

# State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings



A Report for State Business Filing  
Agencies

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## Introduction

The vast majority of Uniform Commercial Code (UCC) financing statements filed with Secretary of State offices are legitimate documents authorized by relevant parties. However, financing statements with no legitimate basis under the UCC, often referred to as fraudulent or bogus filings, are a persistent problem for state filing offices and the individuals targeted by these spurious claims. Often used as a retaliatory measure by government separatist group members, prison inmates, and others looking to harass or intimidate public officials and corporations/lending institutions, these filings can create serious financial difficulties for victims.

While various judicial and administrative remedies are available to those who believe that a filing has wrongfully named them as a debtor, there is a general feeling amongst the nation's Secretaries of State that more can and should be done to address the issue. Removing a bogus lien from the public registry can be a costly and time-consuming process. In most states, this action requires a court order. The legal expenses that are involved can run thousands of dollars, and the process can take months, or even years. Restoring damaged credit histories can take even longer.

Collective efforts by states to subvert fraudulent UCC filings date back to 2004, when the National Association of Secretaries of State (NASS) and the International Association of Commercial Administrators (IACA) developed recommendations to help state filing offices promulgate a more uniform, nationwide response to the problem. The recommendations, updated in 2006, included the adoption of a clear judicial remedy for victims of bogus financing statements, along with stronger civil and criminal penalties for those who submit these claims.<sup>1</sup>

Given the dramatic increase in the number of fraudulent UCC filings during the past few years, state officials are now working under the auspices of NASS to identify additional ways to provide victims of bogus filings with expedited relief. Members of the NASS Business Services Committee have also urged states to contemplate faster, less costly options for keeping bogus liens out of public records. The role of the Secretary of State's office and its level of authority in the filings process are typically at the center of this latest push. Nearly half of all states have implemented their own legislative approaches to subverting fraudulent Uniform Commercial Code (UCC) filings, and more than a dozen of them have given the state filing office greater influence or oversight in the process.

This report is designed to provide state filing offices and other government agencies with an understanding of these relatively new laws, as well as the issues they seek to address. Section One provides background information on the rise in fraudulent filings, shedding light on the growing sovereign citizen movement and the most common types of bogus filings. Section Two provides an overview of the Uniform Commercial Code (UCC) and the important influence that this model law has on the role and authority of state filing offices. Section Three outlines the 2006 NASS/IACA Task Force recommendations and highlights recent state approaches to the proliferation of bogus filings.

## The Rise in Fraudulent UCC Filings

Bogus UCC filings have become more common in recent years due to the explosion in the number of people who identify with an anti-government belief system called the sovereign citizen movement, a loose network of individuals living across the U.S. who believe that the government is illegitimate. The Federal Bureau of Investigation (FBI) has designated sovereign citizens as a domestic terrorist movement, and a growing threat to law enforcement.<sup>2</sup> By some estimates, there are as many as 300,000 sovereigns in the United States, and their numbers are likely to increase.<sup>3</sup> For many of these individuals, paper-based tactics are used to strike back at government interference in their lives. Numerous websites sell how-to kits or offer to train subscribers on how to perpetrate filing schemes in exchange for large fees.

Most of these filings utilize tell-tale buzzwords and share common indicators, including:

- References to the Bible, the Constitution, U.S. Supreme Court Decisions, or foreign treaties
- Names written in all capital letters, or interspersed with colons
- Signatures followed by the words “under duress,” “Sovereign Living Soul”, or a copyright symbol
- Personal seals, stamps, or thumb prints in red ink
- The words “accepted for value”
- Copies of personal documents, such as birth certificates or Social Security cards

According to the American Bar Association, the vast majority of all bogus UCC financing statements also share another important characteristic: They indicate that the debtor is a transmitting utility.<sup>4</sup> This term is used to refer to “any person who is primarily engaged in the railroad, street, railway or trolley bus business, the electric or electronic communications transmission of electricity, steam, gas, or water, or the provision of sewer service.”<sup>5</sup> Fraudulent filers, particularly sovereigns, use this designation in an attempt to ensure that their financing statements remain indefinitely on file. Under UCC Section 9, transmitting utility filings do not lapse. This is a major contrast to most UCC financing statements, which unless continued by the secured party, will lapse after a period of five years from the date of filing.

In general, there are three main types of bogus filings: harassment filings, strawman filings, and authentication filings. It is important to understand the intent behind these submissions, so that states can effectively deal with them. Learning to recognize the common indicators within these spurious claims can also be helpful for policymakers and those who work in state filing offices on the front lines of UCC transactions. All three types of spurious claims will be covered in the following section of this report.

### Harassment Filings

Sovereigns regularly file retaliatory, bogus financing statements and real property liens against government officials, corporations, and banks (or their employees) as a response to a perceived

injustice. Judges, prosecutors, and public defenders are also frequently targeted. Although they are not legally effective, victims may spend years battling their false claims, and some may not even realize they have been targeted until they attempt to conduct a property transaction, or open a line of credit.

Financing statements filed to harass a target victim often falsely indicate that the “debtor” owes large sums of money to the filer or purported “secured party.” Harassment filings have become more common in the past decade as prison inmates have learned about these tactics and adopted them in large numbers. For example, a prisoner seeking retaliation against a government official may file an unauthorized financing statement claiming that the official owes the prisoner millions of dollars.

### **Strawman Filings**

Under a complicated scheme known as “redemption theory,” sovereign citizens believe that the federal government creates a “strawman” account at the U.S. Treasury Department representing the monetary worth of each citizen. An individual’s strawman account supposedly contains anywhere from \$600,000 to \$3 million. Sovereign citizens believe that a UCC financing statement allows them to “secure an interest” in their strawman account and gain access to a secret account holding these funds. This process is sometimes referred to as “freeing money from the strawman.”<sup>6</sup> A strawman filing will often include the same name for both secured party and debtor, with the name of the debtor (the strawman) spelled entirely in uppercase letters. The debtor name may also include the words “corporation” after it. The name of the secured party (the physical individual) is often spelled with initial capital letters only, and a comma or a semicolon before the surname (e.g. John-Robert: Doe).<sup>7</sup>

### **Authentication Filings**

Aside from harassment and strawman claims, sovereigns sometimes submit fraudulent financing instruments in conjunction with bogus UCC filings to try and mislead third parties about the authenticity of the underlying documents.

## **The UCC and the Role of the Secretary of State's Office**

In order to understand why so many bogus or fraudulent liens are accepted for recording by state filing offices in the first place, it is important to highlight the Uniform Commercial Code (UCC) and its influence on the role of the Secretary of State's office. The UCC is a comprehensive model uniform act addressing most aspects of commercial law. The Uniform Law Commission and the American Law Institute are responsible for maintaining and revising its content.

Under Revised Article 9 of the code, Secretary of State offices typically serve as the central filing location for public notices of secured transactions. These public notices, called financing statements, indicate a commercial agreement between a debtor and a secured party.<sup>8</sup> They are used by banks, mortgage

companies, and other lending institutions to determine whether there are existing claims against the collateral of a prospective debtor.

