

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1021

Short Title: Revise UCC Filings Procedures.

(Public)

Sponsors: Representative Hill.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO
THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-402 reads as rewritten:

"§ 25-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must indicate that the collateral is or includes crops, must contain a description of the real estate concerned, and must contain the county of the debtor's residence, or where the debtor is not a resident of this State the county where the crops are growing or to be grown. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is goods which are or are to become fixtures, the statement must

1 also comply with subsection (5). A copy of the security agreement is sufficient as a
2 financing statement if it contains the above information and is signed by the debtor. A
3 carbon, photographic or other reproduction of a security agreement or a financing
4 statement is sufficient as a financing statement if the security agreement so provides or if
5 the original has been filed in this State.

6 (2) A financing statement which otherwise complies with subsection (1) is
7 sufficient when it is signed by the secured party instead of the debtor if it is filed to
8 perfect a security interest in

9 (a) Collateral already subject to a security interest in another jurisdiction
10 when it is brought into this State, or when the debtor's location is
11 changed to this State. Such a financing statement must state that the
12 collateral was brought into this State or that the debtor's location was
13 changed to this State under such circumstances; or

14 (b) Proceeds under G.S. 25-9-306 if the security interest in the original
15 collateral was perfected. Such a financing statement must describe the
16 original collateral; or

17 (c) Collateral as to which the filing has lapsed; or

18 (d) Collateral acquired after a change of name, identity or corporate
19 structure of the debtor (subsection (7)).

20 (3) ~~A form substantially as follows is sufficient to comply with subsection (1):~~ A
21 financing statement complies with subsection (1) of this section if it is filed on paper that
22 is carbonized or the original statement is accompanied by carbon copies and the form is
23 substantially as follows:

24
25 Name of debtor (or assignor)

26 Address

27 Name of secured party (or assignee)

28 Address

29 1. This financing statement covers the following types (or items) of
30 property:(Describe)

31 2. (If collateral is crops) The above described crops are growing or are to be grown
32 on:

33 (Describe Real Estate)

34 3. (If applicable) The above goods are to become fixtures on*

35 *Where appropriate substitute either "The above timber is standing on"or "The
36 above minerals or the like (including oil and gas) or accounts will be financed at the
37 wellhead or minehead of the well or mine located on"

38 (Describe Real Estate)

39 (If the debtor does not have an interest of record) The name of a record
40 owner is

41 4. (If products of collateral are claimed) Products of the collateral are also covered.

42 (use

43 whichever Signature of Debtor (or Assignor)

1 is
2 applicable) Signature of Secured Party (or Assignee)

3 (4) A financing statement may be amended by filing a writing signed by both the
4 debtor and the secured party. An amendment does not extend the period of effectiveness
5 of a financing statement. If any amendment adds collateral, it is effective as to the added
6 collateral only from the filing date of the amendment. In this Article, unless the context
7 otherwise requires, the term "financing statement" means the original financing statement
8 and any amendments. Amendments shall be accompanied by a copy of the original
9 financing statement when filed to be effective.

10 (5) A financing statement covering timber to be cut or covering minerals or the
11 like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or a
12 financing statement filed as a fixture filing (G.S. 25-9-313) must contain a description of
13 the real estate. If the debtor does not have an interest of record in the real estate, the
14 financing statement must show the name of a record owner. A financing statement filed
15 as a fixture filing (G.S. 25-9-313) on a form shall have the appropriate box checked to
16 indicate that the collateral is, or includes, fixtures. If (a) a copy of a security agreement is
17 filed as a financing statement, as authorized by G.S. 25-9-402, or (b) a nonstandard form
18 is filed, to perfect security interests in fixtures, the secured party or other filer shall attach
19 thereto a form financing statement with the appropriate block checked to indicate that the
20 collateral is, or includes, fixtures. If a financing statement is not marked as required by
21 this subsection, it shall not be required to be indexed pursuant to G.S. 25-9-403(7).

22 (6) A mortgage or deed of trust is effective as a financing statement filed as a
23 fixture filing from the date of its recording if

- 24 (a) The goods are described in the mortgage or deed of trust by item or
25 type; and
26 (b) The goods are or are to become fixtures related to the real estate
27 described in the mortgage or deed of trust; and
28 (c) The mortgage or deed of trust complies with the requirements for a
29 financing statement in this section; and
30 (d) The mortgage or deed of trust is duly recorded in the real estate records.
31 Such a mortgage or deed of trust shall not be indexed or filed in the
32 Uniform Commercial Code files. No fee with reference to such a
33 mortgage or deed of trust is required other than the regular recording
34 and satisfaction fees with respect to the mortgage or deed of trust.

35 (7) A financing statement sufficiently shows the name of the debtor if it gives the
36 individual, partnership or corporate name of the debtor, whether or not it adds other trade
37 names or names of partners. Where the debtor so changes his name or in the case of an
38 organization its name, identity or corporate structure that a filed financing statement
39 becomes seriously misleading, the filing is not effective to perfect a security interest in
40 collateral acquired by the debtor more than four months after the change, unless a new
41 appropriate financing statement is filed before the expiration of that time. A filed
42 financing statement remains effective with respect to collateral transferred by the debtor
43 even though the secured party knows of or consents to the transfer.

1 (8) A financing statement substantially complying with the requirements of this
2 section is effective even though it contains minor errors which are not seriously
3 misleading.

4 (9) The Secretary of State shall have the authority to promulgate, issue and
5 prescribe such financing statement forms and such other forms as he deems necessary to
6 be used as standard forms for any filing contemplated by any section of this Article.”

7 Section 2. G.S. 25-9-403(3) reads as rewritten:

8 "(3) A continuation statement may be filed by the secured party within six months
9 prior to the expiration of the five-year period specified in subsection (2). Any such
10 continuation statement must be signed by the secured party, be accompanied by a copy of
11 the original financing statement, identify the original statement by file number and also
12 by the most current file number if any continuation was filed and state that the original
13 statement is still effective. A continuation statement signed by a person other than the
14 secured party of record must be accompanied by a separate written statement of
15 assignment signed by the secured party of record and complying with subsection (2) of
16 G.S. 25-9-405, including payment of the required fee. Upon timely filing of the
17 continuation statement, the effectiveness of the original statement is continued for five
18 years after the last date to which the filing was effective whereupon it lapses in the same
19 manner as provided in subsection (2) unless another continuation statement is filed prior
20 to such lapse. Succeeding continuation statements may be filed in the same manner to
21 continue the effectiveness of the original statement. Unless a statute on disposition of
22 public records provides otherwise, the filing officer may remove a lapsed statement from
23 the files and destroy it immediately if he has retained a microfilm or other photographic
24 ~~record, or in other cases after one year after the lapse.~~ record. In any event, one year after
25 a financing or continuation statement has lapsed, the filing officer may remove the lapsed
26 statement from any files, including computer files, and destroy it immediately. The filing
27 officer shall so arrange matters by physical annexation of financing statements to
28 continuation statements or other related filings, or by other means, that if he physically
29 destroys the financing statements of a period more than five years past, those which have
30 been continued by a continuation statement or which are still effective under subsection
31 (6) shall be retained. Any continuation statement which is not filed in accordance with
32 the requirements set forth herein and during the stated time periods set forth above shall
33 be invalid."

34 Section 3. Any register of deeds office in this State that has had computer files
35 for a period of at least five years is not required to cancel financing statements manually.

36 Section 4. This act becomes effective October 1, 1999.