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LAW/RWH

§7 - C.2C:21-42
Title 2A.
Subtitle 6.
Chapter 37B.
(New)
False or
Fraudulent
Financing
Statements
§§8 -9 -
C.2A:37B-1 &
2A:37B-2
§10 - Note

P.L.2015, CHAPTER 59, *approved May 11, 2015*
Assembly Committee Substitute (*Second Reprint*) for
Assembly, No. 2481

1 AN ACT concerning fraudulent financing statements, amending
2 various parts of the statutory law and supplementing Titles 2A
3 and 2C of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
9 read as follows:

10 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
11 and supplemented:

12 "Biotechnology" means any technique that uses living
13 organisms, or parts of living organisms, to make or modify
14 products, to improve plants or animals, or to develop micro-
15 organisms for specific uses; including the industrial use of
16 recombinant DNA, cell fusion, and novel bioprocessing techniques.

17 "Custodian of a government record" or "custodian" means in the
18 case of a municipality, the municipal clerk and in the case of any
19 other public agency, the officer officially designated by formal
20 action of that agency's director or governing body, as the case may
21 be.

22 "Government record" or "record" means any paper, written or
23 printed book, document, drawing, map, plan, photograph,
24 microfilm, data processed or image processed document,
25 information stored or maintained electronically or by sound-
26 recording or in a similar device, or any copy thereof, that has been
27 made, maintained or kept on file in the course of his or its official

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted November 13, 2014.

²Senate SCM committee amendments adopted March 9, 2015.

1 business by any officer, commission, agency or authority of the
2 State or of any political subdivision thereof, including subordinate
3 boards thereof, or that has been received in the course of his or its
4 official business by any such officer, commission, agency, or
5 authority of the State or of any political subdivision thereof,
6 including subordinate boards thereof. The terms shall not include
7 inter-agency or intra-agency advisory, consultative, or deliberative
8 material.

9 A government record shall not include the following information
10 which is deemed to be confidential for the purposes of P.L.1963,
11 c.73 (C.47:1A-1 et seq.) as amended and supplemented:

12 information received by a member of the Legislature from a
13 constituent or information held by a member of the Legislature
14 concerning a constituent, including but not limited to information in
15 written form or contained in any e-mail or computer data base, or in
16 any telephone record whatsoever, unless it is information the
17 constituent is required by law to transmit;

18 any memorandum, correspondence, notes, report or other
19 communication prepared by, or for, the specific use of a member of
20 the Legislature in the course of the member's official duties, except
21 that this provision shall not apply to an otherwise publicly-
22 accessible report which is required by law to be submitted to the
23 Legislature or its members;

24 any copy, reproduction or facsimile of any photograph, negative
25 or print, including instant photographs and videotapes of the body,
26 or any portion of the body, of a deceased person, taken by or for the
27 medical examiner at the scene of death or in the course of a post
28 mortem examination or autopsy made by or caused to be made by
29 the medical examiner except:

30 when used in a criminal action or proceeding in this State which
31 relates to the death of that person,

32 for the use as a court of this State permits, by order after good
33 cause has been shown and after written notification of the request
34 for the court order has been served at least five days before the
35 order is made upon the county prosecutor for the county in which
36 the post mortem examination or autopsy occurred,

37 for use in the field of forensic pathology or for use in medical or
38 scientific education or research, or

39 for use by any law enforcement agency in this State or any other
40 state or federal law enforcement agency;

41 criminal investigatory records;

42 victims' records, except that a victim of a crime shall have access
43 to the victim's own records;

44 any written request by a crime victim for a record to which the
45 victim is entitled to access as provided in this section, including,
46 but not limited to, any law enforcement agency report, domestic

1 violence offense report, and temporary or permanent restraining
2 order;

3 personal firearms records, except for use by any person
4 authorized by law to have access to these records or for use by any
5 government agency, including any court or law enforcement
6 agency, for purposes of the administration of justice;

7 personal identifying information received by the Division of Fish
8 and Wildlife in the Department of Environmental Protection in
9 connection with the issuance of any license authorizing hunting
10 with a firearm. For the purposes of this paragraph, personal
11 identifying information shall include, but not be limited to, identity,
12 name, address, social security number, telephone number, fax
13 number, driver's license number, email address, or social media
14 address of any applicant or licensee;

15 trade secrets and proprietary commercial or financial information
16 obtained from any source. For the purposes of this paragraph, trade
17 secrets shall include data processing software obtained by a public
18 body under a licensing agreement which prohibits its disclosure;

19 any record within the attorney-client privilege. This paragraph
20 shall not be construed as exempting from access attorney or
21 consultant bills or invoices except that such bills or invoices may be
22 redacted to remove any information protected by the attorney-client
23 privilege;

24 administrative or technical information regarding computer
25 hardware, software and networks which, if disclosed, would
26 jeopardize computer security;

27 emergency or security information or procedures for any
28 buildings or facility which, if disclosed, would jeopardize security
29 of the building or facility or persons therein;

30 security measures and surveillance techniques which, if
31 disclosed, would create a risk to the safety of persons, property,
32 electronic data or software;

33 information which, if disclosed, would give an advantage to
34 competitors or bidders;

35 information generated by or on behalf of public employers or
36 public employees in connection with any sexual harassment
37 complaint filed with a public employer or with any grievance filed
38 by or against an individual or in connection with collective
39 negotiations, including documents and statements of strategy or
40 negotiating position;

41 information which is a communication between a public agency
42 and its insurance carrier, administrative service organization or risk
43 management office;

44 information which is to be kept confidential pursuant to court
45 order;

46 any copy of form DD-214, or that form, issued by the United
47 States Government, or any other certificate of honorable discharge,

1 or copy thereof, from active service or the reserves of a branch of
2 the Armed Forces of the United States, or from service in the
3 organized militia of the State, that has been filed by an individual
4 with a public agency, except that a veteran or the veteran's spouse
5 or surviving spouse shall have access to the veteran's own records;

6 any copy of an oath of allegiance, oath of office or any
7 affirmation taken upon assuming the duties of any public office, or
8 that oath or affirmation, taken by a current or former officer or
9 employee in any public office or position in this State or in any
10 county or municipality of this State, including members of the
11 Legislative Branch, Executive Branch, Judicial Branch, and all law
12 enforcement entities, except that the full name, title, and oath date
13 of that person contained therein shall not be deemed confidential;
14 and

15 that portion of any document which discloses the social security
16 number, credit card number, unlisted telephone number or driver
17 license number of any person; except for use by any government
18 agency, including any court or law enforcement agency, in carrying
19 out its functions, or any private person or entity acting on behalf
20 thereof, or any private person or entity seeking to enforce payment
21 of court-ordered child support; except with respect to the disclosure
22 of driver information by the New Jersey Motor Vehicle
23 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
24 3.4); and except that a social security number contained in a record
25 required by law to be made, maintained or kept on file by a public
26 agency shall be disclosed when access to the document or
27 disclosure of that information is not otherwise prohibited by State
28 or federal law, regulation or order or by State statute, resolution of
29 either or both houses of the Legislature, Executive Order of the
30 Governor, rule of court or regulation promulgated under the
31 authority of any statute or executive order of the Governor.

32 A government record shall not include, with regard to any public
33 institution of higher education, the following information which is
34 deemed to be privileged and confidential:

35 pedagogical, scholarly and/or academic research records and/or
36 the specific details of any research project conducted under the
37 auspices of a public higher education institution in New Jersey,
38 including, but not limited to research, development information,
39 testing procedures, or information regarding test participants,
40 related to the development or testing of any pharmaceutical or
41 pharmaceutical delivery system, except that a custodian may not
42 deny inspection of a government record or part thereof that gives
43 the name, title, expenditures, source and amounts of funding and
44 date when the final project summary of any research will be
45 available;

1 test questions, scoring keys and other examination data
2 pertaining to the administration of an examination for employment
3 or academic examination;
4 records of pursuit of charitable contributions or records
5 containing the identity of a donor of a gift if the donor requires non-
6 disclosure of the donor's identity as a condition of making the gift
7 provided that the donor has not received any benefits of or from the
8 institution of higher education in connection with such gift other
9 than a request for memorialization or dedication;
10 valuable or rare collections of books and/or documents obtained
11 by gift, grant, bequest or devise conditioned upon limited public
12 access;
13 information contained on individual admission applications; and
14 information concerning student records or grievance or
15 disciplinary proceedings against a student to the extent disclosure
16 would reveal the identity of the student.
17 "Personal firearms record" means any information contained in a
18 background investigation conducted by the chief of police, the
19 county prosecutor, or the Superintendent of State Police, of any
20 applicant for a permit to purchase a handgun, firearms identification
21 card license, or firearms registration; any application for a permit to
22 purchase a handgun, firearms identification card license, or firearms
23 registration; any document reflecting the issuance or denial of a
24 permit to purchase a handgun, firearms identification card license,
25 or firearms registration; and any permit to purchase a handgun,
26 firearms identification card license, or any firearms license,
27 certification, certificate, form of register, or registration statement.
28 For the purposes of this paragraph, information contained in a
29 background investigation shall include, but not be limited to,
30 identity, name, address, social security number, phone number, fax
31 number, driver's license number, email address, social media
32 address of any applicant, licensee, registrant or permit holder.
33 "Public agency" or "agency" means any of the principal
34 departments in the Executive Branch of State Government, and any
35 division, board, bureau, office, commission or other instrumentality
36 within or created by such department; the Legislature of the State
37 and any office, board, bureau or commission within or created by
38 the Legislative Branch; and any independent State authority,
39 commission, instrumentality or agency. The terms also mean any
40 political subdivision of the State or combination of political
41 subdivisions, and any division, board, bureau, office, commission or
42 other instrumentality within or created by a political subdivision of
43 the State or combination of political subdivisions, and any
44 independent authority, commission, instrumentality or agency
45 created by a political subdivision or combination of political
46 subdivisions.