### **The Limitations of the UCC Article 9 in Addressing Fraudulent Filings**

According to the uniform language of the UCC, the Secretary of State's office is limited to its role as a filing office for these public records. The office does not have the authority to verify the accuracy or the validity of documents when they are filed, even if they are blatantly fraudulent. If a financing statement is submitted with all of the required information, the Secretary of State must record the document. In fact, the original text of Article 9 prohibits states from rejecting financing statements unless specific grounds exist for this action. Even then, the reasons for rejection are limited to ministerial issues, such as failure to pay the proper fee, incomplete forms, or illegible writing.<sup>9</sup>

Furthermore, the options available to a person named in an unauthorized financing statement are limited under the UCC. There are two main remedies to assist potential victims: an information statement and a termination statement. Formerly known as a correction statement, an information statement can be submitted to the filing office to show that a named debtor would like to amend the record. A termination statement affirms that the unauthorized financing statement is not effective. The person named as a debtor may demand that the secured party file a termination statement, or if the secured party fails to act, the debtor himself/herself may submit one.<sup>10</sup>

Neither an information statement nor a termination statement provides the means to quickly or completely remove the bogus filing from the public record. In fact, the submission of an information statement does not actually invalidate the financing statement. Its only purpose is to provide public notice that the validity of the financing statement is in dispute.<sup>11</sup> Although the filing of a termination statement will indicate in the public record that the unauthorized financing statement is not valid, it does not remove the financing statement from the registry. The UCC requires the financing statement (including the termination statement) to remain on record until at least one year after it lapses.<sup>12</sup> However, while victims may file a termination statement to indicate that a financing statement is invalid, potential secured parties doing an electronic records search may miss the fact that a termination statement has been filed.

It should be noted that while there are a number of limitations, UCC Revised Article 9 also permits a person named as the debtor in an unauthorized filing to seek injunctive relief, to include the collection of damages for financial harms brought about by the claim.<sup>13</sup> Specifically, individuals who submit unauthorized financing statements may be subject to a \$500 penalty per each bogus filing, and an additional \$500 penalty for each refusal to file a termination statement.<sup>14</sup>

### **NASS/IACA Task Force Recommendations and New Approaches**

The drafters of UCC Revised Article 9 have acknowledged the challenges in dealing with bogus UCC filings, as well as the code's inability to provide a completely satisfactory response to the problem. The

drafters' comments have pointed to judicial remedies and criminal penalties as the most effective and least burdensome approaches.<sup>15</sup>

As a result, the NASS/IACA Bogus Filings Task Force devised its 2006 recommendations around this notion.<sup>16</sup> One recommendation encouraged states to allow individuals named as debtors in an unauthorized financing statement to file a motion for judicial review of the filing without paying a fee. After issuing a decision based solely on the documentation submitted by the relevant parties, the court could then order the filing office to remove fraudulent financing statements from the record. Another recommendation encouraged states to adopt laws that would make it a criminal felony to file a financing statement for the purpose of harassment, while still another focused on civil penalties. Under the recommendation on civil penalties, states were urged to take steps that would allow a person to seek damages, court costs, attorney's fees, related expenses, and an injunction against anyone who files a financing statement for the purpose of harassing or defrauding someone.

While a number of states have adopted laws that conform to these recommendations, the significant increase in fraudulent filings during the past few years has required some states to consider their own Article 9 legislative initiatives. Many of these new laws and legislative proposals have a direct impact on Secretary of State offices and how they handle the filing of UCC records.

## **State Approaches to Fraudulent Filings**

When the NASS/IACA Bogus Filings Task Force Recommendations came up for renewal in July 2011, Secretaries of State decided the problem of fraudulent filings had become so widespread and prolific, that new approaches were needed. Their decision was based on shared concerns that the NASS/IACA recommendations continued to place significant burdens on victims, as well as the courts, which have experienced some delays and backlogs due to fraudulent filing cases. Instead, NASS members decided to examine alternative approaches that would allow state filing offices to play a more active role in subverting these filings, either by expanding the authority of state filing offices so they can refuse to accept bogus UCC financing statements, or by allowing the offices to quickly and inexpensively terminate financing statements and wipe them from the record under certain conditions.

A number of states have already adopted non-uniform approaches to this problem. In some cases, state Article 9 amendments impose additional duties on the office of the Secretary of State, and in some cases, it is the Secretary of State that must determine whether a contested record was, in fact, filed without authorization.

Generally speaking, the state laws that address this issue can be categorized into four different approaches: pre-filing administrative discretion, post-filing administrative relief, post-filing expedited judicial relief, and enhanced criminal/civil penalties. Each of these approaches is discussed in this section of the report, while summaries of the relevant state laws are provided in Appendices I – IV. In

states where the Secretary of State's office does not handle UCC filing duties, the report focuses on the equivalent state agent.<sup>17</sup>

### **Pre-Filing Administrative Remedy**

A pre-filing administrative remedy gives the Secretary of State's office broader discretion in rejecting a materially false or fraudulent UCC record submitted for filing. At least nineteen states currently have some type of statutory pre-filing remedy (see [Appendix I](#)), although the scope of the filing office's authority can vary from state to state. For example, in Nebraska, and North Dakota, the filing office may reject a financing statement that has the same name listed as the debtor and secured party. In North Carolina, the filing office may reject a financing statement that is outside the scope of the law, intended for an improper purpose, or intended to harass someone. In Alabama, the filing office may reject a financing statement that appears fraudulent, or has the same name listed as the debtor and secured party. In Texas, the Secretary of State, in consultation with the Attorney General, may reject a financing statement that appears fraudulent.

For a pre-filing remedy to be most effective, it must be comprehensive enough to cover the various types of bogus UCC filings. While some information can be helpful when identifying a strawman filing (e.g. same name for secured party and debtor), harassment and authentication filings require a more general standard. Thus, a comprehensive pre-filing remedy likely requires that the filing office have broad authority to reject a financing statement.

South Carolina is one state that has taken this approach, adopting a statute that defines submissions that can be rejected by the Secretary of State's office given any of the following conditions:

[The financing statement] is not created pursuant to the UCC; is intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person; names the same person as both debtor and secured party; describes collateral not within the scope of the UCC; or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>18</sup>

The obvious benefit of a pre-filing remedy is that it can prevent a bogus financing statement from being filed in the first place. As a result, a person targeted by a harassment filing does not have to spend the time and resources often required to remove the filing from the public record, and they are spared the potential negative impact that the bogus financing statement could have on their credit, which may linger even after a filing has been expunged from the record. The other benefit important to the Secretaries of State, as stewards of the public record, is this approach maintains the integrity of the public record by not allowing fraudulent information to enter into the public record.

The primary challenge states face when implementing a pre-filing remedy is the limitation of resources in the state filing office. A pre-filing remedy requires active review of filings that come into the office on a daily basis, both in person, as well as electronically. Staff must be trained to review incoming filings

for signs of fraud according to the law. If an electronic filing system cannot help to flag filings for this type of information, the work must be carried out by humans.

### **Post-Filing Administrative Remedy**

A post-filing administrative remedy gives the filing office the authority to take corrective action with respect to existing UCC financing statements. At least fourteen states have a law authorizing this type of remedy (see [Appendix II](#)). Once again, the designation of an individual debtor as a transmitting utility typically provides grounds for cancelling a financing statement and/or removing it from the public record. Laws in other states are broader. In Montana and North Carolina for example, the filing office may cancel and remove a financing statement from the record that has been determined to have been fraudulently, wrongfully, or improperly filed.

A post-filing remedy can be most effective if it provides the filing office with the authority to remove a bogus filing from the record. As part of this process, the state may be required to provide some type of due process to the relevant parties. In Montana, the filing office must give the parties notice, and provide an opportunity to respond prior to removing a filing from the records. In West Virginia, the Secretary of State may commence an administrative proceeding to remove a filing from the record after publishing notice of the proceeding in the state register.

By authorizing the filing office to remove a bogus financing statement from the record, victims of harassment filings do not have to seek removal of the filing through the courts, which can reduce costs to both victims and the state, speed up the termination and removal process, and provide a less complicated means for addressing fraudulent filings.

The main challenge posed by this approach is that the victim of the harassment filing may only find out about this fraudulent filing after encountering trouble securing credit or conducting some kind of property-related transaction.

