

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

As Engrossed: H3/11/19

# A Bill

HOUSE BILL 1463

5 By: Representative Gazaway  
6 By: Senator Hester  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE TO  
10 PREVENT FRAUDULENT FILINGS; TO ALLOW THE FILING  
11 OFFICE TO REFUSE TO FILE FRAUDULENT RECORDS; AND FOR  
12 OTHER PURPOSES.  
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## Subtitle

15 TO AMEND THE UNIFORM COMMERCIAL CODE TO  
16 PREVENT FRAUDULENT FILINGS; AND TO ALLOW  
17 THE FILING OFFICE TO REFUSE TO FILE  
18 FRAUDULENT RECORDS.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 4-9-516(b), concerning what constitutes  
25 filing under the Uniform Commercial Code, is amended to add an additional  
26 subdivision, to read as follows:

27 (8) in the case of a financing statement, the filing office  
28 determines that the financing statement is fraudulent under § 4-9-520(e).  
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30 SECTION 2. Arkansas Code § 4-9-520(c), concerning acceptance and the  
31 refusal to accept a record under the Uniform Commercial Code, is amended to  
32 read as follows:

33 (c) A Except as provided in §4-9-520(e)(4)(B), a filed financing  
34 statement satisfying § 4-9-502(a) and (b) is effective, even if the filing  
35 office is required to refuse to accept it for filing under subsection (a).  
36 However, § 4-9-338 applies to a filed financing statement providing



1 information described in § 4-9-516(b)(5) which is incorrect at the time the  
2 financing statement is filed.

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4 SECTION 3. Arkansas Code § 4-9-520, concerning acceptance and the  
5 refusal to accept a record under the Uniform Commercial Code, is amended to  
6 add an additional subsection to read as follows:

7 (e)(1)(A) A filing officer may review a financing statement to  
8 determine if it should be refused for filing as fraudulent under this  
9 subsection.

10 (B) When reviewing a financing statement under subdivision  
11 (e)(1)(A) of this section, the filing officer shall consider the following  
12 factors, including without limitation whether:

13 (i) the financing statement is authorized under the Uniform  
14 Commercial Code;

15 (ii) the financing statement cites performance or  
16 nonperformance of official duties by a current or former employee or officer  
17 of a federal, state, county, or other local government entity without an  
18 accompanying, properly executed security agreement or judgment from a court  
19 with jurisdiction;

20 (iii) the financing statement identifies the secured party  
21 and debtor as being the same person;

22 (iv) there is sufficient proof that a debtor identified as  
23 a transmitting utility meets the definition of a transmitting utility as  
24 specified in the Uniform Commercial Code;

25 (v) the financing statement is remitted by or on behalf of  
26 an inmate in a correction facility without being accompanied by a sworn  
27 notarized statement signed by the debtor acknowledging that the person  
28 entered into a security agreement with the inmate and authorized the filing;

29 (vi) the financing statement is being filed for a purpose  
30 other than a transaction within the scope of the Uniform Commercial Code; and

31 (vii) the text within the financing statement contains  
32 language indicative of past fraudulent filings.

33 (2) If a filing official acting in good faith has reason to believe  
34 that the financing statement is filed for a fraudulent purpose, to promote or  
35 conduct an illegitimate object or purpose, or for the purpose of defrauding  
36 or harassing a person or entity, the filing official shall provide the reason

1 to refuse the filing to:

2 (i) the director of the Business and Commercial Services  
3 Division of the office of the Secretary of State; and

4 (ii) the general counsel for the Secretary of State.

5 (3) If the director and the general counsel concur in the filing  
6 official's reasoning, then written notice under signature of the director  
7 shall be sent by certified mail, return receipt requested, to the mailing  
8 address provided for the secured party of record, stating:

9 (A) the fact of and reason for refusal to file the financing  
10 statement;

11 (B) the need for the secured party to submit, within thirty (30)  
12 days of the date of the certified letter, documentation as to why the  
13 financing statement should not be refused for filing, including without  
14 limitation a properly executed security agreement or a judgment from a court  
15 with jurisdiction authorizing the filing; and

16 (C) legal penalties for filing fraudulent financing statements.

17 (4)(A) If the filing official determines that the secured party  
18 provided sufficient evidence within the thirty-day period specified in the  
19 certified letter demonstrating that the refused filing should have been  
20 accepted for filing, the filing office shall file the record with an  
21 effective date of the time that it was originally submitted for filing with  
22 an information statement indicating that the financing statement was filed  
23 under its initial filing date.

24 (B) If within the thirty-day period specified in the certified  
25 letter the secured party fails to respond or fails to provide sufficient  
26 evidence to support the effectiveness of the financing statement, then the  
27 filing office may refuse the record for filing. The financing statement  
28 record shall be void and have no force or effect on any person or persons  
29 named in the financing statement as related to the effectiveness of a record  
30 under this subchapter.

31 (5) The filing office shall not return a fee paid for filing a  
32 statement which has been refused for filing as fraudulent.

33 (6) Neither the filing office nor an employee of the filing office  
34 shall be liable for the refusal to file financing statements in the lawful  
35 performance of the office or employee under this subsection.

36 (7) Regulated financial institutions, other lenders in the

1 business of making loans or extending credit, and persons that regularly  
2 extend credit to agricultural producers are exempt from the requirements of  
3 this subsection."

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5 SECTION 4. Arkansas Code § 4-9-529(a), concerning unauthorized  
6 financing statement filings, is amended to read as follows:

7 (a) An individual ~~or a~~, representative of an organization, or other  
8 lender in the business of making loans or extending credit may file in the  
9 filing office a notarized affidavit or sworn affirmation, signed or attested  
10 to under penalty of perjury, that identifies a filed financing statement and  
11 states that:

12 (1) the individual ~~or~~, organization, or other lender is  
13 identified as a debtor in the financing statement;

14 (2) the financing statement was not filed by a bank or by a  
15 person that regularly extends credit to agricultural producers; and

16 (3) the financing statement was filed by a person not  
17 entitled to do so under § 4-9-509, § 4-9-708, or § 4-9-808.

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19 /s/Gazaway  
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