



CORPORATION SERVICE COMPANY

2014 Updates

UCC-Related Legislation & Bogus Filing Working Group

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2010 Amendments to UCC Article 9



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Status as of January 1, 2014

- **States Enacted**

- *45 states enacted effective July 1, 2013*
- *Missouri enacted effective August 28, 2013*
- *California enacted in 2013 effective July 1, 2014*

- **States Remaining for 2014**

- *Alabama*
- *Arizona*
- *New York*
- *Oklahoma*
- *US Virgin Islands*
- *Vermont*

2010 Amendments: Alabama

- **Senate Bill 28**

- *Adopts Alternative A for individual debtor name sufficiency rule in § 9-503(a)(4).*
- *Adopted text version of forms in § 9-521.*

- **Status**

- *Enacted April 9, 2014.*
- *Takes effect July 1, 2014.*

2010 Amendments: Arizona

- **Senate Bill 1046**

- *Adopts Alternative A for individual debtor name sufficiency rule in § 9-503(a)(4).*
- *Incorporated by reference the forms as set forth in the official text by non-uniform § 9-521.*
- *No effective date provided.*
- *Emergency declaration stated that the bill takes effect immediately.*

- **Status**

- *Enacted April 22, 2014.*
- *Took effect April 22, 2014.*

2010 Amendments: New York

- **Senate Bill 5901**

- *Provides Alternative A for individual debtor name sufficiency rule in § 9-503(a)(4).*
- *Incorporates by reference forms from the official text of § 9-521.*
- *Effective date remains July 1, 2013.*

- **Status**

- *Pending in Senate Judiciary Committee since January 8, 2014.*

2010 Amendments: Oklahoma

- **Senate Bill 371**

- *Provides Alternative A for individual debtor name sufficiency rule in § 9-503(a)(4).*
- *Provides text version of forms in § 9-521.*
- *Effective date of July 1, 2014.*
- *Amended in March 2014 to move § 9-501(a)(2) central filing office from the Oklahoma County Clerk to the Secretary of State.*

- **Status**

- *Passed Senate in March 2014.*
- *Died in the House. Failed to pass out of committee by crossover deadline.*

2010 Amendments: USVI



2010 Amendments: Vermont

- **House Bill 483**

- *Adopts Alternative A for individual debtor name sufficiency rule in § 9-503(a)(4).*
- *Includes non-uniform form and format images based on 4/20/11 forms in § 9-521.*
- *Amended effective date of July 1, 2014.*

- **Status**

- *Passed both chambers on May 5, 2014.*
- *Still awaiting action by the governor as of May 20, 2014.*

California

- **Assembly Bill 1858**

- *Changes non-uniform § 9-503(a)(4) to Alternative A for individual debtor name sufficiency.*
- *Amended on May 13, 2014 to add new § 9503.5, which would make it a civil rights violation for a secured party to decline credit or offer less favorable terms, because the debtor does not hold or present a valid driver's license or identification card issued by the DMV.*
- *Amended yesterday, May 19, 2014 to strike § 9503.5 and add § 9503(a)(7), which limits violation to those who have not been issued a license or ID.*

- **Status**

- *Pending third reading today in the full Assembly.*

Missouri

- **House Bill 1376 & Senate Bill 766**
 - Adds “nondriver identification card” to § 9-503(a)(4) and fixes other omissions and oversights in original 2010 Amendments law..
- **Status**
 - House bill passed Senate 4/24/14.
 - Senate bill awaiting third reading in House.

Oregon

- **Assembly Bill 5818**
 - Change § 9-503(a)(4) from Alternative B to Alternative A for individual debtor name sufficiency.
- **Status**
 - Died in committee.