### **Post-Filing Expedited Judicial Relief**

Post-filing expedited judicial relief authorizes corrective action on an existing financing statement through an accelerated judicial review process, with no fee required to bring about the action (see [Appendix III](#)). These laws are very similar to the judicial remedy proposed by the NASS/IACA Bogus Filing Task Force. At least nine states have adopted this type of law, and others have considered them in recent years. In most cases, state law authorizes a person who believes he/she is named as the debtor on a fraudulent financing statement to file a motion for expedited judicial review of the filing, and the court may order that the filing be removed from the records.

Victims of a harassment filing are provided with a faster, less costly means for obtaining a declaratory judgment or expungement order from the courts to have the filing removed.<sup>19</sup> In some states, this approach has significantly improved the timeframe for resolving questions about a disputed filing and

streamlined the legal process for dealing with such records. For example, targets of bogus filings in Minnesota can now resolve the situation in a matter of weeks or months, instead of years.

The benefit of this approach seems to be that the court system continues to bear responsibility for handling these issues, which means that the Secretary of State's office does not need to have additional resources, training, and staffing to provide a faster, less costly solution.

One of the drawbacks of expedited judicial relief is that it still places significant burdens on the victims. Although there may not be a fee for filing a motion for expedited judicial review, it is still a court action, and a victim will often need to hire an attorney and pay the associated costs. Since this remedy also places burdens on the courts, they may be unwilling to support it.

### **Post-Filing Criminal/Civil Penalties**

Criminal and civil penalties are designed to deter and punish those who attempt to file spurious claims using UCC financing statements. At least 15 states have laws that make it a crime to fraudulently submit a filing (see [Appendix IV](#)). Typically, the first offense is a misdemeanor crime, while subsequent offenses are charged as a felony. However, a few states, including Minnesota and Texas, make it an outright felony to attempt to harass someone using a fraudulent financing statement.

At least 15 states have laws authorizing civil penalties. Many of these laws permit victims to seek damages, court costs, attorney's fees, related expenses, and injunctions. In a few cases, fines may also be imposed. In West Virginia, the fine is \$500 per fraudulent filing, while a fraudulent filer in Georgia can be charged up to \$10,000 for his or her offense.

Criminal and civil penalties can help prevent the filing of bogus financing statements, and are an important part of a comprehensive approach to the bogus filing problem. However, penalties alone may not provide adequate relief to the victims of bogus filings.

### **Conclusion**

As long as sovereigns and other members of fringe anti-government groups continue to thrive, state filing offices will need to consider laws and policies that deter and defend against bogus UCC filings while maintaining the "open drawer" thrust behind Revised Article 9. Secretaries of State and other state policymakers must decide how they can best equip state filing offices, law enforcement, and members of the public to mitigate the impacts of fraudulent filings and harassment liens. State solutions must cover a number of problematic filings, including harassment filings, strawman filings, and deceptive authentication filings.

Several pre-filing and post-filing approaches are currently available, along with the NASS/IACA approach

that includes strong criminal and civil penalties for those who file bogus UCC claims. The role and authority of the Secretary of State are important aspects of this work. For states that seek to expand the authority of a filing office, budgets may need to be increased to cover all of the additional staffing, training, and other additional costs associated with any changes in the process.

Moving forward, it remains to be seen how imposing a new investigative duty on the Secretary of State will impact the number of fraudulent UCC filings in states that have taken this approach. Additionally, it is unclear whether the adoption of non-uniform legislation impacts the reliability of state filing systems. These issues will undoubtedly be important discussion topics for the members of NASS.

In the meantime, it is clear to the nation's Secretaries of State that states are indeed interested in doing more to assist the targets of fraudulent UCC filings and counterfeit claims. Costly, time-consuming remedies are not providing adequate relief for these citizens, and the fallout is putting a strain on backlogged courts and busy state filing offices. Even where an expedited judicial review is available, the burden of litigation is still on the victims. A remedy that allows state filing offices to subvert a bogus filing and/or allows for its quick removal from the record, in conjunction with strong criminal and civil penalties, will likely be the most effective way for states to alleviate the burdens on bogus filing victims.

## **Appendix I: State Pre-Filing Administrative Remedies**

### **Alabama**

The filing office may reject a UCC filing that appears fraudulent on its face, and a filing that identifies the debtor and secured party as the same person. If the secured party is able to demonstrate that a rejected filing should have been accepted, the filing office must file the document with an effective date of the time that it was originally submitted for filing.<sup>20</sup>

### **California**

The Secretary of State may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.<sup>21</sup>

### **Colorado**

The filing officer may reject a lien or document that the filing officer reasonably believes is “spurious.” A spurious document is one that is groundless, contains a material misstatement or false claim, or is otherwise patently invalid.<sup>22</sup>

The filing officer is not required to accept for filing any lien against a local, state, or federal official or employee based upon the performance or nonperformance of that person’s duties, unless the lien or claim is accompanied by a state or federal court order authorizing the filing.<sup>23</sup>

### **Idaho**

The filing office may reject any UCC financing statement where the debtor and the secured party appear to be the same individual. The filing office may require reasonable proof from the secured party that an individual debtor is in fact a transmitting utility. The Secretary of State may petition the courts to delete unauthorized filings.<sup>24</sup>

### **Illinois**

A filing office may reject a financing statement if the filing office has reason to believe that debtor does not meet the definition of a transmitting utility, the transaction does not meet the definition of a manufactured-home transaction, the transaction does not meet the definition of a public-finance transaction, or the financing statement is unauthorized, invalid, or filed with the intent to harass or defraud. The Secretary of State may refuse to accept a record for filing on these grounds only if the refusal is approved by the Department of Business Services of the Secretary of State and the General Counsel to the Secretary of State.<sup>25</sup>

A secured party who believes in good faith that a record rejected by the filing office was not in violation of applicable law may file an action to require that the record be accepted. If a court determines that a

rejected record should be accepted, the Secretary of State must file the record and include a notice indicating that the record was filed pursuant to its initial filing date.

The above provisions do not apply to a record communicated to the filing office by a regulated financial institution except that the Secretary of State may request from the secured party of record, or the person that communicated the record, additional documentation supporting that the record was communicated by a regulated financial institution.

### **Indiana**

The Secretary of State may refuse to accept a financing statement for filing or recording if it is not required or authorized to be filed or recorded with the secretary of state; or the secretary of state has reasonable cause to believe the financing statement is materially false or fraudulent. A fraudulent financing statement that the secretary of state may refuse to accept includes any financing statement that has the same name listed as both the debtor and the secured party, any financing statement that identifies an individual debtor as a transmitting utility, and any financing statement that is determined to be intended for an improper purpose, such as hindering, harassing, or wrongfully interfering with another person or entity. A fraudulent financing statement also includes a statement that is filed without the consent or participation of the obligor named in the financing statement, the person named in the financing statement as debtor, and the owner of collateral described or indicated in the financing statement; a financing statement that is filed by consent of an agent, a fiduciary, or another representative of the secured party of record without the consent of the secured party; and any financing statement that is forged. The secretary of state does not have a duty to inspect, evaluate, or investigate a financing statement that is presented for filing or recording.<sup>26</sup>

### **Michigan**

The Secretary of State may reject any filing that the Secretary of State has reason to believe is false or fraudulent; asserts a claim against a current or former federal, state, or local official or employee related to the performance of that person's duties, unless the filer holds a security agreement or court judgment; indicates that the secured party and the debtor are substantially the same; or indicates that the individual debtor is a transmitting utility.

