CHAPTER 96--H.F.No. 3400

An act relating to business organizations; governing fraudulent business filings; amending Minnesota Statutes 2020, sections 336.9-510; 336.9-516; proposing coding for new law in Minnesota Statutes, chapter 336.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2020, section 336.9-510, is amended to read:

336.9-510 EFFECTIVENESS OF FILED RECORD.

(a) **Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under section 336.9-509 or by the filing office under section 336.9-5135.

(b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by section 336.9-515(d) is ineffective.

Sec. 2. **[336.9-5135] TERMINATION OF WRONGFULLY FILED FINANCING STATEMENT; REINSTATEMENT.**

(a) **Intent to harass.** "Intent to harass" means from the totality of the information provided in the record it appears obvious to the filing office that there is no valid basis for the filing of the record.

(b) **Affidavit of wrongful filing.** A person identified as the debtor in a filed financing statement may deliver to the filing office a notarized affidavit that identifies the financing statement by file number, indicates the person's mailing address, and states that the person believes the filed record identifying the person as the debtor was not authorized to be filed and was communicated or caused to be communicated to the office with the intent to harass or defraud the person identified as the debtor. The office may reject an affidavit that is incomplete or that the office believes was delivered with the intent to harass or defraud the secured party. The secretary of state must provide a form of affidavit for use under this section.

(c) **Termination statement by filing office.** If an affidavit is delivered to the filing office under subsection (b) and is not rejected under subsection (b), the office must promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must identify by its file number the initial financing statement it relates to and must indicate that it was filed pursuant to this section. A termination statement filed under this subsection is not effective until 20 days after the date it is filed.

(d) **No fee charged or refunded.** The filing office must not charge a fee to file an affidavit under subsection (b) or a termination statement under subsection (c). The office must not return any fee paid to file the financing statement identified in the affidavit, whether or not the financing statement is reinstated under subsection (g).

(e) **Notice of termination statement.** Within two business days of the date a filing office files a termination statement under subsection (c), it must send to the secured party of record for the financing

statement the termination statement relates to a notice stating the termination statement has been filed and becomes effective 20 days after the date the termination statement was filed. The notice must be sent by certified mail, return receipt requested, to the address provided for the secured party of record in the financing statement, with a copy sent by e-mail to the e-mail address provided by the secured party of record, if any.

(f) **Administrative review; action for reinstatement.** If a secured party believes in good faith the filed record identified in an affidavit and delivered to the filing office under subsection (b) was authorized to be filed and was not communicated or caused to be communicated to the filing office with the intent to harass or defraud, the secured party may do the following:

(1) before the termination statement takes effect, request that the filing office conduct an expedited review of the filed record and any documentation provided by the secured party. The filing office may, as a result of the review, remove from the record the termination statement filed by it under subsection (c) before it takes effect; or

(2) at any time, commence an action against the filing office seeking reinstatement of the financing statement the filed record relates to. The action must be commenced before the expiration of six months after the date the termination statement was filed under subsection (c) becomes effective. If the person identified as the debtor is not named as a defendant in the action, the secured party must send a copy of the complaint to the person identified as the debtor at the address indicated in the affidavit. The exclusive venue for the action is the district court for the county where the filing office in which the financing statement was filed is located. The action must be considered by the court on an expedited basis.

(g) **Office to file notice of action for reinstatement.** Within ten days after the date the filing office is served with process in an action under subsection (f), the filing office must file in the central filing system a notice indicating the action has been commenced. The notice must indicate the file number of the initial financing statement it relates to.

(h) **Action for reinstatement successful.** In an action under subsection (f), if the court determines the financing statement was authorized to be filed and was not communicated or caused to be communicated to the filing office with the intent to harass or defraud the person identified as the debtor, the court must order that the financing statement is reinstated. If a reinstatement order is issued by the court, the filing office must promptly file a record that identifies by its file number the initial financing statement the record relates to and indicates the financing statement has been reinstated.

(i) **Effect of reinstatement.** Upon the filing of a record reinstating a financing statement under subsection (h), the effectiveness of the financing statement is reinstated and the financing statement is considered to never have been terminated under this section. A continuation statement filed under section 336.9-515(d) after the effective date of a termination statement filed under subsection (c) becomes effective if the financing statement is reinstated.

(j) **Liability for wrongful filing.** In an action under subsection (f), if the court determines the filed record identified in an affidavit delivered to the filing office under subsection (b) was not authorized to be filed and was communicated or caused to be communicated to the filing office with the intent to harass or defraud the person identified as the debtor, the filing office and the person identified as the debtor may recover from the secured party that filed the action the costs and expenses, including reasonable attorney fees, that the filing office and the person identified as the debtor incurred in the action. The recovery is under this subsection in addition to any recovery the person identified as the debtor is entitled to under section 336.9-625.

Sec. 3. Minnesota Statutes 2020, section 336.9-516, is amended to read:

336.9-516 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 to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office. For purposes of filing office authorization, transmission of records using the Extensible Markup Language (XML) format is authorized by the filing office after the later of July 1, 2007, or the determination of the secretary of state that the central filing system is capable of receiving and processing these records;

(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 section 336.9-512 or 336.9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 336.9-515;

(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 surname; or

(D) in the case of a record filed or recorded in the filing office described in section 336.9-501 (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; 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 section 336.9-514 (a) or an amendment filed under section 336.9-514 (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 section 336.9-515 (d)~~.~~; or

(8) in the case of an initial financing statement or an amendment that provides a name of a debtor not previously provided in the financing statement to which the amendment relates, the office reasonably believes the record was communicated or caused to be communicated (i) with the intent to harass or defraud the person identified as the debtor, or (ii) for another unlawful purpose. The office has no duty to form a belief as to whether a record was communicated or caused to be communicated with the intent to harass or defraud the person identified as the debtor or for another unlawful purpose, and has no duty to investigate or ascertain facts relevant to whether the intent or purpose was present. The secretary of state is not required to return an image of a filing rejected under this clause.

(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

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 336.9-512, 336.9-514, or 336.9-518, is an initial financing statement.

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

(e) **Effectiveness of record; purchaser in good faith.** A record that the filing office initially refuses to accept under subsection (b)(8) but later accepts after receiving additional information is effective as if the office had not initially refused to accept the record, except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

Presented to the governor May 24, 2022

Signed by the governor June 2, 2022, 2:09 p.m.