

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

819Z0816

## HOUSE BILL NO. 1248

Introduced by: Representative Bartels and Senator White

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding filing and recording  
2 secured transaction records with the Office of the Secretary of State.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 57A-9-516 be amended to read:

5 57A-9-516. (a) Except as otherwise provided in subsection (b), communication of a record  
6 to a filing office and tender of the filing fee or acceptance of the record by the filing office  
7 constitutes filing.

8 (b) Filing does not occur with respect to a record that a filing office refuses to accept  
9 because:

10 (1) The record is not communicated by a method or medium of communication  
11 authorized by the filing office;

12 (2) An amount equal to or greater than the applicable filing fee is not tendered;

13 (3) The filing office is unable to index the record because:

14 (A) In the case of an initial financing statement, the record does not provide a  
15 name for the debtor;



- 1 (B) In the case of an amendment or information statement, the record:
  - 2 (i) Does not identify the initial financing statement as required by § 57A-9-
  - 3 512 or 57A-9-518, as applicable; or
  - 4 (ii) Identifies an initial financing statement whose effectiveness has lapsed
  - 5 under § 57A-9-515;
- 6 (C) In the case of an initial financing statement that provides the name of a debtor
- 7 identified as an individual or an amendment that provides a name of a debtor
- 8 identified as an individual which was not previously provided in the financing
- 9 statement to which the record relates, the record does not identify the debtor's
- 10 surname; or
- 11 (D) In the case of a record filed or recorded in the filing office described in § 57A-
- 12 9-501(a)(1), the record does not provide a sufficient description of the real
- 13 property to which it relates;
- 14 (4) In the case of an initial financing statement or an amendment that adds a secured
- 15 party of record, the record does not provide a name and mailing address for the
- 16 secured party of record;
- 17 (5) In the case of an initial financing statement or an amendment that provides a name
- 18 of a debtor which was not previously provided in the financing statement to which
- 19 the amendment relates, the record does not:
  - 20 (A) Provide a mailing address for the debtor; or
  - 21 (B) Indicate whether the name provided as the name of the debtor is the name of
  - 22 an individual or an organization;
- 23 (6) In the case of an assignment reflected in an initial financing statement under § 57A-9-
- 24 514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a

1 name and mailing address for the assignee; or

2 (7) In the case of a continuation statement, the record is not filed within the six-month  
3 period prescribed by § 57A-9-515(d).

4 (c) For purposes of subsection (b):

5 (1) A record does not provide information if the filing office is unable to read or decipher  
6 the information; and

7 (2) A record that does not indicate that it is an amendment or identify an initial financing  
8 statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518,  
9 is an initial financing statement.

10 (d) If a person presents a financing statement to the secretary of state for filing or recording,  
11 the secretary of state may refuse to accept the financing statement for filing or recording if:

12 (1) The financing statement is not required or authorized to be filed or recorded with the  
13 secretary of state; or

14 (2) The secretary of state has reasonable cause to believe the financing statement is  
15 materially false or fraudulent.

16 (e) A fraudulent financing statement that the secretary of state may refuse to accept includes  
17 the following:

18 (1) Any financing statement that has the same name listed as both the debtor and the  
19 secured party;

20 (2) Any financing statement that identifies an individual debtor as a transmitting utility;

21 (3) Any financing statement that is determined to be intended for an improper purpose,  
22 such as hindering, harassing, or wrongfully interfering with another person or entity;

23 or

24 (4) Any financing statement that is filed:

1           (A) Without the consent or participation of the:

2                   (i) Obligor named in the financing statement;

3                   (ii) The person named in the financing statement as debtor; and

4                   (iii) The owner of collateral described or indicated in the financing  
5                                   statement; or

6           (B) By consent of an agent, a fiduciary, or another representative of the secured  
7                   party of record without the consent of the secured party; or

8           (5) Any financing statement that is forged.

9           (f) The secretary of state does not have a duty to inspect, evaluate, or investigate a financing  
10 statement that is present for filing or recording.

11           (g) A record that is communicated to the filing office with tender of the filing fee, but which  
12 the filing office refuses to accept for a reason other than one set forth in subsection (b), is  
13 effective as a filed record except as against a purchaser of the collateral which gives value in  
14 reasonable reliance upon the absence of the record from the files.