If the Secretary refuses to accept a record for filing, the person attempting the filing may seek a court order requiring the Secretary to accept the filing. If the court orders the record to be filed, it is effective as filed from the initial filing date, except against a person who purchases the collateral in reasonable reliance upon the absence of the filing from the record.<sup>27</sup>

The Secretary of State must provide written notice to individuals named as a debtor in a financing statement and provide them with a copy of the financing statement. The notice must include the remedies that are available if the debtor believes that the financing statement is fraudulent.<sup>28</sup>

### **Mississippi**

Filing does not occur with respect to a record that a filing office refuses to accept because in the case of

an initial financing statement or an amendment the filing office believes in good faith that the record was communicated to the filing office in violation of applicable law (see Appendix II).<sup>29</sup>

### **Montana**

If the filing office has reason to believe that a lien submitted for filing is improper or fraudulent, it may reject the submission after giving notice and an opportunity to respond to the parties.<sup>30</sup>

### **Nebraska**

A financing statement will be rejected if it lists the same person as debtor and secured party.<sup>31</sup>

### **North Dakota**

A UCC financing statement must be rejected if it lists the same individual as both debtor and secured party.<sup>32</sup>

### **North Carolina**

The Secretary of State may refuse to accept a financing statement that the Secretary determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.<sup>33</sup>

### **Ohio**

The Secretary of State may refuse to accept a document for filing or recording if the Secretary has reasonable cause to believe that the document is materially false or fraudulent. If the Secretary of State refuses to accept a document, the person attempting to file the document may seek a court order requiring the Secretary of State to accept it for filing.<sup>34</sup>

### **Oregon**

Transmitting utility is re-defined as an organization, not a person, primarily engaged in the business of a utility. The filing office may not accept a claim of encumbrance on the property of a federal or state official or employee based on the performance or nonperformance of their duties. The filing office may refuse to accept a financing statement that on its face reveals it is being filed for a purpose not within the scope of the UCC, including factors such as whether the debtor and the secured party are the same person, or whether the collateral described is within the scope of the UCC.<sup>35</sup> If the Secretary of State refuses to accept a record for filing based on this provision, the secured party may contest the refusal by requesting a hearing before the Secretary of State within 20 days. If the Secretary of State determines that the record should have been filed, the filing office must index the record as of the date it was originally presented for filing.<sup>36</sup>

### **South Carolina**

The Secretary of State may refuse to accept a financing statement that the Secretary of State determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. The Secretary of State may also refuse to accept a financing statement that names the same person as both debtor and secured party,

describes collateral not within the scope of applicable law, or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>37</sup>

### **Texas**

If the Secretary of State believes that a document filed to create a lien is fraudulent, the Secretary must request that the prospective filer provide additional documentation supporting the existence of the lien, and request the assistance of the attorney general in determining whether the proposed lien is fraudulent. For purposes of this provision, a document is presumed to be fraudulent if it is filed by or on behalf of an inmate in a correctional facility, unless it is accompanied by a sworn, notarized statement signed by the debtor acknowledging that the person entered into a security agreement with the inmate and authorized the filing of the lien.<sup>38</sup>

### **Virginia**

The filing office must refuse to accept a financing statement if it appears to the office that the filing is for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with a person or promote or conduct an illegitimate object or purpose; is materially false or fraudulent; or indicates that the debtor and the secured party are substantially the same person or that an individual debtor is a transmitting utility.<sup>39</sup>

### **Washington**

The UCC filing office may refuse to accept a document for filing if it appears to be fraudulent or not within the scope of UCC. If the filing office refuses to accept a document, the filer may contest the decision by filing a petition for review in the Superior Court. The process is provided for in the Administrative Procedure Act which establishes the exclusive means of judicial review of agency action.

### **West Virginia**

Filing does not occur with respect to a record that a filing office refuses to accept because in the case of an initial financing statement or an amendment the filing office believes in good faith that the record was communicated to the filing office in violation of applicable law (see Appendix IV).<sup>40</sup>

## **Appendix II: State Post-Filing Administrative Remedies**

### **Alabama**

A recording official may nullify or expunge from an official record a false or fraudulent lien or instrument. A person or entity whose rights are affected by the filing of a lien or other instrument may petition a recording official to nullify or expunge the filing. A party may appeal the decision of the recording official through the courts.<sup>41</sup>

### **Illinois**

A person named in a financing statement that the person believes was unauthorized, invalid, or filed with the intent to harass or defraud, may file an affidavit with the secretary of state. Upon receipt of the affidavit the secretary of state must request additional documentation from the relevant parties. The Department of Business Services of the Office of the Secretary of State and the Office of General Counsel must review the documentation within 30 days. The Secretary of State may terminate the record if the Secretary has a reasonable basis for determining the record is in violation of applicable law. The Secretary of State may initiate an administrative action with regard to a filing if the Secretary has reason to believe it is in violation of applicable law. The Secretary of State may give heightened scrutiny to a record that indicates that the debtor is a transmitting utility or that indicates that the transaction to which the records relates is a manufactured-home transaction or a public-finance transaction.

A secured party who believes in good faith that a record communicated to the filing office was not in violation of applicable law may file an action to require that the record be reinstated. If a court determines that a terminated record should be reinstated, the Secretary of State must re-file the record and include a notice indicating that the record was re-filed pursuant to its initial filing date. If the period of effectiveness of a re-filed record would have lapsed during the period of termination, the secured party may file a continuation statement within 30 days after the record is re-filed. A re-filed record is considered to have been ineffective against all persons for all purposes except against a purchaser of the collateral in reasonable reliance on the absence of the record from the files.

The above provisions do not apply to a record communicated to the filing office by a regulated financial institution except that the Secretary of State may request from the secured party of record, or the person that communicated the record, additional documentation supporting that the record was communicated by a regulated financial institution.

### **Michigan**

A person may file an affidavit with the Secretary of State stating that the person is named as the debtor in a fraudulent financing statement. No fee is required for the filing. Filing of a false affidavit is a felony. On receipt of the affidavit, the Secretary of State must terminate the financing statement, and notify the purported secured party. If the secured party claims that the filing is authorized, that person may seek

reinstatement of the filing. If a court determines that the financing statement is fraudulent, the filer of the unauthorized statement must pay the court costs and expenses of the person who brought the action.

If a court determines that the financing statement should be reinstated, it must notify the Secretary and the Secretary must reinstate the filing, and indicate that it is effective from the initial filing date. If a financing statement that is reinstated would have lapsed during the period of termination, the secured party may, within 30 days after the filing is reinstated, file a continuation statement retroactive to the day the filing would have lapsed. However, if, during the time that the financing statement is terminated, someone purchases the collateral based in reasonable reliance on the absence of the statement from the records, the reinstatement or continuation statement is not retroactive against that person.<sup>42</sup>

If a correction statement is filed with the Secretary claiming that a previously filed record was wrongfully filed, the Secretary must determine whether it was wrongfully filed. The Secretary may require the person who filed the correction statement or the secured party to provide any relevant additional information. If the Secretary finds that the record was wrongfully filed, the Secretary must terminate the record, and notify the secured party.<sup>43</sup>