1 "Law enforcement agency" means a public agency, or part
2 thereof, determined by the Attorney General to have law
3 enforcement responsibilities.

4 "Constituent" means any State resident or other person
5 communicating with a member of the Legislature.

6 "Member of the Legislature" means any person elected or
7 selected to serve in the New Jersey Senate or General Assembly.

8 "Criminal investigatory record" means a record which is not
9 required by law to be made, maintained or kept on file that is held
10 by a law enforcement agency which pertains to any criminal
11 investigation or related civil enforcement proceeding.

12 "Victim's record" means an individually-identifiable file or
13 document held by a victims' rights agency which pertains directly to
14 a victim of a crime except that a victim of a crime shall have access
15 to the victim's own records.

16 "Victim of a crime" means a person who has suffered personal or
17 psychological injury or death or incurs loss of or injury to personal
18 or real property as a result of a crime, or if such a person is
19 deceased or incapacitated, a member of that person's immediate
20 family.

21 "Victims' rights agency" means a public agency, or part thereof,
22 the primary responsibility of which is providing services, including
23 but not limited to food, shelter, or clothing, medical, psychiatric,
24 psychological or legal services or referrals, information and referral
25 services, counseling and support services, or financial services to
26 victims of crimes, including victims of sexual assault, domestic
27 violence, violent crime, child endangerment, child abuse or child
28 neglect, and the Victims of Crime Compensation Board, established
29 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
30 the Victims of Crime Compensation Office pursuant to P.L.2007,
31 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
32 (cf: P.L.2014, c.19, s.2)

33
34 2. N.J.S.12A:9-502 is amended to read as follows:

35 12A:9-502. Contents of Financing Statement; Record of
36 Mortgage as Financing Statement; Time of Filing Financing
37 Statement.

38 (a) Sufficiency of financing statement. Subject to subsection (b),
39 a financing statement is sufficient only if it:

40 (1) provides the name of the debtor;

41 (2) provides the ²legal² name of the secured party or ²the
42 legal name of² a representative of the secured party ², which
43 discloses the identity of the secured party or representative²; and

44 (3) indicates the collateral covered by the financing statement
45 and that the collateral is within the scope of this chapter ², pursuant
46 to 12A:9-102 and 12A:9-109².

1 (b) Real-property-related financing statements. Except as
2 otherwise provided in 12A:9-501(b), to be sufficient, a financing
3 statement that covers as-extracted collateral or timber to be cut, or
4 which is filed as a fixture filing and covers goods that are or are to
5 become fixtures, must satisfy subsection (a) and also:

- 6 (1) indicate that it covers this type of collateral;
7 (2) indicate that it is to be filed in the real property records;
8 (3) provide a description of the real property to which the
9 collateral is related; and
10 (4) if the debtor does not have an interest of record in the real
11 property, provide the name of a record owner.

12 (c) Record of mortgage as financing statement. A record of a
13 mortgage is effective, from the date of recording, as a financing
14 statement filed as a fixture filing or as a financing statement
15 covering as-extracted collateral or timber to be cut only if:

- 16 (1) the record indicates the goods or accounts that it covers;
17 (2) the goods are or are to become fixtures related to the real
18 property described in the record or the collateral is related to the
19 real property described in the record and is as-extracted collateral or
20 timber to be cut;
21 (3) the record satisfies the requirements for a financing
22 statement in this section, but:
23 (A) the record need not indicate that it is to be filed in the real
24 property records; and
25 (B) the record sufficiently provides the name of a debtor who is
26 an individual if it provides the individual name of the debtor or the
27 surname and first personal name of the debtor, even if the debtor is
28 an individual to whom 12A:9-503(a)(4) applies; and
29 (4) the record is recorded.

30 (d) Filing before security agreement or attachment. A financing
31 statement may be filed before a security agreement is made or a
32 security interest otherwise attaches.

33 (cf: P.L.2013, c.65, s.21)

34

35 3. N.J.S.12A:9-516 is amended to read as follows:

36 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

37 (a) What constitutes filing. Except as otherwise provided in
38 subsection (b), communication of a record to a filing office and
39 tender of the filing fee or acceptance of the record by the filing
40 office constitutes filing.

41 (b) Refusal to accept record; filing does not occur. Filing does
42 not occur with respect to a record that a filing office refuses to
43 accept because:

- 44 (1) the record is not communicated by a method or medium of
45 communication authorized by the filing office;
46 (2) an amount equal to or greater than the applicable filing fee is
47 not tendered;

- 1 (3) the filing office is unable to index the record because:
- 2 (A) in the case of an initial financing statement, the record does
- 3 not provide a name for the debtor;
- 4 (B) in the case of an amendment or information statement, the
- 5 record:
- 6 (i) does not identify the initial financing statement as required
- 7 by 12A:9-512 or 12A:9-518, as applicable; or
- 8 (ii) identifies an initial financing statement whose effectiveness
- 9 has lapsed under 12A:9-515;
- 10 (C) in the case of an initial financing statement that provides the
- 11 name of a debtor identified as an individual or an amendment that
- 12 provides a name of a debtor identified as an individual which was
- 13 not previously provided in the financing statement to which the
- 14 record relates, the record does not identify the debtor's surname; or
- 15 (D) in the case of a record filed or recorded in the filing office
- 16 described in 12A:9-501(a) (1), the record does not provide a
- 17 sufficient description of the real property to which it relates;
- 18 (4) in the case of an initial financing statement or an amendment
- 19 that adds a secured party of record, the record does not provide a
- 20 name and mailing address for the secured party of record;
- 21 (5) in the case of an initial financing statement or an amendment
- 22 that provides a name of a debtor which was not previously provided
- 23 in the financing statement to which the amendment relates, the
- 24 record does not:
- 25 (A) provide a mailing address for the debtor; or
- 26 (B) indicate whether the name provided as the name of the
- 27 debtor is the name of an individual or an organization;
- 28 (C) (Deleted by amendment, P.L.2013, c.65.)
- 29 (6) in the case of an assignment reflected in an initial financing
- 30 statement under 12A:9-514 (a) or an amendment filed under 12A:9-
- 31 514(b), the record does not provide a name and mailing address for
- 32 the assignee; **[or]**
- 33 (7) in the case of a continuation statement, the record is not filed
- 34 within the six-month period prescribed by 12A:9-515(d); or
- 35 (8) one or more of the following circumstances exist:
- 36 (A) the record is not required or authorized to be filed or
- 37 recorded with the filing office;
- 38 (B) the record on its face is being filed or recorded for a purpose
- 39 outside the scope of this chapter;
- 40 (C) the collateral described in the record is not within the scope
- 41 of this chapter;
- 42 (D) the filing office reasonably believes that the filer is
- 43 attempting to file under a fictitious name ¹with the intent to harass
- 44 or defraud the person identified as the debtor ²because:
- 45 (i) names are written in all capital or all lowercase letters or
- 46 interspersed with colons;

1 (ii) signatures or names are followed by the words “sui juris,”
2 “under duress,” “living soul,” or a copyright symbol;

3 (iii) the presence of personal seals, stamps, thumb prints, or
4 other embossed logos; or

5 (iv) the words “accepted for value” or “all rights reserved”
6 appear anywhere on the documents¹² ;

7 (E) the filing office reasonably believes that the record is
8 materially false or fraudulent because:

9 (i) the record asserts a claim against a current or former officer
10 or employee of any federal, state, county, or other local
11 governmental unit, including members of the Legislative Branch,
12 Executive Branch, Judicial Branch, and all law enforcement
13 entities, and relates to the performance or non-performance of the
14 officer's or employee's public duties, and for which the filer does
15 not hold a properly executed security agreement or judgment from a
16 court of competent jurisdiction;

17 (ii) the record indicates that the debtor and the secured party are
18 ¹substantially¹ the same;

19 (iii) the record indicates that an individual is a transmitting
20 utility; or

21 (iv) the filer is incarcerated.

22 The provisions of this paragraph (8) ¹do not apply to a record
23 communicated to the filing office by a properly documented
24 regulated financial institution¹ are not subject to the “mandatory
25 refusal to accept record” requirement of 12A:9-520(a). However,
26 upon discovery of a filed record that meets the provisions of this
27 paragraph (8), the filing office shall remove that record as per
28 procedures established in rules promulgated in accordance with
29 12A:9-526(a)¹.

30 The filing office and the employees of the filing office may not
31 be held liable for the filing or non-filing of any record described
32 within this paragraph (8).

33 (c) Rules applicable to subsection (b). For purposes of
34 subsection (b):

35 (1) a record does not provide information if the filing office is
36 unable to read or decipher the information; and

37 (2) a record that does not indicate that it is an amendment or
38 identify an initial financing statement to which it relates, as required
39 by 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing
40 statement.

