which
13 the filing office refuses to accept for a reason other than one set forth in subsection (b), is
14 effective as a filed record except as against a purchaser of the collateral which gives value in
15 reasonable reliance upon the absence of the record from the files.