

1 Consider this example:  
2

3 Lender makes a loan to Borrower. The loan is not evidenced by chattel paper. The loan  
4 agreement (or note) provides that Lender's rights may not be assigned and, if Lender  
5 wrongfully assigns the rights, an assignee may not enforce Borrower's obligation to pay.  
6 Lender assigns the right to payment (i.e., the payment intangible or instrument) to  
7 Assignee.  
8

9 If the assignment to Assignee is a sale, then Section 9-408(a) applies and the contractual  
10 restrictions are ineffective with respect to the creation, attachment, and perfection of  
11 Assignee's security interest.  
12

13 If the assignment to Assignee is for security, the restriction would not be effective if  
14 Assignee itself sought to collect or if Assignee sold to a buyer at foreclosure (and,  
15 presumably, if the foreclosure buyer resold). However, the restriction would be effective  
16 against nonforeclosure buyers who did not take through a foreclosure buyer.  
17

18 Section 9-406 is clear that a contractual restriction would not be effective to restrict the  
19 assignee's right *qua* assignee to enforce the account debtor's obligation under Section 9-607.  
20 The proposed amendment would eliminate any doubt that the restriction would not be effective  
21 to restrict the assignee's right to enforce if the assignee became the owner of the payment  
22 intangible or promissory note by accepting it in a "strict foreclosure" under Section 9-620.  
23

24  
25 **SECTION 9-513A. TERMINATION OF WRONGFULLY FILED RECORD;**

26 **REINSTATEMENT.**

27 (a) **["Government employee."]** In this section, "government employee" means:

28 (1) an employee or elected or appointed official of this State, the United States, or  
29 a governmental unit of this State or the United States; and

30 (2) a member of an authority, board, or commission established by this State, the  
31 United States, or a governmental unit of this State or the United States.

32 (b) **[Application of this section.]** This section applies only with respect to a filed  
33 financing statement that indicates all secured parties of record to be individuals, identifies as a  
34 debtor an individual who was a government employee at or before the time the financing  
35 statement was filed, and was filed by an individual not entitled to do so under Section 9-509(a).

36 If the financing statement indicates more than one debtor, the provisions of this section apply

1 only with respect to those debtors who are individuals and were government employees at or  
2 before the time the financing statement was filed.

3 (c) [Affidavit of wrongful filing.] A government employee identified as a debtor in a  
4 filed financing statement [to which this section applies] may file in the filing office a notarized  
5 affidavit, made under oath or penalty of perjury, in the form prescribed by the [Secretary of  
6 State], stating that the affiant is an individual who was a government employee at or before the  
7 time the financing statement was filed and that the financing statement was filed by an individual  
8 not entitled to do so under Section 9-509(a). The [Secretary of State] shall adopt and, upon  
9 request, make available to a government employee a form of affidavit to be used under this  
10 subsection.

11 (d) [Termination statement by filing office.] If an affidavit is filed under subsection  
12 (c), the filing office shall promptly file a termination statement with respect to the financing  
13 statement. The termination statement must indicate that it was filed pursuant to this section.

14 (e) [No fee charged or refunded.] The filing office shall not charge a fee for the filing  
15 of an affidavit under subsection (c) or a termination statement under subsection (d). The filing  
16 office shall not return any fee paid for filing the financing statement to which the affidavit  
17 relates, whether or not the financing statement is reinstated under subsection (h).

18 (f) [Notice of termination statement.] On the same day that a filing office files a  
19 termination statement under subsection (d), it shall send to the secured party of record for the  
20 financing statement a notice advising the secured party of record that the termination statement  
21 has been filed. The notice shall be sent by certified mail, return receipt requested, to the address  
22 provided for the secured party in the financing statement.

23 (g) [Action for reinstatement.] An individual who believes in good faith that the  
24 individual was entitled to file the financing statement as to which a termination statement was

1 filed under subsection (d) may file an action to reinstate the financing statement. The exclusive  
2 venue for an action shall be in the [circuit] court for the county where the filing office in which  
3 the financing statement was filed is located or, if the government employee resides in this State,  
4 the county where the government employee resides. The action shall have priority on the court's  
5 calendar and shall proceed by expedited hearing.

6 (h) [Action for reinstatement successful.] If, in an action under subsection (g), the  
7 court determines that the financing statement should be reinstated, the secured party of record  
8 may provide a copy of the court's judgment or order to the filing office. If the filing office  
9 receives a copy within 30 days after the entry of the judgment or order, the filing office shall  
10 promptly file a record that identifies by its file number the initial financing statement to which  
11 the record relates and indicates that the financing statement has been reinstated.

12 (i) [Effect of reinstatement.] Except as otherwise provided in subsection (j), upon the  
13 filing of a record reinstating a financing statement under subsection (h), the effectiveness of the  
14 financing statement is retroactively reinstated and the financing statement shall be considered  
15 never to have been ineffective as against all persons and for all purposes. If the effectiveness of  
16 a financing statement that is reinstated would have lapsed between the time of the filing of the  
17 termination statement and the time of the filing of the record reinstating the financing statement,  
18 the secured party of record may file a continuation statement not later than 30 days after the time  
19 of the filing of the record reinstating the financing statement. Upon the timely filing of a  
20 continuation statement, the effectiveness of the financing statement continues for a period of five  
21 years commencing on the day on which the financing statement would have become ineffective  
22 had no termination statement been filed by the filing office.

23 (j) [Exception to subsection (i).] A financing statement whose effectiveness is  
24 reinstated shall not be effective as against a person that purchased the collateral in good faith and

1 for value between the time of the filing of the termination of the financing statement and the time  
2 of the filing of the record reinstating the financing statement.

3 (k) [Liability for wrongful filing.] If, in an action under subsection (g), the court  
4 determines that the individual who filed the financing statement was not entitled to do so under  
5 Section 9-509(a), the government employee may recover from the individual the costs and  
6 expenses, including reasonable attorneys' fees, that the government employee incurred in the  
7 action. [This recovery is in addition to any recovery to which the government employee is  
8 entitled under Section 9-625.]

### 9 **Reporter's Note**

10 This section responds to those who think it desirable to provide an administrative remedy  
11 to deal with "bogus" financing statements. To preserve the integrity of the filing system, it is  
12 available only under specified circumstances, provides a right of action to an aggrieved secured  
13 party of record, and protects good faith purchasers for value.  
14

15 If the Joint Review Committee adopts this approach, it may wish to consider whether an  
16 amendment to Section 9-510(a) would be necessary. Section 9-510 provides that a filed record  
17 is effective only to the extent that it was filed by a person that may file it under Section 9-509.  
18 Section 9-509 does not include records that would be authorized to be filed by the Secretary of  
19 State under this Section.  
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### 21 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING** 22 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

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24 (b) [Public-finance or manufactured-home transaction.] Except as otherwise  
25 provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a  
26 public-finance transaction or manufactured-home transaction is effective for a period of 30 years  
27 after the date of filing if it indicates that it is filed in connection with a public-finance transaction  
28 or manufactured-home transaction.  
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30 \* \* \*