41 (d) Refusal to accept record; record effective as filed record. A
42 record that is communicated to the filing office with tender of the
43 filing fee, but which the filing office refuses to accept for a reason
44 other than one set forth in subsection (b), is effective as a filed
45 record except as against a purchaser of the collateral which gives

1 value in reasonable reliance upon the absence of the record from the
2 files.

3 (cf: P.L.2013, c.65, s.25)

4

5 ²4. N.J.S.12A:9-520 is amended to read as follows:

6 12A:9-520. Acceptance and refusal to accept record.

7 (a) Mandatory refusal to accept record. A filing office shall
8 refuse to accept a record for filing for a reason set forth in 12A:9-
9 516 (b) and may refuse to accept a record for filing only for a
10 reason set forth in 12A:9-516 (b).

11 (b) Communication concerning refusal. If a filing office refuses
12 to accept a record for filing, it shall communicate to the person that
13 presented the record the fact of and reason for the refusal and the
14 date and time the record would have been filed had the filing office
15 accepted it. The communication must be made at the time and in
16 the manner prescribed by filing-office rule but, in the case of a
17 filing office described in 12A:9-501 (a) (2), in no event more than
18 two business days after the filing office receives the record.

19 (c) When filed financing statement effective. A filed financing
20 statement satisfying 12A:9-502 (a) and (b) is effective, even if the
21 filing office is required to refuse to accept it for filing under
22 subsection (a). However, 12A:9-338 applies to a filed financing
23 statement providing information described in 12A:9-516 (b) (5)
24 which is incorrect at the time the financing statement is filed.

25 (d) Separate application to multiple debtors. If a record
26 communicated to a filing office provides information that relates to
27 more than one debtor, this part applies as to each debtor separately.

28 (e) The provisions of 12A:9-516(b)(8)(A) through (E) do not
29 apply to a financing statement filed by a registered organization or a
30 representative of a registered organization. If a registered
31 organization that is attempting to file a financing statement is
32 organized under the law of a governmental unit other than this State
33 and the filing office reasonably believes the record is submitted to
34 harass, defraud, or for any other unlawful purpose, the filing office
35 may require the registered organization or its representative to
36 provide verification from the jurisdiction under whose law the
37 institution is organized. As used in this subsection, “registered
38 organization” means that term as defined in 12A:9-102.²

39 (cf: P.L. 2001, c.386, s.84)

40

41 ²[4.] ²5.² N.J.S.12A:9-525 is amended to read as follows:

42 12A:9-525. Fees.

43 (a) Initial financing statement or other record: general rule.
44 Except as otherwise provided in **[subsection]** subsections (d) and
45 (e), the fees for filing and indexing records under this part are:

46 (1) \$25 for financing statement;

- 1 (2) \$25 for continuation statement;
2 (3) \$25 for amendment statement;
3 (4) \$25 for partial release;
4 (5) \$25 for assignment;
5 (6) \$25 termination statement; and
6 (7) \$1 per page for copy of any filed financing statement.
7 (b) Number of names. Except as otherwise provided in
8 subsection (d), the number of names required to be indexed does not
9 affect the amount of the fee in subsection (a).
10 (c) Response to information request. The fee for responding to
11 a request for information from the filing office, including for
12 issuing a certificate of search showing whether there is on file any
13 financing statement naming a particular debtor, is \$25.
14 (d) Record of mortgage. This section does not require a fee
15 with respect to a record of mortgage which is effective as a
16 financing statement filed as a fixture filing or as a financing
17 statement covering as-extracted collateral or timber to be cut under
18 12A:9-502 (c). However, the recording and satisfaction fees that
19 otherwise would be applicable to the record of the mortgage apply.
20 (e) No fee shall be paid for any correction statement,
21 termination statement, or other documentation filed by any current
22 or former officer or employee of any federal, state, county, or other
23 local governmental unit, including members of the Legislative
24 Branch, Executive Branch, Judicial Branch, and all law
25 enforcement entities, or the officer's or employee's immediate
26 family or estate, filing for the purpose of removing a fraudulent or
27 otherwise improper filing or record related to the performance or
28 non-performance of that officer's or employee's public duties for
29 which the initial filer did not hold a properly executed security
30 agreement or judgment from a court of competent jurisdiction ²or
31 for which the initial filer was not entitled to file the initial financing
32 statement under 12A:9-509².
33 (cf: P.L.2002, c.34, s.19)
34

35 ²**[5.] 6.**² N.J.S.12A:9-625 is amended to read as follows:

36 12A:9-625. Remedies for Secured Party's Failure to Comply with
37 Chapter.

38 (a) Judicial orders concerning noncompliance. If it is
39 established that a secured party is not proceeding in accordance
40 with this chapter, a court may order or restrain collection,
41 enforcement, or disposition of collateral on appropriate terms and
42 conditions.

43 (b) Damages for noncompliance. Subject to subsections (c), (d)
44 and (f), a person is liable for damages in the amount of any loss
45 caused by a failure to comply with this chapter. Loss caused by a

1 failure to comply may include loss resulting from the debtor's
2 inability to obtain, or increased costs of, alternative financing.

3 (c) Persons entitled to recover damages; statutory damages if
4 collateral is consumer goods. Except as otherwise provided in
5 12A:9-628:

6 (1) a person that, at the time of the failure, was a debtor, was an
7 obligor, or held a security interest in or other lien on the collateral
8 may recover damages under subsection (b) for its loss; and

9 (2) if the collateral is consumer goods, a person that was a
10 debtor or a secondary obligor at the time a secured party failed to
11 comply with this part may recover for that failure in any event an
12 amount not less than the credit service charge plus 10 percent of the
13 principal amount of the obligation or the time-price differential plus
14 10 percent of the cash price.

15 (d) Recovery when deficiency eliminated or reduced. A debtor
16 whose deficiency is eliminated under 12A:9-626 may recover
17 damages for the loss of any surplus. However, a debtor or
18 secondary obligor whose deficiency is eliminated or reduced under
19 12A:9-626 may not otherwise recover under subsection (b) for
20 noncompliance with the provisions of this part relating to
21 collection, enforcement, disposition, or acceptance.

22 (e) Statutory damages: noncompliance with specified
23 provisions. In addition to any damages recoverable under
24 subsection (b), the debtor, consumer obligor, or person named as a
25 debtor in a filed record, as applicable, may recover \$500 in each
26 case from a person that:

27 (1) fails to comply with 12A:9-207;

28 (2) fails to comply with 12A:9-208;

29 (3) files a record that the person is not entitled to file under
30 12A:9-509 (a);

31 (4) fails to cause the secured party of record to file or send a
32 termination statement as required by 12A:9-513 (a) or (c);

33 (5) fails to comply with 12A:9-616 (b) (1) and whose failure is
34 part of a pattern, or consistent with a practice, of noncompliance; or

35 (6) fails to comply with 12A:9-616 (b) (2).

36 (f) Statutory damages: noncompliance with 12A:9-210. A
37 debtor or consumer obligor may recover damages under subsection
38 (b) and, in addition, \$500 in each case from a person that, without
39 reasonable cause, fails to comply with a request under 12A:9-210.
40 A recipient of a request under 12A:9-210 which never claimed an
41 interest in the collateral or obligations that are the subject of a
42 request under that section has a reasonable excuse for failure to
43 comply with the request within the meaning of this subsection.

44 (g) Limitation of security interest: noncompliance with 12A:9-
45 210. If a secured party fails to comply with a request regarding a
46 list of collateral or a statement of account under 12A:9-210, the
47 secured party may claim a security interest only as shown in the list

1 or statement included in the request as against a person that is
2 reasonably misled by the failure.

3 (h) Additional damages for fraudulent filings: any current or
4 former officer or employee of any federal, state, county, or other
5 local governmental unit, including members of the Legislative
6 Branch, Executive Branch, Judicial Branch, and all law
7 enforcement entities, or the current or former officer's or
8 employee's immediate family or estate injured by a filing that
9 relates to the performance or non-performance of the officer's or
10 employee's public duties, and for which the filer does not hold a
11 properly executed security agreement or judgment from a court of
12 competent jurisdiction² or for which the initial filer was not entitled
13 to file the initial financing statement under 12A:9-509², may bring
14 a civil action in the Superior Court against the person or entity who
15 filed or recorded the injuring documents. Upon a finding that a
16 filing is false or contains any materially false, fictitious, or
17 fraudulent statement or representation, or with the intent to harass,
18 hinder, defraud, retaliate against, or in any way impede the
19 performance of that officer's or employee's duties, the court may do
20 any one or more of the following:

21 (1) order the defendant to pay a sum of not less than \$2000 for
22 each fraudulent filing or, the actual damages caused by the filing or
23 recording, whichever is greater;

24 (2) enjoin the defendant from filing any future liens,
25 encumbrances, court actions, or claims against persons specified by
26 the court without approval of the court;

27 (3) award the defendant court costs and reasonable attorney's
28 fees; or

29 (4) order any other relief as is required to clear title to the real
30 or personal property.