### **Mississippi**

No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is filed with the intent to harass or defraud the person identified as debtor in the record or any other person; is not authorized or permitted under applicable law; is not related to a valid existing or potential commercial or financial transaction, an existing agricultural or other lien, or a judgment of a court of competent jurisdiction. The Secretary of State may initiate a review of a record presented for filing or a filed record if the Secretary of State receives an information statement filed by the debtor with the Secretary of State alleging the record was communicated to the filing office in violation of applicable law or the Secretary of State has reason to believe, from information contained in the record or obtained from the person that communicated the record to the filing office, that the record was communicated to the filing office in violation of applicable law. Upon initiating the review, the Secretary of State shall additional documentation from the parties supporting the effectiveness of the record. The Secretary of State may terminate the record effective 30days after the first request for additional documentation is sent if it has a reasonable basis for concluding that the record was communicated to the filing office in violation of applicable law. The Secretary of State may give heightened scrutiny to a record when: the record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction; the record indicates that the debtor and the secured party are substantially the same; the debtor is a transmitting utility; or the transaction to which the record relates is a public-finance transaction. A secured party of record that believes in good faith the record was not communicated to the filing office in violation of applicable law may file a court action to require the Secretary of State to accept or reinstate the record. Neither the

filing office nor any of its employees shall incur liability for the termination or failure to terminate a record under this section or for the refusal to accept a record for filing in the lawful performance of the duties of the office or employee. These provisions do not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution.<sup>44</sup>

### **Montana**

If the filing office receives a complaint that a filed lien is improper or fraudulent, the filing office may remove the filing from the existing records after giving both parties notice and an opportunity to respond.<sup>45</sup>

### **Nebraska**

A person identified as the debtor in a financing statement may file an affidavit with the filing office stating that the financing statement was filed by a person not entitled to do. The filing office may file a termination statement with respect to the financing statement identified in the affidavit. The termination statement shall take effect thirty days after it is filed except as provided below. On the same day that the filing office files a termination statement it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record that the termination statement has been filed.

A secured party of record identified in a financing statement as to which a termination statement has been filed may bring an action within twenty business days after the termination statement is filed against the individual who filed the affidavit seeking a determination as to whether the financing statement was filed by a person entitled to do so. The action shall have priority on the court's calendar and shall proceed by expedited hearing. A court may order preliminary relief, including, but not limited to, an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of the court or by an order issued by another court and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall promptly file an amendment to the financing statement indicating that the termination statement is effective.

If a court determines that the financing statement was filed by a person entitled to do so and the filing office receives a certified copy of the court's final judgment or order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall remove the termination statement and any amendments filed from the files. If the filing office receives the certified copy after the termination statement takes effect and within thirty days after the final judgment or order was entered, the filing office shall promptly file an amendment to the financing statement that indicates that the financing statement has been reinstated. Upon the filing of an amendment reinstating

a financing statement the effectiveness of the financing statement is retroactively reinstated and the financing statement shall be considered never to have been ineffective against all persons and for all purposes. A financing statement whose effectiveness was terminated under and has been reinstated under subsection shall not be effective as against a person that purchased the collateral in good faith between the time the termination statement was filed and the time of the filing of the amendment reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement.

The filing office shall not charge a fee for the filing of an affidavit or a termination statement. The filing office shall not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is subsequently reinstated. Neither the filing office nor any of its employees shall be subject to liability for the termination or amendment of a financing statement in the lawful performance.<sup>46</sup>

### **New York**

Upon conviction of a crime where the defendant intentionally filed a false financing statement the court must file a certificate with the Secretary of State certifying that a judgment of conviction has been entered against the defendant who was listed as the secured party.<sup>47</sup>

### **North Carolina**

When a person files a correction statement alleging that a previously filed record was wrongfully filed and should have been rejected, the Secretary of State must determine whether the assertions are correct. In order to make this determination, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State. If the Secretary of State finds that the record was wrongfully filed and should have been rejected, the Secretary of State must cancel the record and it will be void and have no effect.<sup>48</sup>

### **Oregon**

If a filing of encumbrance has been made against a federal or state official or employee based on the performance or nonperformance of their duties, a sworn notice may be given to the office which shall clear title to the property. An expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Pennsylvania**

Department of State may conduct an administrative hearing to determine if a financing statement was fraudulently filed. A financing statement is fraudulent if no rational basis exists entitling the person to file the financing statement, and it appears that the person filed the initial financing statement with the intent to annoy, harass, or harm the debtor. If the Department determines that the financing statement is fraudulent, and no appeal is filed, the Department must file a correction statement indicating that the financing statement was found to be fraudulent and may be ineffective. If the decision is appealed and the court affirms the decision, the correction statement must indicate this.<sup>49</sup>

**Tennessee**

Upon conviction for an offense pursuant to applicable state law (see Appendix IV) any court having or exercising circuit court jurisdiction may order the removal from any record the lien or document evidencing an encumbrance, and order that the document be void and of no legal effect, and, if so ordered, the court shall cause the removal of any cloud on a title that may have arisen because of the document.<sup>50</sup>

**Virginia**

If the filing office becomes aware that a record may have been wrongfully filed because it should have been rejected, the filing office may review the record and relevant circumstances and, if it determines that the record was wrongfully filed and should have been rejected (as provided under applicable law requiring refusal of a filing – see Virginia pre-filing remedy above), the record shall be deemed void and ineffective; and the filing office shall remove the record from the index and communicate the foregoing to the person that presented the wrongfully filed record and to other persons, as appropriate.<sup>51</sup>

**Washington**

The UCC filing office may remove a financing statement from the record if it appears to be fraudulent or not within the scope of UCC. If the filing office removes a document, the filer may contest the decision by filing a petition for review in the Superior Court. The process is provided for in the Administrative Procedure Act which establishes the exclusive means of judicial review of agency action.

**West Virginia**

A person identified as a debtor in a filed record the person believes was caused to be communicated to the filing office in violation of applicable law (see Appendix IV) may file with the Secretary of State an affidavit to that effect. Upon receipt of the affidavit or upon administrative action by the Secretary of State, the Secretary of State shall request from the parties additional documentation supporting the effectiveness of the record. Secretary of State shall review all such documentation received within 30 days after the first request for additional documentation is sent if the Secretary of State has a reasonable basis for concluding that the record was communicated to the filing office in violation of applicable law. The Secretary of State may initiate an administrative with regard to a filed record if the Secretary of State has reason to believe, from information contained in the record or obtained from the person who communicated the record to the filing office, that the record was communicated to the filing office in violation of applicable law. The Secretary of State may give heightened scrutiny to a record that indicates the debtor is a transmitting utility or that indicates the transaction to which the record relates is a manufactured home transaction or a public finance transaction. The Secretary of State shall promptly communicate to the secured party of record a notice of the termination of a record. A secured party of record who believes in good faith that the record was not communicated to the filing office in violation of applicable law may file an action to require that the record be reinstated by the filing office. If the court determines that a record terminated or rejected should be reinstated or accepted, the court shall provide a copy of an order to that effect to the Secretary of State. On receipt of an order reinstating a terminated record, the Secretary of State shall refile the record. Neither the filing

office nor any of its employees incur liability for the termination or failure to accept a record for filing in the lawful performance of the duties of the office or employee. These provisions do not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution.<sup>52</sup>

## **Appendix III: State Post-Filing Expedited Judicial Relief**

### **Colorado**

Any person who believes a spurious lien or document has been filed against the person's property may seek a court order declaring the lien invalid. The person who filed the document will have up to 20 days to appear before the court and show cause why the document should not be declared invalid. If the person fails to appear, the lien will be declared invalid and released. If, following a hearing, the court finds that the document is spurious, it must issue an order releasing the spurious document, and it must award costs, including attorney's fees, to the person who brought the action.<sup>53</sup>

### **California**

A public officer or employee whose property is subject to a false lien or other encumbrance may petition the court for an order directing the person claiming the lien or encumbrance to appear before the court at a hearing and show cause why the lien or encumbrance should not be stricken. The hearing date must allow adequate time for notice. If the court finds that the lien or encumbrance is false, it may issue an order striking and releasing the lien or encumbrance and may award costs and reasonable attorney fees to the petitioner.<sup>54</sup>