Bogus Filing Legislation

Alaska

- **House Bill 222**
 - *Would require the Recorder to reject a UCC record if the Recorder reasonably believes that the document is being submitted for an unlawful, false, or fraudulent purpose, to promote an illegitimate object or purpose, in bad faith, or to harass or defraud a person.*
- **Status**
 - *Withdrawn from further consideration February 3, 2014.*

Georgia

- **House Bill 985**

- *Extends current law that makes it a felony to file a false lien against a public official to false liens filed against all citizens..*

- **Status**

- *Enacted.*
- *Effective July 1, 2014.*

Hawaii

- **House Bill 2148**

- *Makes it an offense to file a fraudulent or otherwise improper financing statement; provides for punishment and penalties for fraudulent filings on real and personal property in retaliation against, or for intimidation of, officers of counties and States for their official actions; for fraudulent filings for retaliation, intimidation or harassment of individuals and employers; provides sufficient deterrent for fraudulent filings on real or personal property.*

- **Status**

- *Failed to pass out of committee by deadline.*

Kansas

- **House Bill 2569**

- *Amends existing law that provides an expedited judicial process that allows a party to challenge a fraudulent lien or claim.*
- *Upon receipt of a copy of an order prohibiting a person from filing fraudulent liens, the register of deeds or the secretary of state shall not accept further liens or claims from such person unless such filing is accompanied by a court order approving the filing of such lien or claim by such person.*

- **Status**

- *Has yet to receive a hearing.*

Missouri

- **House Bill 1412**

- *Allows secretary of state to reject a record it reasonably believes is false or fraudulent.*
- *Allows rejection of record that appears on its face to provide certain factors.*
- *Presumed false when filed by a prisoner.*
- *Allows secretary of state to terminate record following filing of an information statement.*

- **Status**

- *Awaiting governor's signature as of May 20, 2014.*

Missouri

- **House Bill 2214**

- *It provides that if a title company performs a search that will be used for title insurance purposes and determines that a disclosed document is materially false or fraudulent, the title company shall record a notice of false or fraudulent document at its own expense. (Emphasis added).*
- *Title company shall not be liable for recording notice of false or fraudulent document.*
- *Bill is silent on liability of title company that fails to record notice of false or fraudulent document.*

- **Status**

- *Failed to receive a hearing in committee.*



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Maryland

- **House Bill 1435**

- *Provided for judicial review of allegedly fraudulent financing statements.*

- **Status**

- *Voted down in committee March 28, 2014.*



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Maryland

- **Senate Bill 404 (Identical to House Bill 1370)**
 - Adds new § 9-520.1.
 - Allows filing office to reject record if all parties are individuals and it is evident that the secured party is not authorized to file the record.
 - Provides for judicial and administrative review by SDAT of rejection decision.
- **Status**
 - Enacted April 8, 2014.
 - Takes effect on October 1, 2014.

New Hampshire

- **House Bill 1122**
 - A person may not knowingly file any type of document that fraudulently purports to be a judgment or other document to create a lien without having been authorized under state law, the Constitution, or the laws of the United States.
 - If a filing office believes in good faith that a document is fraudulent, the filing office shall index the document only under the signer [secured party] of the document and shall identify the document as a notice. No other names appearing on the document shall be indexed.
 - The filing office shall send a copy of such document to the county attorney or attorney general's office for review and possible prosecution.
 - Makes the fraudulent filing a felony.
- **Status**
 - Awaiting action by the governor.

New Jersey

- **Senate Bill 2106**
 - *Introduced on May 12, 2014*
 - *Text not available as of May 16, 2014.*
- **Status**
 - *Assigned to Senate Commerce Committee yesterday (May 19, 2014).*

New Jersey

- **Assembly Bill 2481**
 - *Adds new subsections to § 9-501.*
 - *Requires filing office to send a notice to the debtor when debtor is an individual.*
 - *Adds a long list of rejection reasons to § 9-520, not where they belong in § 9-516.*
 - *Allows filing office to terminate fraudulent record after administrative review if debtor files a "correction statement."*
 - *Exempts regulated financial institutions.*
- **Status**
 - *Pending in committee since February 10, 2014.*