31 (cf: P.L.2013, c.65, s.29)

32

33 ²**[6.] 7.²** (New section) A person commits a crime of the
34 second degree if he files or records, or directs another to file or
35 record, in any public record or in any private record which is
36 generally available to the public, any document, lien, encumbrance,
37 or court action against the real or personal property of a current or
38 former public servant, the public servant's immediate family or
39 estate, a current or former federal officer or employee, or the
40 officer's or employee's immediate family or estate, on account of
41 the performance or non-performance of that public servant's,
42 officer's or employee's official duties, knowing or having reason to
43 know that such document, lien, encumbrance, or court action is
44 false or contains any materially false, fictitious, or fraudulent
45 statement or representations, or with the intent to harass, hinder,

1 defraud, retaliate against, or in any way impede the performance of
2 that public servant's, officer's or employee's duties.

3 A person convicted of a violation of this section may, in addition
4 to any other penalty imposed by the court, be enjoined from filing
5 any future liens, encumbrances, or court actions against persons
6 specified by the court without approval of the court.

7
8 ²**[7.] 8.**² (New section) Any current or former officer or
9 employee of any federal, state, county, or other local governmental
10 unit, including members of the Legislative Branch, Executive
11 Branch, Judicial Branch, and all law enforcement entities, or the
12 current or former officer's or employee's immediate family or
13 estate injured by a filing or recording that relates to the performance
14 or non-performance of the officer's or employee's public duties, and
15 for which the filer does not hold a properly executed security
16 agreement or judgment from a court of competent jurisdiction ²or
17 for which the initial filer was not entitled to file the initial financing
18 statement under 12A:9-509² may bring a civil action against the
19 person or entity who filed or recorded the documents. Upon a
20 showing that a filing is false or contains any materially false,
21 fictitious, or fraudulent statement or representations, or with the
22 intent to harass, hinder, defraud, retaliate against, or in any way
23 impede the performance of that officer's or employee's duties, the
24 court may do any one or more of the following:

25 a. order the defendant to pay a sum of not less than \$2000 for
26 each fraudulent filing or, the actual damages caused by the filing or
27 recording, whichever is greater;

28 b. enjoin the defendant from making any future liens,
29 encumbrances, court actions, or claims against persons specified by
30 the court without approval of the court;

31 c. award the plaintiff court costs and reasonable attorney's fees;
32 or

33 d. order any other relief as is required to clear title to the real
34 or personal property.

35
36 ²9. (New section) The Division of Revenue in the Department
37 of the Treasury may adopt, pursuant to the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
39 regulations to effectuate the provisions of this act.²

40
41 ²**[8.] 10.**² This act shall take effect immediately ², and shall
42 apply only to documents filed on or after the effective date of this
43 act².

44
45
46 Provides remedies for certain fraudulent financing statements.

ASSEMBLY, No. 2481

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 10, 2014

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

SYNOPSIS

Provides remedies for fraudulent financing statements filed pursuant to the Uniform Commercial Code.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/19/2014)

1 AN ACT concerning fraudulent financing statements, amending
2 N.J.S.12A:9-501 and N.J.S.12A:9-520, and supplementing
3 chapter 9 of Title 12A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.12A:9-501 is amended to read as follows:
9 12A:9-501. Filing Office.

10 (a) Filing offices. Except as otherwise provided in subsection
11 (b), if the local law of this State governs perfection of a security
12 interest or agricultural lien, the office in which to file a financing
13 statement to perfect the security interest or agricultural lien is:

14 (1) the office designated for the filing or recording of a record
15 of a mortgage on the related real property, if:

16 (A) the collateral is as-extracted collateral or timber to be cut; or

17 (B) the financing statement is filed as a fixture filing and the
18 collateral is goods that are or are to become fixtures; or

19 (2) the Division of Commercial Recording or other office
20 designated by Executive Order, in all other cases, including a case
21 in which the collateral is goods that are or are to become fixtures
22 and the financing statement is not filed as a fixture filing.

23 (b) Filing office for transmitting utilities. The office in which to
24 file a financing statement to perfect a security interest in collateral,
25 including fixtures, of a transmitting utility is the Division of
26 Commercial Recording or other office designated by Executive
27 Order. The financing statement also constitutes a fixture filing as to
28 the collateral indicated in the financing statement which is or is to
29 become fixtures.

30 (c) If a filing office receives a financing statement under
31 paragraph (2) of subsection (a) of this section or subsection (b) of
32 this section for filing, and any debtor identified on the financing
33 statement is an individual, the office shall provide written notice of
34 the filing of the financing statement to that debtor. The filing office
35 shall determine the form of the written notice and the written notice
36 shall contain at least all of the following information:

37 (1) The debtor's name and address as shown on the financing
38 statement;

39 (2) The secured party's name and address as shown on the
40 financing statement; and

41 (3) The remedies available to the debtor under section 3 of
42 P.L. , c. (C.) (pending before the Legislature as this bill) if
43 the debtor believes that the financing statement is erroneously or
44 fraudulently filed.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (d) In addition to the written notice described in subsection (c)
2 of this section, the office shall provide at no charge to a debtor
3 described in that subsection a copy or image of the filed financing
4 statement and any attachments. If the debtor requests additional
5 copies or searches, the fees provided in 12A:9-525 shall apply to
6 that request.

7 (e) A person shall not knowingly or intentionally file a false or
8 fraudulent financing statement with any office under paragraph (2)
9 of subsection (a) of this section or subsection (b) of this section. In
10 addition to any other penalty provided by law, a violation of this
11 subsection is a crime of the third degree. If the person is convicted
12 of the violation, the court may find that the financing statement is
13 ineffective and may order the filing office to terminate the financing
14 statement and may order restitution.

15 (f) If a person files a false or fraudulent financing statement
16 with any office under paragraph (2) of subsection (a) of this section
17 or subsection (b) of this section, a debtor named in that financing
18 statement may file an action against the person that filed the
19 financing statement seeking appropriate equitable relief or damages,
20 including, but not limited to, an order declaring the financing
21 statement ineffective and ordering the office to terminate the
22 financing statement, and reasonable attorney fees.

23 (cf: P.L.2001, c.386, s.66)

24
25 2. N.J.S.12A:9-520 is amended to read as follows:

26 12A:9-520. Acceptance and Refusal to Accept Record.

27 (a) Mandatory refusal to accept record. A filing office shall
28 refuse to accept a record for filing for a reason set forth in 12A:9-
29 516 (b) and may refuse to accept a record for filing only for a
30 reason set forth in 12A:9-516 (b).

31 (b) Communication concerning refusal. If a filing office refuses
32 to accept a record for filing, it shall communicate to the person that
33 presented the record the fact of and reason for the refusal and the
34 date and time the record would have been filed had the filing office
35 accepted it. The communication must be made at the time and in
36 the manner prescribed by filing-office rule but, in the case of a
37 filing office described in 12A:9-501 (a) (2), in no event more than
38 two business days after the filing office receives the record.

39 (c) When filed financing statement effective. A filed financing
40 statement satisfying 12A:9-502 (a) and (b) is effective, even if the
41 filing office is required to refuse to accept it for filing under
42 subsection (a). However, 12A:9-338 applies to a filed financing
43 statement providing information described in 12A:9-516 (b) (5)
44 which is incorrect at the time the financing statement is filed.

45 (d) Separate application to multiple debtors. If a record
46 communicated to a filing office provides information that relates to
47 more than one debtor, this part applies as to each debtor separately.

1 (e) Notwithstanding any other provision of Chapter 9 of the
2 Uniform Commercial Code, N.J.S.12A:9-101 et seq., if a person
3 presents a record to a filing office for filing or recording, the filing
4 office may refuse to accept the record for filing or recording if one
5 or more of the following circumstances exist:

6 (1) The record is not required or authorized to be filed or
7 recorded with the filing office;

8 (2) The record is being filed or recorded for a purpose outside
9 the scope of Chapter 9 of the Uniform Commercial Code;

10 (3) The filing office has reasonable cause to believe the record
11 is materially false or fraudulent;

12 (4) The record asserts a claim against a current or former
13 employee or officer of a federal, state, county, or other local
14 governmental unit that relates to the performance of the officer's or
15 employee's public duties, and for which the filer does not hold a
16 properly executed security agreement or judgment from a court of
17 competent jurisdiction; or

18 (5) The record indicates that the debtor and the secured party are
19 substantially the same or that an individual debtor is a transmitting
20 utility.

21 (f) If a correction statement filed with the filing office under
22 12A:9-518 alleges that a previously filed record was wrongfully
23 filed, the filing office shall, without undue delay, determine whether
24 the contested record was wrongfully filed. To determine whether
25 the record was wrongfully filed, the filing office may require the
26 person who filed the correction statement or the secured party to
27 provide any additional relevant information requested by the filing
28 office, including an original or copy of a security agreement that is
29 related to the record. If the filing office finds that the record was
30 wrongfully filed, the filing office shall terminate the record and the
31 record is void and ineffective. The filing office shall notify the
32 secured party named in the contested record of the termination.

33 (g) If the filing office refuses to accept a record for filing or
34 recording pursuant to subsection (e) of this section, the person who
35 presented the record to the filing office may commence an action
36 under section 3 of P.L. , c. (C.) (pending before the
37 Legislature as this bill) to require the filing office to accept the
38 record for filing or recording. A record ordered by the court to be
39 accepted is effective as a filed record from the initial filing date
40 except as against a purchaser of the collateral which gives value in
41 reasonable reliance on the absence of the record from the files.

42 (h) A filing officer who, acting in a manner that does not subject
43 the filing officer to personal liability under the statutes of this State,
44 improperly refuses to accept a record for filing or recording under
45 subsection (e) of this section is not personally liable for the
46 improper refusal or determination.