### **Indiana**

A person who believes that a financing statement is fraudulent may file a motion for judicial review of the financing statement. If a court determines that a financing statement is fraudulent, the court may award the prevailing party all costs related to the review, declare the financing statement ineffective; and order the office or agency that possesses the financing statement to terminate or purge the financing statement.<sup>55</sup>

### **Kansas**

A person named as the debtor on a lien the person believes to be fraudulent may file a motion for expedited judicial review of the status of the lien. A lien is considered fraudulent if the person named as debtor did not consent to the lien. No filing fee is required for the motion. The court may issue a finding based solely on the documentation submitted with the motion, and without notice of any kind. The court must send a copy of its findings to each party within 7 days after the findings are issued. The court's findings may include an order setting aside the lien and directing the filing office to nullify the lien. In the case of documents filled under the UCC, the order will act as a termination statement.<sup>56</sup>

### **Maine**

A person named as the debtor on a UCC financing statement the person believes to be fraudulent may file a motion for expedited judicial review to determine the authorization of the filing. No fee is required to file the motion. The purported secured party must be given 20 day notice of the court's review. The court's finding may be based solely on a review of the documentation submitted by the parties. The court must send a copy of its findings to each party within 7 days after the findings are issued. If the court finds that the financing statement is in fact unauthorized, it must order the filing

officer to remove the filing from the records, effective at the expiration of the time period for appeal of the decision, or upon the decision being affirmed following an appeal. If the secured party appeals the court's decision, it must give notice of the appeal to the filing office.

### **Minnesota**

A person who has reason to believe that a UCC financing statement is fraudulent may file a motion for judicial review of the effectiveness of the financing statement. No fee is required for filing the motion. A UCC financing statement is fraudulent if it is filed without the authorization of the person named as the debtor. A copy of the motion must be mailed to the person indicated as the secured party on the financing statement, along with a form for responding to the motion and the relevant section of law.

The person named as secured party has 20 days to respond to the motion and request a hearing. If a hearing is requested, the court must hold the hearing within five days. If a hearing is not requested by the 20<sup>th</sup> day, the court must conduct a review of the motion within five days after the 20 day period expires, and its findings may be based solely on a review of the documentation included with the motion. The court must send each party a copy of its finding within 7 days of its decision. The court may find that the financing statement was unauthorized and not legally valid, and may also order the filing office to remove the financing statement from the records. The person who brought the motion must file a copy of the court's findings with the filing office. No filing fee is required. The court may award the prevailing party all costs related to the review, including filing fees, attorney fees, and administrative costs.<sup>57</sup>

### **New York**

An employee of the state or political subdivision who is identified as a debtor in a financing statement may bring a proceeding against the named filer of such statement to invalidate the filing where the statement was falsely filed. If the court finds that the financing statement was falsely filed, the court must order expungement or redaction of the state in the office where the financing statement was filed. If the court finds that an individual has engaged in a repeated pattern of false filings, the court may enjoin the individual from filing further financing statements without leave of the court.<sup>58</sup>

### **Oregon**

If an invalid encumbrance has been filed, an expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Texas**

A person named as the debtor on a document purporting to claim a lien believes that the document is false; the person may file a motion with the court for judicial review. The court's review may be made ex parte without delay or notice of any kind, and the court's findings may be based solely on a review of the documentation attached to the motion. No filing fee is required. A copy of the finding must be sent to each party within 7 days of the court's decision.<sup>59</sup> If the lien that is the subject of the court's findings is one that is filed with the Secretary of State, any person may file a copy of the court's findings with the

Secretary of State. The Secretary of State must file the findings with the records pertaining to the original document.<sup>60</sup>

## **Appendix IV: State Criminal and Civil Penalties**

### **Alabama**

A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting real or personal property, or an interest therein, or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge that it will be registered, filed or recorded or become a part of the records of that public office or public employee. Offering a false instrument for recording is a Class A misdemeanor. A person commits the crime of offering a false instrument for recording against a public servant if the person offers, for recording, a written instrument which relates to or affects the real or personal property, or an interest therein, or a contractual relationship of a public servant, knowing that the written instrument contains a materially false statement or materially false information, with the intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his or her duties. Offering a false instrument for recording against a public servant is a Class C felony.<sup>61</sup>

### **Arkansas**

It is a crime to file a fraudulent financing statement with the purpose to defraud or harass a person. A first offense is a misdemeanor, and subsequent offense is a felony. Arkansas also provides civil penalties that include damages, courts costs, attorney's fees, and related expenses. A person may also seek injunctive relief.<sup>62</sup>

### **California**

No person may knowingly file a false lien or other encumbrance against a public officer or employee with the intent to harass or hinder the person in discharging his/her official duties. Any person who violates this provision is liable for civil damages.<sup>63</sup>

### **Florida**

A person who files with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a felony. The term "instrument" includes a financing statement. If a person is convicted of violating this provision the sentencing court shall issue an order declaring the instrument forming the basis of the conviction null and void and may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge. The sentencing court may also order the instrument forming the basis of the conviction sealed from the official record and removed from any applicable electronic database used for recording instruments in the official record. Any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action under this section without regard to whether criminal charges are pursued. Upon a finding that an instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor

of another person the court shall determine whether the entire instrument or certain parts thereof are null and void. If the court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating instruments in the official record. Upon a finding of intent to defraud or harass, the court or jury shall award actual damages and punitive damages. The court may also levy a civil penalty.<sup>64</sup>

### **Georgia**

It is unlawful for a person to knowingly file a false lien or encumbrance in a public record or private record that is generally available to the public against the real or personal property of a public officer or employee on account of the performance of the officer or employee's official duties, knowing or having reason to know that such lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. Any person who violates this provision is guilty of a felony and, upon conviction, shall be punished by imprisonment of not less than one nor more than ten years, a fine not to exceed \$10,000, or both.<sup>65</sup>

### **Illinois**

No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is not authorized, is not related to a valid transaction, lien, or court judgment, and is filed with the intent to harass or defraud the person identified as the debtor in the record or any other person. A violation of this provision is a misdemeanor for a first offense, and a felony for a second or subsequent offense.

A person who violates this provision is also liable in a civil action for damages, attorney's fees, court costs, and other related expenses.

### **Kansas**

A person aggrieved by a fraudulent lien may bring an action for civil penalties and injunction against the person who filed the unauthorized lien. Potential civil penalties include damages, court costs, and attorney's fees. A court may also issue an injunction preventing the defendant from filing any future liens without authorization of the court.<sup>66</sup>

### **Maine**

Criminal and civil penalties apply against those who file an unauthorized financing statement with the intent to harass, hinder, or defraud the person named as the debtor. Potential civil penalties include damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, or the attorney general, may bring an action to recover damages or seek an injunction.<sup>67</sup>

### **Michigan**

Knowingly or intentionally filing a false or fraudulent financing statement with the office of the Secretary of State is a felony. If the person is convicted of the violation, the court may find that the financing

statement is ineffective and may order the office of the Secretary of State to terminate the financing statement and may order restitution.

