

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5934

A bill to amend 1962 PA 174, entitled
"Uniform commercial code,"
(MCL 440.1101 to 440.11102) by adding section 9501a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 9501A. (1) A PERSON IDENTIFIED AS A DEBTOR IN A FINANCING
2 STATEMENT FILED WITH THE SECRETARY OF STATE MAY FILE AN AFFIDAVIT
3 WITH THE SECRETARY OF STATE IN THE FORM PRESCRIBED UNDER SUBSECTION
4 (2) STATING THAT THE FINANCING STATEMENT IS FRAUDULENT. A PERSON
5 SHALL NOT FILE AN AFFIDAVIT UNDER THIS SUBSECTION WITH RESPECT TO A
6 FINANCING STATEMENT FILED BY A REGULATED FINANCIAL INSTITUTION OR A
7 REPRESENTATIVE OF A REGULATED FINANCIAL INSTITUTION.

8 (2) THE SECRETARY OF STATE SHALL ADOPT AND MAKE AVAILABLE A
9 FORM AFFIDAVIT TO BE USED TO GIVE NOTICE OF A FRAUDULENT FINANCING
10 STATEMENT UNDER SUBSECTION (1).

1 (3) ON RECEIPT OF AN AFFIDAVIT UNDER SUBSECTION (1), THE
2 SECRETARY OF STATE SHALL TERMINATE THE FINANCING STATEMENT
3 EFFECTIVE ON THE DATE THE AFFIDAVIT IS FILED.

4 (4) THE SECRETARY OF STATE SHALL NOT CHARGE A FEE TO FILE AN
5 AFFIDAVIT UNDER THIS SECTION. THE SECRETARY OF STATE SHALL NOT
6 RETURN ANY FILING FEE PAID FOR FILING THE FINANCING STATEMENT,
7 REGARDLESS OF WHETHER THE FINANCING STATEMENT IS TERMINATED UNDER
8 THIS SECTION.

9 (5) THE SECRETARY OF STATE SHALL SEND NOTICE OF THE
10 TERMINATION OF A FINANCING STATEMENT UNDER SUBSECTION (3) TO THE
11 FILER OF THE FINANCING STATEMENT ADVISING THE FILER THAT THE
12 FINANCING STATEMENT HAS BEEN TERMINATED. IF THE FILER OF THE
13 FINANCING STATEMENT BELIEVES IN GOOD FAITH THAT THE STATEMENT WAS
14 LEGALLY FILED AND IS NOT FRAUDULENT, THE FILER MAY FILE AN ACTION
15 TO REINSTATE THE FINANCING STATEMENT.

16 (6) IF THE COURT IN AN ACTION UNDER THIS SECTION OR SECTION
17 9520(7) DETERMINES THAT THE FINANCING STATEMENT SHOULD BE
18 REINSTATED OR ACCEPTED, THE COURT SHALL PROVIDE A COPY OF ITS ORDER
19 TO THE SECRETARY OF STATE. ON RECEIPT OF AN ORDER REINSTATING A
20 FINANCING STATEMENT, THE SECRETARY OF STATE SHALL FILE A RECORD
21 THAT IDENTIFIES BY ITS FILE NUMBER THE INITIAL FINANCING STATEMENT
22 TO WHICH THE RECORD RELATES AND INDICATES THAT THE FINANCING
23 STATEMENT HAS BEEN REINSTATED.

24 (7) ON THE FILING OF A RECORD REINSTATING A FINANCING
25 STATEMENT UNDER SUBSECTION (6), THE FINANCING STATEMENT IS
26 EFFECTIVE AS A FILED RECORD FROM THE INITIAL FILING DATE. IF A
27 FINANCING STATEMENT THAT IS REINSTATED WOULD HAVE LAPSED DURING THE

1 PERIOD OF TERMINATION, THE SECURED PARTY MAY FILE A CONTINUATION
2 STATEMENT WITHIN 30 DAYS AFTER THE RECORD REINSTATING THE FINANCING
3 STATEMENT IS FILED. THE CONTINUATION STATEMENT IS EFFECTIVE AS A
4 FILED RECORD FROM THE DATE THE FINANCING STATEMENT WOULD HAVE
5 LAPSED. HOWEVER, A FINANCING OR CONTINUATION STATEMENT IS NOT
6 RETROACTIVE AS PROVIDED IN THIS SUBSECTION AS AGAINST A PURCHASER
7 OF THE COLLATERAL THAT GIVES VALUE IN REASONABLE RELIANCE ON THE
8 ABSENCE OF THE RECORD FROM THE FILES.

9 (8) IF THE COURT IN AN ACTION UNDER THIS SECTION DETERMINES
10 THAT THE FINANCING STATEMENT IS FRAUDULENT, THE FILER OF THE
11 FINANCING STATEMENT SHALL PAY THE COSTS AND EXPENSES INCURRED BY
12 THE PERSON IDENTIFIED AS A DEBTOR IN THE FINANCING STATEMENT IN THE
13 ACTION.

14 (9) AN INDIVIDUAL WHO FILES A MATERIALLY FALSE OR FRAUDULENT
15 AFFIDAVIT UNDER SUBSECTION (1) IS GUILTY OF A FELONY PUNISHABLE BY
16 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A \$2,500.00 FINE, OR
17 BOTH.

18 (10) AS USED IN THIS SECTION, "REGULATED FINANCIAL
19 INSTITUTION" MEANS A FINANCIAL INSTITUTION SUBJECT TO REGULATORY
20 OVERSIGHT OR EXAMINATION BY A STATE OR FEDERAL AGENCY. REGULATED
21 FINANCIAL INSTITUTION INCLUDES A BANK, SAVINGS BANK, SAVINGS
22 ASSOCIATION, BUILDING AND LOAN ASSOCIATION, CREDIT UNION, CONSUMER
23 FINANCE COMPANY, INDUSTRIAL BANK, INDUSTRIAL LOAN COMPANY,
24 INSURANCE COMPANY, INVESTMENT COMPANY, INSTALLMENT SELLER, MORTGAGE
25 SERVICER, SALES FINANCE COMPANY, OR LEASING COMPANY.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 94th Legislature are
3 enacted into law:

4 (a) Senate Bill No. 1236.

5 (b) House Bill No. 5935.