47 (i) Subsection (e) of this section does not apply to a financing
48 statement filed by a regulated financial institution or a

1 representative of a regulated financial institution. If a regulated
2 financial institution that is attempting to file a financing statement
3 is organized under the law of a governmental unit other than this
4 State, the filing office may request the regulated financial
5 institution or its representative to provide verification of regulation
6 or licensure in the jurisdiction under whose law the institution is
7 organized. As used in this subsection, "regulated financial
8 institution" means that term as defined in section 3 of P.L. _____,
9 c. (C. _____) (pending before the Legislature as this bill).
10 (cf: P.L.2001, c.386, s.84)
11

12 3. (New section) (a) A person identified as a debtor in a
13 financing statement filed with the filing office may file an affidavit
14 in the form prescribed under subsection (b) of this section stating
15 that the financing statement is fraudulent. A person shall not file an
16 affidavit under this subsection with respect to a financing statement
17 filed by a regulated financial institution or a representative of a
18 regulated financial institution.

19 (b) The filing office shall adopt and make available a form
20 affidavit to be used to give notice of a fraudulent financing
21 statement under subsection (a) of this section.

22 (c) On receipt of an affidavit under subsection (a) of this
23 section, the filing office shall terminate the financing statement
24 effective on the date the affidavit is filed.

25 (d) The filing office shall not charge a fee to file an affidavit
26 under this section. The filing office shall not return any filing fee
27 paid for filing the financing statement, regardless of whether the
28 financing statement is terminated under this section.

29 (e) The filing office shall send notice of the termination of a
30 financing statement under subsection (c) of this section to the filer
31 of the financing statement advising the filer that the financing
32 statement has been terminated. If the filer of the financing statement
33 believes in good faith that the statement was legally filed and is not
34 fraudulent, the filer may file an action to reinstate the financing
35 statement.

36 (f) If the court in an action under this section or 12A:9-520(g)
37 determines that the financing statement should be reinstated or
38 accepted, the court shall provide a copy of its order to the filing
39 office. On receipt of an order reinstating a financing statement, the
40 filing office shall file a record that identifies by its file number the
41 initial financing statement to which the record relates and indicates
42 that the financing statement has been reinstated.

43 (g) On the filing of a record reinstating a financing statement
44 under subsection (f) of this section, the financing statement is
45 effective as a filed record from the initial filing date. If a financing
46 statement that is reinstated would have lapsed during the period of
47 termination, the secured party may file a continuation statement
48 within 30 days after the record reinstating the financing statement is

1 filed. The continuation statement is effective as a filed record from
2 the date the financing statement would have lapsed. However, a
3 financing or continuation statement is not retroactive as provided in
4 this subsection as against a purchaser of the collateral that gives
5 value in reasonable reliance on the absence of the record from the
6 files.

7 (h) If the court in an action under this section determines that
8 the financing statement is fraudulent, the filer of the financing
9 statement shall pay the costs and expenses incurred by the person
10 identified as a debtor in the financing statement in the action.

11 (i) An individual who files a materially false or fraudulent
12 affidavit under subsection (a) of this section is guilty of a crime of
13 the third degree.

14 (j) As used in this section, "regulated financial institution"
15 means a financial institution subject to regulatory oversight or
16 examination by a state or federal agency. Regulated financial
17 institution includes a bank, savings bank, savings association,
18 building and loan association, credit union, consumer finance
19 company, industrial bank, industrial loan company, insurance
20 company, investment company, installment seller, mortgage
21 servicer, sales finance company, or leasing company.

22
23 4. This act shall take effect immediately.
24
25

26 STATEMENT 27

28 This bill provides remedies for victims of fraudulent financing
29 statements filed pursuant to the Uniform Commercial Code. The
30 bill provides victims with pre-filing and post-filing remedies, as
31 well as providing notice requirements so victims are notified when
32 a financing statement has been filed against them.

33 Under current law, financing statements are forms filed by
34 creditors with the State or local government to perfect a security
35 interest in property held by a debtor, which is used as collateral
36 against the loan. While the vast majority of financing statements
37 are filed for valid purposes with authorization from the parties to
38 the loan, it has become increasingly common for financing
39 statements to be filed fraudulently as retaliatory measures meant to
40 harass individuals. Fraudulent financing statements can cause
41 serious financial consequences to victims of these filings, as the
42 filings damage credit scores and may cause difficulties in selling or
43 purchasing real property.

44 Under the bill, a filing office must provide written notice of the
45 filing of certain financing statements to the debtor identified on the
46 financing statement if that debtor is an individual, and provide at no
47 charge to that debtor a copy or image of the filed financing
48 statement and any attachments.

1 The bill provides that a person who knowingly or intentionally
2 files a false or fraudulent financing statement with any office, in
3 addition to any other penalty provided by law, is guilty of a crime
4 of the third degree. If the person is convicted of the violation, the
5 court may find that the financing statement is ineffective and may
6 order the office to terminate the financing statement and may order
7 restitution. Additionally, the debtor named in the financing
8 statement may file an action against the person that filed the
9 financing statement seeking appropriate equitable relief or damages.

10 Under the bill, if a person presents a record to a filing office for
11 filing or recording, the filing office may refuse to accept the record
12 for filing or recording if one or more of the following circumstances
13 exist:

14 (1) The record is not required or authorized to be filed or
15 recorded with the filing office.

16 (2) The record is being filed or recorded for a purpose outside
17 the scope of Chapter 9 of the Uniform Commercial Code.

18 (3) The filing office has reasonable cause to believe the record
19 is materially false or fraudulent.

20 (4) The record asserts a claim against a current or former
21 employee or officer of a federal, state, county, or other local
22 governmental unit that relates to the performance of the officer's or
23 employee's public duties, and for which the filer does not hold a
24 properly executed security agreement or judgment from a court of
25 competent jurisdiction.

26 (5) The record indicates that the debtor and the secured party are
27 substantially the same or that an individual debtor is a transmitting
28 utility.

29 The bill provides that if a correction statement filed with the
30 filing office alleges that a previously filed record was wrongfully
31 filed, the filing office must determine whether the contested record
32 was wrongfully filed.

33 Under the bill, a filing officer who, acting in a manner that does
34 not subject the filing officer to personal liability under the statutes
35 of this state, improperly refuses to accept a record for filing or
36 recording is not personally liable for the improper refusal or
37 determination.

38 The provisions of the bill concerning a filing office refusing to
39 accept a financing statement do not apply to a financing statement
40 filed by a regulated financial institution or a representative of a
41 regulated financial institution. If a regulated financial institution
42 that is attempting to file a financing statement is organized under
43 the law of a governmental unit other than this State, the filing office
44 may request the regulated financial institution or its representative
45 to provide verification of regulation or licensure in the jurisdiction
46 under whose law the institution is organized.

47 Under the bill, except with respect to a financing statement filed
48 by a regulated financial institution, a person identified as a debtor in

1 a financing statement filed with the filing office may file an
2 affidavit with the filing office stating that the financing statement is
3 fraudulent. On receipt of that affidavit, the filing office shall
4 terminate the financing statement effective on the date the affidavit
5 is filed.

6 The bill provides that the filing office must send notice of the
7 termination of a financing statement to the filer of the financing
8 statement advising the filer that the financing statement has been
9 terminated. If the filer of the financing statement believes in good
10 faith that the statement was legally filed and is not fraudulent, the
11 filer may file an action to reinstate the financing statement. If the
12 court determines that the financing statement should be reinstated
13 or accepted, the court shall provide a copy of its order to the filing
14 office.

15 The bill provides that if the court determines that the financing
16 statement is fraudulent, the filer of the financing statement must pay
17 the costs and expenses incurred by the person identified as a debtor
18 in the financing statement in the action.

19 Under the bill, an individual who files a materially false or
20 fraudulent affidavit to remove a financing statement is guilty of a
21 crime of the third degree.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2481

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 2014

The Assembly Financial Institutions and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2481.

The Assembly Committee Substitute provides remedies for victims of certain fraudulent financing statement filings, principally those filed pursuant to the Uniform Commercial Code.

Under current law, financing statements are forms filed by creditors with the State or local government to perfect a security interest in property held by a debtor, which is used as collateral against the loan. While the vast majority of financing statements are filed for valid purposes with authorization from the parties to the loan, it has become increasingly common for financing statements to be filed fraudulently as retaliatory measures meant to harass individuals. Fraudulent financing statements can cause serious financial consequences to victims of these filings, as the filings damage credit scores and may cause difficulties in selling or purchasing real property.

The substitute bill makes confidential certain public documents that are sometimes used against certain public officers and employees in the filing of fraudulent financing statements, including any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, except that the full name, title, and oath date of the officer or employee contained in the documents is not deemed confidential.

The bill provides that, in order for a financing statement to be deemed sufficient, it must provide the legal name of the secured party or the legal name of a representative of the security party, and it must indicate that the collateral covered by the financing statement is collateral that is within the scope of chapter 9 of the Uniform Commercial Code.