A debtor named in a false or fraudulent financing statement may file an action against the person that filed the financing statement seeking relief or damages, including, an order declaring the financing statement ineffective and ordering the office of the secretary of state to terminate the financing statement, and attorney fees.<sup>68</sup>

### **Minnesota**

Civil and criminal penalties apply against a person who knowingly files a financing statement that is not related to a valid lien or security agreement, or is for an improper purpose, including harassing, hindering, or defrauding any person. Filing a fraudulent financing statement is a gross misdemeanor, except where the a person commits the offense with the intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against: a judicial officer; a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; a sheriff or deputy sheriff because of that person's performance of official duties in connection with a sheriff's sale of real property; or a county recorder because of that person's performance of official duties in connection with the filing of liens placed on real property; or commits the offense after having been previously convicted of a violation of this provision.<sup>69</sup> In these cases the offense is a felony. Potential civil penalties include damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, the attorney general, or the county or city attorney, may bring an action to recover damages or seek an injunction.<sup>70</sup>

### **Montana**

A person adversely affected by a fraudulent lien may recover damages from the person responsible for filing the lien.<sup>71</sup>

### **New Hampshire**

A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. A financing statement is fraudulent if it is not authorized, contains a material false statement, or is groundless. An owner of property covered by a fraudulent financing statement may file suit in court to have the fraudulent financing statement released or cancelled.<sup>72</sup>

### **New York**

A person is guilty of offering a false instrument for filing where the person knows that that the written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation. Offering a false instrument for filing in the first degree is a felony. A person commits the crime of offering a false instrument for filing in the second degree if the instrument is a UCC financing statement

and the collateral asserted to be covered by the statement is the property of a person who is a state or local officer or otherwise a judge or justice of the court system, and the financing statement does not relate to an actual transaction, and the person filed the financing statement in retaliation for the performance of official duties by the person.<sup>73</sup>

### **North Dakota**

Criminal and civil penalties apply against a person who knowingly files a financing statement that the person knows is not authorized by the individual named as the debtor, and was filed with the intent to harass, hinder, or defraud any person. A first offense is a misdemeanor, and after two or more violations it becomes a felony. Potential civil penalties include damages, court costs, attorney's fees; and related expenses. A person impacted by the unauthorized financing statement, the attorney general, state's attorney, or municipal attorney may bring an action to recover civil damages or seek an injunction.<sup>74</sup>

### **South Carolina**

It is a felony to knowingly or intentionally file a false or fraudulent financing statement for the purpose of hindering, harassing, or wrongfully interfering with another person. If a person is convicted of violating this provision, the court may find that the financing statement is ineffective, may order the filing office to terminate or purge the financing statement, and may order restitution to an aggrieved party.

A person named as a debtor in a false or fraudulent financing statement may file an action against the person who filed the document seeking relief or damages, including an order declaring the financing statement ineffective, ordering the filing office to terminate or purge the financing statement, and awarding reasonable attorney fees.<sup>75</sup>

### **Texas**

A person may not intentionally or knowingly file a UCC financing statement that contains a material false statement or is groundless. A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. An owner of property covered by a fraudulent financing statement may also request release of the fraudulent statement.<sup>76</sup> An offense of this law is a misdemeanor, unless the fraudulent financing statement is filed with the intent to harass or defraud, in which case it is a felony.<sup>77</sup>

Civil penalties apply against a person who files a fraudulent lien or claim against real or personal property with the intent to cause another person financial injury, mental anguish, or emotional distress. Potential penalties include damages, court costs, and attorney's fees. Civil penalties also apply against any inmate who files a financing statement, or any person who files a financing statement on an inmate's behalf, unless the financing statement is accompanied by a statement indicating that the document is being filed by an inmate, or by a person on the inmate's behalf. A person impacted by a fraudulent lien, the attorney general, or a district, county, or municipal attorney may bring an action to recover damages or seek an injunction.<sup>78</sup>

**Tennessee**

It is an offense for any person to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property. The term "person" includes any individual or entity. These provisions do not apply to a license attorney who prepares a document in the course of representation of a client; specified financial institutions; a title insurance company or agent who prepares, signs, or files a lien or other document in the ordinary course of business; or a real estate licensee operating in compliance with applicable law. A violation this provision is a Class E felony.<sup>79</sup>

**Utah**

A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets. A violation is a third degree felony unless the person has been previously convicted of this offense, in which case the violation is a second degree felony.<sup>80</sup>

**Virginia**

Any person who maliciously files a lien or encumbrance in a public record against the real or personal property of another knowing that such lien or encumbrance is false is guilty of a felony. The court shall direct the clerk of any jurisdiction in which a false lien or encumbrance has been filed to release from record such lien or encumbrance. Such lien or encumbrance shall be deemed invalid and shall be treated as if it was never filed.<sup>81</sup>

**West Virginia**

No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is not authorized or permitted under state law and is filed with the intent to harass or defraud the person identified as debtor in the record or any other person. Any person who violates this provision is, for a first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1000 or, in the discretion of the court, be confined in jail not more than twelve months, or both fined and confined. Any person who violates this provision for a second or subsequent offense, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years. Any person who violates this provision is liable in a civil action to each injured person for up to \$10,000; reasonable attorney fees; court costs and other expenses; and in the discretion of the court, punitive damages in an amount determined by the court or jury.<sup>82</sup>

## Endnotes

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- <sup>1</sup> NASS/IACA Joint Task Force on Bogus UCC Documents, *Report and Recommendations* <[www.iaca.org/downloads/BogusFiling/Recommendations\\_on\\_Bogus\\_Filings.pdf](http://www.iaca.org/downloads/BogusFiling/Recommendations_on_Bogus_Filings.pdf)> (2006).
- <sup>2</sup> Federal Bureau of Investigation, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement* <[www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens](http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens)> (Sept. 2011).
- <sup>3</sup> Southern Poverty Law Center, *Sovereign Citizens Movement* <[www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement](http://www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement)> (accessed on Mar. 12, 2012).
- <sup>4</sup> The American Bar Association Section on Business Law Joint Task Force on Filing Office Operations & Search Logic, *States Ring in the New Year by Amending UCC Article 9* <<http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200901/subcommittees/foosl.pdf>> (accessed May 5, 2012).
- <sup>5</sup> *Uniform Commercial Code* § 9-501(1)(n) (2004).
- <sup>6</sup> See Federal Bureau of Investigation, *supra n. 2*.
- <sup>7</sup> U.S. Department of Justice, *News Release* [www.justice.gov/usao/ohn/news%202005-2009/11September2006.html](http://www.justice.gov/usao/ohn/news%202005-2009/11September2006.html) (Sept. 11, 2006); Southern Poverty Law Center, *The Sovereigns: A Dictionary of the Peculiar* <[www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the](http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the)> (Fall 2010).
- <sup>8</sup> Article 9 covers transactions involving both tangible property (e.g. goods, inventory, equipment) and intangible property (e.g. promissory notes, letters of credit, deposit accounts) as collateral. Transactions involving real property, including mortgages, are generally not within the scope of Article 9.
- <sup>9</sup> *Uniform Commercial Code* §§ 9-516(a), [9-520\(a\)](#).
- <sup>10</sup> *Id.* § 9-513, cmt. 3.
- <sup>11</sup> *Id.* § [9-518](#), cmt. 2.
- <sup>12</sup> *Id.* §§ 9-513 cmt. 5; [9-519\(g\)](#) & cmt. 6.
- <sup>13</sup> *Id.* § [9-625\(a\)](#), (b) & cmt. 2.
- <sup>14</sup> *Id.* 9-625(e)(3), (e)(4); also see Scott E. Reynolds, *How To Recognize and Remedy an Unauthorized Financing Statement*, New Jersey Law Journal <[http://riker.com/images/uploads/pdfs/Reynolds\\_December\\_2011\\_NJLJ\\_Article.pdf](http://riker.com/images/uploads/pdfs/Reynolds_December_2011_NJLJ_Article.pdf)> (Dec. 5, 2011); *Williams*, 476 F. Supp. 2d 1368 at 1379 (awarding damages to victims of bogus filing under Florida's UCC remedies provision ([Fla. Stat.](#) § 679.625(5)(c) (2012))).
- <sup>15</sup> Uniform Commercial Code, § 9-518 cmt. 3.
- <sup>16</sup> It should be noted that Congress also took this approach, passing a law in 2008 that makes it a federal offense to file a false retaliatory lien against a federal official.
- <sup>17</sup> Some of these provisions refer to financing statements, and others refer to liens. Provisions using the latter reference are included to the extent that they are located in a state's UCC Article 9 laws, or otherwise appear to cover financing statements.
- <sup>18</sup> [S.C. Code Ann.](#) § 36-9-516(b)(8), (9) (2012).
- <sup>19</sup> See e.g. *U.S. v. Leitner*, No. 3:10cv454/RS-CJK (N.D. Fla.) (2011) (court order removing bogus UCC financing statements the Florida UCC registry); *U.S. v. Davenport*, No. CV-10-027-JLQ (E.D. Wash.) (2010) (court order expunging bogus UCC financing statements from the Washington State UCC records).
- <sup>20</sup> [Ala. Admin. Code](#) r. 820-4-3.02(3)(b), (3)(c), (7) (2007).
- <sup>21</sup> [Cal. Govt. Code Ann.](#) § 12181 (2012).
- <sup>22</sup> [Colo. Rev. Stat.](#) §§ 38-35-201, 202 (2012); also see Colorado Secretary of State, *Uniform Commercial Code FAQs* <[www.sos.state.co.us/pubs/UCC/FAQs/spurious.html](http://www.sos.state.co.us/pubs/UCC/FAQs/spurious.html)> (describing a bogus financing statement that contains a false lien of claim as a spurious document).

