



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1260 (as enrolled)

House Bill 5148 (as enrolled)

Sponsor: Senator Alan Sanborn (S.B. 1260)

Representative Scott Shackleton (H.B. 5148)

Senate Committee: Economic Development, Small Business and Regulatory Reform

House Committee: Government Operations

PUBLIC ACT 304 of 2004

PUBLIC ACT 212 of 2004

Date Completed: 9-1-04

RATIONALE

In recent years, numerous false filing statements evidently have been filed in order to harass government officials, particularly judges and corrections officers. (A financing statement is a document that, when filed, "perfects" the interest of a creditor (the secured party) in personal property of the debtor (the collateral). A financing statement must include the name of the debtor and the secured party, and indicate the collateral covered by the statement. When a creditor's security interest is perfected, the creditor has priority over other creditors of the debtor who have an interest in the collateral.)

Commonly, false financing statements are filed by or on behalf of prisoners, who may have a vendetta against the sentencing judge or a grudge against a prison guard. Although the Department of Corrections has taken steps to limit this practice, a number of false financing statements apparently are filed by inmates' nonincarcerated friends, who may or may not know that they are filing a false statement. A dissatisfied civil litigant also might file a statement naming the judge as a debtor.

As a rule, financing statements are filed with the Secretary of State (SOS). Although the SOS may reject a financing statement for technical reasons, such as incomplete information, the SOS does not examine the legitimacy of the information. Thus, prisoners or others who file fraudulent statements are able to create a public document that purports to record an interest in the property of a government official.

Often, the alleged debtor will not find out about the financing statement until he or she is denied credit or a mortgage, since financial institutions review the Secretary of State's records in determining a person's creditworthiness. Although a person may file a correction statement if he or she believes that filed information is inaccurate or was wrongfully filed, a correction statement does not affect the original filing.

It was suggested that someone who is named in a financing statement should be notified of the filing, and should have recourse against the person who filed it if the statement is fraudulent. It also was suggested that criminal penalties would help deter those who file false statements.

CONTENT

House Bill 5148 amends Part 5 of Article 9 of the Uniform Commercial Code, which governs the filing of financing statements, to do the following:

- Require the Secretary of State to give notice to an individual who is named as a debtor on a financing statement filed with the SOS.**
- Make it a felony for a person to file a false or fraudulent financing statement with the SOS.**
- Allow a debtor named in a false or fraudulent financing statement to bring an action against the person who filed it.**

- **Authorize the court to order the SOS to terminate a false statement.**
- **Prescribe a fee of \$15 (rather than \$10 plus other amounts) for filing and indexing a record.**
- **Waive the fee for an individual debtor filing a correction statement.**

Senate Bill 1260 amends the Code of Criminal Procedure to include in the sentencing guidelines filing a false or fraudulent financing statement. The offense will be a Class E felony against the public trust with a five-year statutory maximum.

The bills were tie-barred to each other, and will take effect on January 1, 2005.

A detailed description of House Bill 5148 follows.

Notice to Debtor

Under the bill, if the Secretary of State receives a financing statement for filing, and any debtor identified on it is an individual, the SOS must give written notice of the filing to that debtor. The notice must contain at least all of the following:

- The debtor's name and address as shown on the financing statement.
- The secured party's name and address as shown on the financing statement.
- The remedies available to the debtor under the Act if he or she believes that the financing statement is erroneously or fraudulently filed.

The Secretary of State also must give an individual debtor, at no charge, a copy or image of the filed financing statement and any attachments. If the debtor requests additional copies or images, the fees prescribed in Part 5 will apply to that request.

Criminal & Civil Actions

The bill prohibits a person from knowingly or intentionally filing a false or fraudulent financing statement with the SOS. In addition to any other penalty provided by law, a violation will be a felony punishable by imprisonment for up to five years and/or a maximum fine of \$2,500. If the person is convicted, the court may find that the financing statement is ineffective and order

the SOS to terminate it. The court also may order restitution.

If a person files a false or fraudulent financing statement with the SOS, a debtor named in it may file an action against the person seeking appropriate equitable relief or damages, including an order declaring the financing statement ineffective and ordering the SOS to terminate it, and reasonable attorney fees.

Filing & Search Fees

Currently, the fee for filing and indexing a record under Part 5 is \$10, plus the following additional fee or fees, if applicable:

- \$7, if the record is financing statement (or a financing statement amendment) in a form other than the one contained in the Act.
- \$12, if the record contains more than 100 pages.
- \$10 for each name over two that the filing office is required to index.

The bill deletes this fee structure and sets a fee of \$15 for filing and indexing a record under Part 5. There will be no fee for filing and indexing a correction statement filed with the SOS by an individual named as a debtor on a record indexed by the SOS.

Under the Act, a filing office (e.g., the office of the Secretary of State or a register of deeds) must charge a fee for responding to a request for a search of the records concerning a debtor, including issuance of a certificate describing each presently effective record filed concerning the debtor, if requested. The fee is \$6 plus additional fees for particular requests. The bill deletes the additional fee of \$6 that applies when a person requests a certificate and the search discloses more than 100 presently effective records filed concerning the debtor.

MCL 777.14g (S.B. 1260)
440.9501 & 440.9525 (H.B. 5148)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By naming a person as a debtor and listing collateral worth millions of dollars, false financing statements can do great harm to the reputation of the unsuspecting target and ruin his or her credit. "In essence, they perpetrate the fraud that a loan agreement exists between the two parties", according to the Secretary of State's office. Many of these bogus documents are filed by or on behalf of prisoners with a grudge against a judge, prison guard, law enforcement official, or witness. Evidently, inmates commonly share packets of information containing filing forms and instructions, or send the material to friends or relatives on the outside. The Department of Corrections has taken steps to confiscate the packets, halt mailings to the SOS, notify people on the outside that they are committing a violation, and pass on these people's names to the Attorney General.

Although these measures can reduce false filings by prisoners, there has been nothing to stop anyone else from filing a fraudulent claim against someone he or she wishes to harass. The SOS cannot refuse to accept a properly completed financing statement, and the only one who can amend it is the person who filed the statement. The bills establish consumer protections and remedies for victims by requiring the SOS to give people notice when they are named as a debtor in a financing statement, allowing victims to bring a civil action when they are falsely named, and authorizing courts to invalidate fraudulent statements. Although the criminal penalty will not discourage someone serving a life sentence, it might deter other inmates and those who help prisoners, as well as otherwise law-abiding citizens.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The \$5 increase in the fee for filing and indexing a record will generate approximately \$890,000 annually. The elimination of fees for particular records and certificates will result in the annual loss of approximately \$20,000. The Department of State will incur indeterminate costs related to notifications required under the House bill. The fee increases will cover additional costs, subject to annual appropriations.

The criminal penalty will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of the felony offense. Offenders will receive a sentencing guidelines minimum sentence recommendation from 0-3 months to 24-38 months. Local units of government will incur the costs of intermediate sanctions or incarceration in a local facility, both of which vary by county. The State will incur the costs of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries will benefit from any additional penal fine revenue.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.