The bill provides that the filing of a financing statement does not occur and a filing office may refuse to accept the statement if one or more of the following circumstances exist:

(1) the record is not required or authorized to be filed or recorded with the filing office;

(2) the record on its face is being filed or recorded for a purpose outside the scope of chapter 9 of the Uniform Commercial Code;

(3) the collateral described in the record is not within the scope of chapter 9 of the Uniform Commercial Code;

(4) the filing office reasonably believes that the filer is attempting to file under a fictitious name; or

(5) the filing office reasonably believes that the record is materially false or fraudulent because:

(i) the record asserts a claim against a current or former officer or employee of any federal, state, county, or other local governmental unit, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, and relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction;

(ii) the record indicates that the debtor and the secured party are substantially the same;

(iii) the record indicates that an individual is a transmitting utility; or

(iv) the filer is incarcerated.

The bill provides that these circumstances do not apply to a record communicated to the filing office by a properly documented regulated financial institution and that the filing office, and its employees, may not be held liable for the filing or non-filing of any record subject to the circumstances outlined above.

The bill stipulates that no fee shall be paid for any correction statement, termination statement, or other documentation filed by any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the officer's or employee's immediate family or estate filing for the purpose of removing a fraudulent or otherwise improper filing or record related to the performance or non-performance of that officer's or employee's public duties for which the initial filer did not hold a properly executed security agreement or judgment from a court of competent jurisdiction.

Additionally, pursuant to the bill, any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the current or former officer's or employee's immediate family or estate injured by a filing that relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction, may bring a civil action in the Superior Court against the person or entity who filed or recorded the injuring documents. Upon a finding that a filing is false or contains any

materially false, fictitious, or fraudulent statement or representation, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that officer's or employee's duties, the court may:

(1) order the defendant to pay a sum of not less than \$2000 for each fraudulent filing or, the actual damages caused by the filing or recording, whichever is greater;

(2) enjoin the defendant from filing any future liens, encumbrances, court actions, or claims against persons specified by the court without approval of the court;

(3) award the defendant court costs and reasonable attorney's fees;

(4) order any other relief as is required to clear title to the real or personal property.

The bill anticipates that certain fraudulent filings could occur outside the context of the Uniform Commercial Code and provides that the civil action outlined above will be applicable to those fraudulent filings as well.

The bill also provides that a person commits a crime of the second degree if he files or records, or directs another to file or record, in any public record or in any private record which is generally available to the public, any document, lien, encumbrance, or court action against the real or personal property of a current or former public servant, the public servant's immediate family or estate, a current or former federal officer or employee, or the officer's or employee's immediate family or estate, on account of the performance or non-performance of that public servant's, officer's or employee's official duties, knowing or having reason to know that such document, lien, encumbrance, or court action is false or contains any materially false, fictitious, or fraudulent statement or representations, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that public servant's, officer's or employee's duties.

Under the bill, a person convicted of a violation of this section may, in addition to any other penalty imposed by the court, be enjoined from filing any future liens, encumbrances, or court actions against persons specified by the court without approval of the court.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2481**

with Assembly Floor Amendments
(Proposed by Assemblyman DIEGNAN)

ADOPTED: NOVEMBER 13, 2014

This floor amendment clarifies the circumstances under which a filing does not occur and a filing office may refuse to accept a record, which shows evidence of being fraudulently filed. The amendments also remove a provision exempting records communicated by certain financial institutions and clarify the circumstances in which a filing office may be required to remove a filed record that is discovered to have been filed fraudulently.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2481**

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 9, 2015

The Senate Commerce Committee reports favorably, and with committee amendments Assembly Bill No. 2481 (1R ACS).

The bill, as amended, provides remedies to victims of fraudulent financing statements filed pursuant to the Uniform Commercial Code and certain other fraudulent filings.

Under current law, financing statements are forms filed by creditors with the State or local government to perfect a security interest in property held by a debtor, which is used as collateral against the loan. While the vast majority of financing statements are filed for valid purposes with authorization from the parties to the loan, it has become increasingly common for financing statements to be filed fraudulently as retaliatory measures meant to harass individuals. Fraudulent financing statements can cause serious financial consequences to victims of these filings, as the filings damage credit scores and may cause difficulties in selling or purchasing real property.

This bill, as amended, makes confidential certain public documents that are sometimes used against certain public officers and employees in the filing of fraudulent financing statements, including any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, except that the full name, title, and oath date of the officer or employee contained in the documents is not deemed confidential.

The bill provides that, in order for a financing statement to be deemed sufficient, it must provide the name of the secured party or a representative of the secured party that discloses the identity of the secured party or representative and is not being used with any unlawful motive, and it must indicate that the collateral covered by the financing statement is collateral that is within the scope of chapter 9 of the Uniform Commercial Code.

The bill provides that the filing of a financing statement does not occur and a filing office may refuse to accept the statement if one or more of the following circumstances exist:

(1) the record is not required or authorized to be filed or recorded with the filing office;

(2) the record on its face is being filed or recorded for a purpose outside the scope of chapter 9 of the Uniform Commercial Code;

(3) the collateral described in the record is not within the scope of chapter 9 of the Uniform Commercial Code;

(4) the filing office reasonably believes that the filer is attempting to file under a fictitious name with the intent to harass or defraud the person identified as the debtor; or

(5) the filing office reasonably believes that the record is materially false or fraudulent because:

(i) the record asserts a claim against a current or former officer or employee of any federal, state, county, or other local governmental unit, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, and relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction;

(ii) the record indicates that the debtor and the secured party are substantially the same;

(iii) the record indicates that an individual is a transmitting utility; or

(iv) the filer is incarcerated.

The bill provides that these circumstances do not apply to a financing statement filed by a registered organization or a representative of a registered organization.

The bill stipulates that no fee shall be paid for any correction statement, termination statement, or other documentation filed by any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the officer's or employee's immediate family or estate filing for the purpose of removing a fraudulent or otherwise improper filing or record related to the performance or non-performance of that officer's or employee's public duties for which the initial filer did not hold a properly executed security agreement or judgment from a court of competent jurisdiction or for which the initial filer was not entitled to file the initial financing statement.

Additionally, pursuant to the bill, any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the current or former officer's or employee's immediate family or estate injured by a filing that relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of

competent jurisdiction or for which the initial filer was not entitled to file the initial financing statement, may bring a civil action in the Superior Court against the person or entity who filed or recorded the injuring documents. Upon a finding that a filing is false or contains any materially false, fictitious, or fraudulent statement or representation, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that officer's or employee's duties, the court may:

(1) order the defendant to pay a sum of not less than \$2000 for each fraudulent filing or, the actual damages caused by the filing or recording, whichever is greater;

(2) enjoin the defendant from filing any future liens, encumbrances, court actions, or claims against persons specified by the court without approval of the court;

(3) award the defendant court costs and reasonable attorney's fees;

(4) order any other relief as is required to clear title to the real or personal property.

The bill anticipates that certain fraudulent filings could occur outside the context of the Uniform Commercial Code and provides that the civil action outlined above will also be applicable to those fraudulent filings.

The bill also provides that a person commits a crime of the second degree if he files or records, or directs another to file or record, in any public record or in any private record which is generally available to the public, any document, lien, encumbrance, or court action against the real or personal property of a current or former public servant, the public servant's immediate family or estate, a current or former federal officer or employee, or the officer's or employee's immediate family or estate, on account of the performance or non-performance of that public servant's, officer's or employee's official duties, knowing or having reason to know that such document, lien, encumbrance, or court action is false or contains any materially false, fictitious, or fraudulent statement or representations, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that public servant's, officer's or employee's duties.

A person convicted under the bill, in addition to any other penalty imposed by the court, may be enjoined from filing any future liens, encumbrances, or court actions against persons specified by the court without approval of the court.

As amended and reported, this bill is identical to the Senate Committee Substitute for Senate Bill No. 2106, as reported by the committee.

Committee Amendments

The committee amendments:

1) Remove a requirement that, in order to be considered sufficient, a financing statement must provide the legal name of the

secured party or representative. Instead, the secured party or representative must use a name which discloses the identity of the secured party or representative.

2) Remove a list of features a filing office must use when identifying a false name, and instead allow a filing office to use reasonable belief when identifying a false name.

3) Provide that certain provisions regarding a filing office's ability to refuse a record for filing do not apply to registered organizations.

4) Provide that certain provisions of the bill regarding the payment of fees and civil and criminal penalties also apply to filings for which the initial filer was not entitled to file the initial financing statement.

5) Provide that the Division of Revenue in the Department of Treasury may adopt rules and regulations to effectuate the purposes of the bill.

6) Clarify that the bill only applies to documents filed after the bill's effective date.

SENATE, No. 2106

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MAY 19, 2014

Sponsored by:

Senator PETER J. BARNES, III

District 18 (Middlesex)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Bateman

SYNOPSIS

Provides remedies for fraudulent financing statements filed pursuant to the Uniform Commercial Code; allows filing offices to reject certain financing statements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/10/2014)

1 AN ACT concerning filing statements, amending N.J.S.12A:9-501
2 and N.J.S.12A:9-520, and supplementing chapter 9 of Title 12A
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.12A:9-501 is amended to read as follows:
9 12A:9-501. Filing Office.

10 (a) Filing offices. Except as otherwise provided in subsection
11 (b), if the local law of this State governs perfection of a security
12 interest or agricultural lien, the office in which to file a financing
13 statement to perfect the security interest or agricultural lien is:

14 (1) the office designated for the filing or recording of a record
15 of a mortgage on the related real property, if:

16 (A) the collateral is as-extracted collateral or timber to be cut; or

17 (B) the financing statement is filed as a fixture filing and the
18 collateral is goods that are or are to become fixtures; or

19 (2) the Division of Commercial Recording or other office
20 designated by Executive Order, in all other cases, including a case
21 in which the collateral is goods that are or are to become fixtures
22 and the financing statement is not filed as a fixture filing.