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- <sup>23</sup> *Id.* § 202(3).
- <sup>24</sup> [Idaho Code](#) 28-9-516A (2012).
- <sup>25</sup> [5 Ill. Comp. Stat.](#) 9-516(b)(3.5), (e) (2012); [Ill. HB.5190, 97<sup>th</sup> General Assembly](#) (HB. 5190 was passed by the General Assembly on May 22<sup>nd</sup>, 2012. The bill was sent to the Governor on June 20<sup>th</sup>. As of July 1, 2012 the bill had not yet been signed into law).
- <sup>26</sup> [Ind. Code](#) § 26-1-9.1-901.
- <sup>27</sup> [Mich. Comp. Laws](#) § 440.9520 (2012).
- <sup>28</sup> *Id.* § [9501](#)(4), (5); also see Michigan Secretary of State, *Secretary of State Takes Action to Prevent UCC Fraud* <[www.michigan.gov/sos/0,4670,7-127-1640\\_9150-117815--,00.html](http://www.michigan.gov/sos/0,4670,7-127-1640_9150-117815--,00.html)> (May 11, 2005).
- <sup>29</sup> [Miss. Code. Ann.](#) § 75-9-516.
- <sup>30</sup> [Mont. Code. Ann.](#) §30-9A-420(1) (2012).
- <sup>31</sup> [Neb. Rev. Stat.](#) § 9-516(8) (2012).
- <sup>32</sup> [N.D. Admin. Code](#) 72-01-02-06 (2012).
- <sup>33</sup> [N.C. Gen. Stat.](#) § 29-516(8) (2012).
- <sup>34</sup> [Ohio Rev. Code Ann.](#) § 111.24(A), (B) (2012).
- <sup>35</sup> [Or. Rev. Stat. Ann.](#) § 79.0516(2)(h) (2012).
- <sup>36</sup> *Id.* § 0520(5).
- <sup>37</sup> [S.C. Code Ann.](#) § 36-9-516(b)(8), (9) (2012).
- <sup>38</sup> [Tex. Govt. Code. Ann.](#) § 405.022 (2012).
- <sup>39</sup> Va. Code Ann. §§ [8.9A-516](#); [8.9A-520](#).
- <sup>40</sup> [W. Va. Code](#) § 46-9-516(b).
- <sup>41</sup> [Alabama Code](#) § 13A-9-12.
- <sup>42</sup> [Mich. Comp. Laws](#) § 440.9501a.
- <sup>43</sup> *Id.* § [9520](#).
- <sup>44</sup> [Miss. Code. Ann.](#) § 75-9-501.1
- <sup>45</sup> [Mont. Code. Ann.](#) §30-9A-420(1).
- <sup>46</sup> N.E. LB 210 (Mar. 7, 2013) (available at <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB210.pdf>)
- <sup>47</sup> See [AB 3457](#) (signed into law 2012, Chap 113).
- <sup>48</sup> [N.C. Gen. Stat.](#) § 29-518 (2012).
- <sup>49</sup> [13 Pa. Consol. Stat. Ann.](#) § 9518 (2012).
- <sup>50</sup> [Tenn. Code. Ann.](#) § 39-17-117.
- <sup>51</sup> [Va. Code Ann.](#) § 8.9A-516.
- <sup>52</sup> [W. Va. Code](#) § 46-9-516(a).
- <sup>53</sup> Colo. Rev. Stat. § 204.
- <sup>54</sup> [Cal. Code. Civ. Proc.](#) §§ 765.010, 030.
- <sup>55</sup> [Ind. Code](#) § 26-1-9.1-902.
- <sup>56</sup> [Kan. Stat. Ann.](#) § 58-4301(2012).
- <sup>57</sup> [Minn. Stat.](#) § 545.05 (2012).

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<sup>58</sup> See [SB 4042](#) (signed into law 2013, chap. 490).

<sup>59</sup> [Tex. Govt. Code Ann.](#) § 51.903.

<sup>60</sup> *Id.* § 905; also see Texas Attorney General, *Wiping Out Fraudulent Liens* <[www.oag.state.tx.us/alerts/alerts\\_view.php?id=114.&type=3](http://www.oag.state.tx.us/alerts/alerts_view.php?id=114.&type=3)> (Sept. 1, 2005) (describing procedures available for removing fraudulent liens).

<sup>61</sup> [Alabama Code](#) § 13A-9-12

<sup>62</sup> [Ark. Code Ann.](#) § 5-37-215 (LEXIS L. Publg. 2012).

<sup>63</sup> [Cal. Govt. Code Ann.](#) § 6223.

<sup>64</sup> [Fla. Stat.](#) § 817.535.

<sup>65</sup> [2012 Ga. Laws.](#) Act 582

<sup>66</sup> [Kan. Stat. Ann.](#) § 58-4302(2012)

<sup>67</sup> [Title 5, Me. Rev. Stat. Ann.](#) § 90-E (2012).

<sup>68</sup> [Mich. Comp. Laws](#) § 440.9501(6), (7).

<sup>69</sup> [Minn. Stat.](#) § 609.7475.

<sup>70</sup> [Minn. Stat.](#) § 604.17.

<sup>71</sup> [Mont. Code. Ann.](#) §30-9A-420(2).

<sup>72</sup> [N.H. Rev. Stat. Ann.](#) § 382-A:9-529 (2011).

<sup>73</sup> See [SB 4042](#) (signed into law 2013, chap. 490).

<sup>74</sup> [N.D. Cent. Code](#) § 41-10.

<sup>75</sup> [S.C. Code Ann.](#) § 36-9-501(c)(d).

<sup>76</sup> [Tex. Bus. Com. Code Ann.](#) § 9-5185 (2012).

<sup>77</sup> [Tex. Penal Code Ann.](#) § 37.101 (2012).

<sup>78</sup> [Tex. Civ. Prac. And Remedies Code](#) § 12.002, .003 (2012).

<sup>79</sup> [Tenn. Code. Ann.](#) § 39-17-117.

<sup>80</sup> [Utah Code Ann.](#) § 76-6-503.5 (2012).

<sup>81</sup> [Va. Code Ann.](#) § 18.2-213.2

<sup>82</sup> [W. Va. Code](#) § 46-9-516(a).