

AN ACT

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

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

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

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

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

- (1) The record is not communicated by a method or medium of communication authorized by the filing office;
- (2) An amount equal to or greater than the applicable filing fee is not tendered;
- (3) The filing office is unable to index the record because:
  - (A) In the case of an initial financing statement, the record does not provide a name for the debtor;
  - (B) In the case of an amendment or information statement, the record:
    - (i) Does not identify the initial financing statement as required by § 57A-9-512 or 57A-9-518, as applicable; or
    - (ii) Identifies an initial financing statement whose effectiveness has lapsed under § 57A-9-515;
  - (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's

surname; or

- (D) In the case of a record filed or recorded in the filing office described in § 57A-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
  - (A) Provide a mailing address for the debtor; or
  - (B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;
- (6) In the case of an assignment reflected in an initial financing statement under § 57A-9-514(a) or an amendment filed under § 57A-9-514(b), the record does not provide a name and mailing address for the assignee; or
- (7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by § 57A-9-515(d).

(c) For purposes of subsection (b):

- (1) A record does not provide information if the filing office is unable to read or decipher the information; and
- (2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by § 57A-9-512, 57A-9-514, or 57A-9-518, is an initial financing statement.

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

- (1) The financing statement is not required or authorized to be filed or recorded with the secretary of state; or
- (2) The secretary of state has reasonable cause to believe the financing statement is materially false or fraudulent.

(e) A financing statement that the secretary of state may refuse to accept or reject includes the following:

- (1) Any financing statement that has the same name listed as both the debtor and the secured party;
- (2) Any financing statement that identifies an individual debtor as a transmitting utility;
- (3) 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; or
- (4) Any financing statement that is filed:
  - (A) Without the consent or participation of the:
    - (i) Obligor named in the financing statement;
    - (ii) The person named in the financing statement as debtor; and
    - (iii) The owner of collateral described or indicated in the financing statement; or
  - (B) By consent of an agent, a fiduciary, or another representative of the secured party of record without the consent of the secured party; or
- (5) Any financing statement that is forged.

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

(g) A record that is communicated to the filing office with tender of the filing fee, but which the

filings office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1248

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Chief Clerk

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Speaker of the House

Attest:

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Chief Clerk

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President of the Senate

Attest:

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Secretary of the Senate

House Bill No. 1248  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ M.

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By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_

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Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

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Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State

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By \_\_\_\_\_  
Asst. Secretary of State