23 (b) Filing office for transmitting utilities. The office in which to
24 file a financing statement to perfect a security interest in collateral,
25 including fixtures, of a transmitting utility is the Division of
26 Commercial Recording or other office designated by Executive
27 Order. The financing statement also constitutes a fixture filing as to
28 the collateral indicated in the financing statement which is or is to
29 become fixtures.

30 (c) If a filing office receives a financing statement under
31 paragraph (2) of subsection (a) of this section or subsection (b) of
32 this section for filing, and any debtor identified on the financing
33 statement is an individual, the office shall provide written notice of
34 the filing of the financing statement to that debtor. The filing office
35 shall determine the form of the written notice and the written notice
36 shall contain at least all of the following information:

37 (1) The debtor's name and address as shown on the financing
38 statement;

39 (2) The secured party's name and address as shown on the
40 financing statement; and

41 (3) The remedies available to the debtor under section 3 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill) if the debtor
43 believes that the financing statement is erroneously or fraudulently
44 filed.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (d) In addition to the written notice described in subsection (c)
2 of this section, the office shall provide at no charge to a debtor
3 described in that subsection a copy or image of the filed financing
4 statement and any attachments. If the debtor requests additional
5 copies or searches, the fees provided in 12A:9-525 shall apply to
6 that request.

7 (e) A person shall not knowingly or intentionally file a false or
8 fraudulent financing statement with any office under paragraph (2)
9 of subsection (a) of this section or subsection (b) of this section. In
10 addition to any other penalty provided by law, a violation of this
11 subsection is a crime of the third degree. If the person is convicted
12 of the violation, the court shall find that the financing statement is
13 ineffective and order the filing office to terminate the financing
14 statement, and shall order restitution.

15 (f) If a person files a false or fraudulent financing statement
16 with any office under paragraph (2) of subsection (a) of this section
17 or subsection (b) of this section, a debtor named in that financing
18 statement may file an action against the person that filed the
19 financing statement seeking appropriate equitable relief or damages,
20 including, but not limited to, an order declaring the financing
21 statement ineffective and ordering the office to terminate the
22 financing statement, and reasonable attorney fees.

23 (cf: P.L.2001, c.386, s.66)

24

25 2. N.J.S.12A:9-520 is amended to read as follows:

26 12A:9-520. Acceptance and Refusal to Accept Record.

27 (a) Mandatory refusal to accept record. A filing office shall
28 refuse to accept a record for filing for a reason set forth in 12A:9-
29 516 (b) and may refuse to accept a record for filing only for a
30 reason set forth in 12A:9-516 (b).

31 (b) Communication concerning refusal. If a filing office refuses
32 to accept a record for filing, it shall communicate to the person that
33 presented the record the fact of and reason for the refusal and the
34 date and time the record would have been filed had the filing office
35 accepted it. The communication must be made at the time and in
36 the manner prescribed by filing-office rule but, in the case of a
37 filing office described in 12A:9-501 (a) (2), in no event more than
38 two business days after the filing office receives the record.

39 (c) When filed financing statement effective. A filed financing
40 statement satisfying 12A:9-502 (a) and (b) is effective, even if the
41 filing office is required to refuse to accept it for filing under
42 subsection (a). However, 12A:9-338 applies to a filed financing
43 statement providing information described in 12A:9-516 (b) (5)
44 which is incorrect at the time the financing statement is filed.

45 (d) Separate application to multiple debtors. If a record
46 communicated to a filing office provides information that relates to
47 more than one debtor, this part applies as to each debtor separately.

1 (e) Notwithstanding any other provision of Chapter 9 of the
2 Uniform Commercial Code, N.J.S.12A:9-101 et seq., if a person
3 presents a record to a filing office for filing or recording, the filing
4 office may refuse to accept the record for filing or recording if one
5 or more of the following circumstances exist:

6 (1) The record is not required or authorized to be filed or
7 recorded with the filing office;

8 (2) The record is being filed or recorded for a purpose outside
9 the scope of Chapter 9 of the Uniform Commercial Code;

10 (3) The filing office has reasonable cause to believe the record
11 is materially false or fraudulent;

12 (4) The record asserts a claim against a current or former
13 employee or officer of a federal, state, county, or other local
14 governmental unit that relates to the performance of the officer's or
15 employee's public duties, and for which the filer does not hold a
16 properly executed security agreement or judgment from a court of
17 competent jurisdiction; or

18 (5) The record indicates that the debtor and the secured party are
19 substantially the same or that an individual debtor is a transmitting
20 utility.

21 (f) If a statement filed with the filing office under 12A:9-518
22 alleges that a previously filed record was wrongfully filed, the filing
23 office shall, without undue delay, determine whether the contested
24 record was wrongfully filed. To determine whether the record was
25 wrongfully filed, the filing office may require the person who filed
26 the statement or the secured party to provide any additional relevant
27 information requested by the filing office, including an original or
28 copy of a security agreement that is related to the record. If the
29 filing office finds that the record was wrongfully filed, the filing
30 office shall terminate the record and the record is void and
31 ineffective. The filing office shall notify the secured party named
32 in the contested record of the termination.

33 (g) If the filing office refuses to accept a record for filing or
34 recording pursuant to subsection (e) of this section, the person who
35 presented the record to the filing office may commence an action
36 under section 3 of P.L. , c. (C.) (pending before the
37 Legislature as this bill) to require the filing office to accept the
38 record for filing or recording. A record ordered by the court to be
39 accepted is effective as a filed record from the initial filing date
40 except as against a purchaser of the collateral which gives value in
41 reasonable reliance on the absence of the record from the files.

42 (h) A filing officer who, acting in a manner that does not subject
43 the filing officer to personal liability under the statutes of this State,
44 improperly refuses to accept a record for filing or recording under
45 subsection (e) of this section is not personally liable for the
46 improper refusal or determination.

47 (i) If the filing office: (1) refuses to accept a record for filing or
48 recording pursuant to subsection (e) of this section; (2) finds that a

1 previously filed record was wrongfully filed pursuant to subsection
2 (f) of this section; or (3) terminates a filing statement pursuant to
3 section 3 of P.L. , c. (C.) (pending before the Legislature as
4 this bill), the filing office shall notify the county prosecutor of the
5 county in which the filing office is located of the refusal, finding, or
6 termination.

7 (j) Subsection (e) of this section does not apply to a financing
8 statement filed by a regulated financial institution or a
9 representative of a regulated financial institution. If a regulated
10 financial institution that is attempting to file a financing statement
11 is organized under the law of a governmental unit other than this
12 State, the filing office may request the regulated financial
13 institution or its representative to provide verification of regulation
14 or licensure in the jurisdiction under whose law the institution is
15 organized. As used in this subsection, "regulated financial
16 institution" means that term as defined in section 3 of P.L. , c.
17 (C.) (pending before the Legislature as this bill).

18 (cf: P.L.2001, c.386, s.84)

19

20 3. (New section) (a) A person identified as a debtor in a
21 financing statement filed with the filing office may file an affidavit
22 in the form prescribed under subsection (b) of this section stating
23 that the financing statement is fraudulent. A person shall not file an
24 affidavit under this subsection with respect to a financing statement
25 filed by a regulated financial institution or a representative of a
26 regulated financial institution.

27 (b) The filing office shall adopt and make available a form
28 affidavit to be used to give notice of a fraudulent financing
29 statement under subsection (a) of this section.

30 (c) On receipt of an affidavit under subsection (a) of this
31 section, the filing office shall terminate the financing statement
32 effective on the date the affidavit is filed.

33 (d) The filing office shall not charge a fee to file an affidavit
34 under this section. The filing office shall not return any filing fee
35 paid for filing the financing statement, regardless of whether the
36 financing statement is terminated under this section.

37 (e) The filing office shall send notice of the termination of a
38 financing statement under subsection (c) of this section to the filer
39 of the financing statement advising the filer that the financing
40 statement has been terminated. If the filer of the financing statement
41 believes in good faith that the statement was legally filed and is not
42 fraudulent, the filer may file an action to reinstate the financing
43 statement.

44 (f) If the court in an action under this section or 12A:9-520(g)
45 determines that the financing statement should be reinstated or
46 accepted, the court shall provide a copy of its order to the filing
47 office. On receipt of an order reinstating a financing statement, the
48 filing office shall file a record that identifies by its file number the

1 initial financing statement to which the record relates and indicates
2 that the financing statement has been reinstated.

3 (g) On the filing of a record reinstating a financing statement
4 under subsection (f) of this section, the financing statement is
5 effective as a filed record from the initial filing date. If a financing
6 statement that is reinstated would have lapsed during the period of
7 termination, the secured party may file a continuation statement
8 within 30 days after the record reinstating the financing statement is
9 filed. The continuation statement is effective as a filed record from
10 the date the financing statement would have lapsed. However, a
11 financing or continuation statement is not retroactive as provided in
12 this subsection as against a purchaser of the collateral that gives
13 value in reasonable reliance on the absence of the record from the
14 files.