New York

- **Assembly Bill 5946 (SB 3482)**

- *Provides that filing false liens or encumbrances against public officers or public employees or with the intent to harass, intimidate or otherwise attempt to affect the actions of the public official or public employee, knowingly file a false or misleading lien is a first degree class E felony.*

- **Status**

- *Pending in committee.*

Rhode Island

- **Senate Bill 2625**

- *Addresses real property recording.*
- *Every person filing an instrument shall sign a certification that he or she has read the instrument being filed, that to the best of the filer's knowledge, information, or belief formed after reasonable inquiry, it is well grounded in fact... and that it is not being filed for any improper purpose*
- *A court, may award treble damages against a person found to have filed an instrument in violation of this subsection.*
- *"Instrument" includes records filed under Article 9.*

- **Status**

- *Pending in Judiciary Committee since March 4, 2014.*

South Carolina

- **House Bill 4742**

- *Makes it a felony to present for filing in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee for the performance of the public officer or public employee's official duties.*
- *Allows county-level filing office to reject record if it reasonably believes it to be false.*

- **Status**

- *Passed the House on May 1, 2014.*
- *Currently pending in Senate Banking & Insurance Committee.*

Other Legislation of Interest

Indiana

- **House Bill 1223**

- *Requires the bureau of motor vehicles to issue a personal identification card that does not bear the photograph of the holder.*
- *The personal identification card is issued to persons who have sincerely held religious beliefs that prohibit the taking of a person's photograph. It is intended as a substitute for the non-driver's identification card and a person may not hold both at the same time.*
- *Adds personal identification card to § 9-503(a)(4).*

- **Status**

- *Failed to pass out of committee before the legislature adjourned.*



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Indiana

- **House Bill 1395 & Senate Bill 29**

- *Provides for the issuance of a "commercial identification card".*
- *Adds commercial identification card to § 9-503(a)(4).*

- **Status**

- *Failed to pass out of committee before the legislature adjourned.*



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Mississippi

- **House Bill 860**

- *Failure of secured party to file a termination statement within the statutory time frame established by § 9-513 would expose the secured party to statutory penalties of **\$200 per day** of noncompliance.*
- *Applied similar rules when mortgagee failed to record satisfaction following payment of the obligation and demand by the mortgagor.*
- *Similar to HB 518 that failed in 2013.*

- **Status**

- *Died in committee.*



Bogus Filing Working Group

Hip Pocket Amendment



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The Hip Pocket Amendment (“HPA”)

- **Purpose**
 - Offer an alternative to non-uniform bogus filing legislation.
 - Not intended to replace existing bogus filing laws.
- **Allows Rejection of Fraudulent Filings**
 - It is not necessary to enact this provision, only if the filing office requires additional reasons for rejection.
 - Option A: Record filed with intent to harass or defraud the debtor.
 - Option B: Record filed with intent to harass or defraud the debtor or any other unlawful purpose
 - Options to do not apply to a “trusted filer.”
- **Post-Filing Remedies**
 - Affidavit of wrongful filing.
 - Filing office termination.
 - Filing office administrative review prior to termination of record submitted by a “trusted filer.”



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HPA Features

- **Trusted Filer**
 - Allows low-risk filers to bypass some of the HPA provisions.
 - Avoids potential objections by financial institutions, volume filers and service companies.
 - Status determined by the filing office.
- **Administrative Procedure & Due Process**
 - Filing office provides notice to secured party at time it files termination under HPA.
 - Secured party may bring a court action.
 - HPA provides rules and procedures in unlikely event of court-ordered reinstatement.



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IACA and the HPA

- **Create Model Form of Affidavit**
 - *Will be very helpful for states that enact the HPA.*
- **Create Model Filing Office Termination Form**
 - *Will help to further distinguish the bogus nature of the financing statement.*
- **Draft HPA Model Rules and Procedures**
 - *UCC filing offices are generally not experienced with administrative review procedures. IACA can help.*
- **HPA Outlook**
 - *Expect some states to consider enacting HPA next year.*
 - *A few states already have an HPA variant in effect.*



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The End

Questions?

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