15 (h) If the court in an action under this section determines that
16 the financing statement is fraudulent, the filer of the financing
17 statement shall pay the costs and expenses incurred by the person
18 identified as a debtor in the financing statement in the action.

19 (i) An individual who files a materially false or fraudulent
20 affidavit under subsection (a) of this section is guilty of a crime of
21 the third degree.

22 (j) As used in this section, "regulated financial institution"
23 means a financial institution subject to regulatory oversight or
24 examination by a state or federal agency. Regulated financial
25 institution includes a bank, savings bank, savings association,
26 building and loan association, credit union, consumer finance
27 company, industrial bank, industrial loan company, insurance
28 company, investment company, installment seller, mortgage
29 servicer, sales finance company, or leasing company.

30
31 4. (New section) On motion of a person who: has been the
32 victim of a violation of 12A:9-501 (e); was the subject of a filing
33 statement found to be wrongfully filed pursuant to 12A:9-520 (f); or
34 was identified as a debtor in a filing statement terminated pursuant
35 to section 3 of P.L. , c. (C.) (pending before the Legislature
36 as this bill), or on its own motion, a court may, without a hearing,
37 grant an order directing all consumer reporting agencies doing
38 business within the State of New Jersey to delete from that person's
39 file those items of information that were the result of a fraudulent or
40 wrongfully filed filing statement. The consumer reporting agency
41 shall provide the victim with a copy of the corrected credit history
42 report at no charge.

43
44 5. This act shall take effect immediately.

STATEMENT

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This bill provides remedies to victims of fraudulent financing statements filed pursuant to the Uniform Commercial Code. The bill provides victims with pre-filing and post-filing remedies, as well as providing notice requirements so that victims are notified when a financing statement has been filed against them.

Under current law, financing statements are forms filed by creditors with the State or local government to perfect a security interest in property held by a debtor, which is used as collateral against the loan. While the vast majority of financing statements are filed for valid purposes with authorization from the parties to the loan, it has become increasingly common for financing statements to be filed fraudulently as retaliatory measures meant to harass individuals. Fraudulent financing statements can cause serious financial consequences to victims of these filings, as the filings damage credit scores and may cause difficulties in selling or purchasing real property.

Under the bill, a filing office must provide written notice of the filing of certain financing statements to the debtor identified on the financing statement if that debtor is an individual, and provide at no charge to that debtor a copy or image of the filed financing statement and any attachments.

The bill provides that a person who knowingly or intentionally files a false or fraudulent financing statement with any office, in addition to any other penalty provided by law, is guilty of a crime of the third degree. If the person is convicted of the violation, the court must find that the financing statement is ineffective and order the office to terminate the financing statement, and shall order restitution. Additionally, the debtor named in the financing statement may file an action against the person that filed the financing statement seeking appropriate equitable relief or damages.

Under the bill, if a person presents a record to a filing office for filing or recording, the filing office may refuse to accept the record for filing or recording if one or more of the following circumstances exist:

- (1) The record is not required or authorized to be filed or recorded with the filing office.
- (2) The record is being filed or recorded for a purpose outside the scope of Chapter 9 of the Uniform Commercial Code.
- (3) The filing office has reasonable cause to believe the record is materially false or fraudulent.
- (4) The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction.

1 (5) The record indicates that the debtor and the secured party are
2 substantially the same or that an individual debtor is a transmitting
3 utility.

4 The bill provides that if a statement filed with the filing office
5 alleges that a previously filed record was wrongfully filed, the filing
6 office must determine whether the contested record was wrongfully
7 filed.

8 Under the bill, a filing officer who, acting in a manner that does
9 not subject the filing officer to personal liability under the statutes
10 of this state, improperly refuses to accept a record for filing or
11 recording is not personally liable for the improper refusal or
12 determination.

13 The provisions of the bill concerning a filing office refusing to
14 accept a financing statement do not apply to a financing statement
15 filed by a regulated financial institution or a representative of a
16 regulated financial institution. If a regulated financial institution
17 that is attempting to file a financing statement is organized under
18 the law of a governmental unit other than this State, the filing office
19 may request the regulated financial institution or its representative
20 to provide verification of regulation or licensure in the jurisdiction
21 under whose law the institution is organized.

22 Under the bill, except with respect to a financing statement filed
23 by a regulated financial institution, a person identified as a debtor in
24 a financing statement filed with the filing office may file an
25 affidavit with the filing office stating that the financing statement is
26 fraudulent. On receipt of that affidavit, the filing office must
27 terminate the financing statement effective on the date the affidavit
28 is filed.

29 The bill provides that the filing office must send notice of the
30 termination of a financing statement to the filer of the financing
31 statement advising the filer that the financing statement has been
32 terminated. If the filer of the financing statement believes in good
33 faith that the statement was legally filed and is not fraudulent, the
34 filer may file an action to reinstate the financing statement. If the
35 court determines that the financing statement should be reinstated
36 or accepted, the court must provide a copy of its order to the filing
37 office.

38 The bill provides that if the court determines that the financing
39 statement is fraudulent, the filer of the financing statement must pay
40 the costs and expenses incurred by the person identified as a debtor
41 in the financing statement in the action.

42 Under the bill, an individual who files a materially false or
43 fraudulent affidavit to remove a financing statement is guilty of a
44 crime of the third degree.

45 The bill provides that if the filing office refuses to accept a
46 record for filing or recording, finds that a previously filed record
47 was wrongfully filed, or terminates a filing statement, the filing

1 office must notify the county prosecutor of the county in which the
2 filing office is located of the refusal, finding, or termination.

3 The bill also provides that, on the motion of a person who has
4 been the victim of a fraudulent filing statement, or on its own
5 motion, a court may, without a hearing, grant an order directing all
6 consumer reporting agencies doing business within the State of
7 New Jersey to delete those items of information from that person's
8 file that were the result of the fraudulent filing statement. The
9 consumer reporting agency must provide the victim with a copy of
10 the corrected credit history report at no charge.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2106**

STATE OF NEW JERSEY

DATED: MARCH 9, 2015

The Senate Commerce Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2106.

This substitute bill provides remedies to victims of fraudulent financing statements filed pursuant to the Uniform Commercial Code and certain other fraudulent filings.

Under current law, financing statements are forms filed by creditors with the State or local government to perfect a security interest in property held by a debtor, which is used as collateral against the loan. While the vast majority of financing statements are filed for valid purposes with authorization from the parties to the loan, it has become increasingly common for financing statements to be filed fraudulently as retaliatory measures meant to harass individuals. Fraudulent financing statements can cause serious financial consequences to victims of these filings, as the filings damage credit scores and may cause difficulties in selling or purchasing real property.

This bill makes confidential certain public documents that are sometimes used against certain public officers and employees in the filing of fraudulent financing statements, including any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, except that the full name, title, and oath date of the officer or employee contained in the documents is not deemed confidential.

The bill provides that, in order for a financing statement to be deemed sufficient, it must provide the name of the secured party or a representative of the secured party that discloses the identity of the secured party or representative and is not being used with any unlawful motive, and it must indicate that the collateral covered by the financing statement is collateral that is within the scope of chapter 9 of the Uniform Commercial Code.

The bill provides that the filing of a financing statement does not occur and a filing office may refuse to accept the statement if one or more of the following circumstances exist:

(1) the record is not required or authorized to be filed or recorded with the filing office;

(2) the record on its face is being filed or recorded for a purpose outside the scope of chapter 9 of the Uniform Commercial Code;

(3) the collateral described in the record is not within the scope of chapter 9 of the Uniform Commercial Code;

(4) the filing office reasonably believes that the filer is attempting to file under a fictitious name with the intent to harass or defraud the person identified as the debtor; or

(5) the filing office reasonably believes that the record is materially false or fraudulent because:

(i) the record asserts a claim against a current or former officer or employee of any federal, state, county, or other local governmental unit, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, and relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction;

(ii) the record indicates that the debtor and the secured party are substantially the same;

(iii) the record indicates that an individual is a transmitting utility; or

(iv) the filer is incarcerated.

The bill provides that these circumstances do not apply to a financing statement filed by a registered organization or a representative of a registered organization.

The bill stipulates that no fee shall be paid for any correction statement, termination statement, or other documentation filed by any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the officer's or employee's immediate family or estate filing for the purpose of removing a fraudulent or otherwise improper filing or record related to the performance or non-performance of that officer's or employee's public duties for which the initial filer did not hold a properly executed security agreement or judgment from a court of competent jurisdiction or for which the initial filer was not entitled to file the initial financing statement.

Additionally, pursuant to the bill, any current or former officer or employee of any federal, state, county, or other local governmental unit, and all law enforcement entities, or the current or former officer's or employee's immediate family or estate injured by a filing that relates to the performance or non-performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction or for which the initial filer was not entitled to file the initial financing statement, may bring a civil action in the Superior Court against the person or entity who filed or recorded the injuring documents. Upon a finding that a filing is false or contains any materially false, fictitious, or fraudulent statement or

representation, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that officer's or employee's duties, the court may:

(1) order the defendant to pay a sum of not less than \$2000 for each fraudulent filing or, the actual damages caused by the filing or recording, whichever is greater;

(2) enjoin the defendant from filing any future liens, encumbrances, court actions, or claims against persons specified by the court without approval of the court;

(3) award the defendant court costs and reasonable attorney's fees;

(4) order any other relief as is required to clear title to the real or personal property.

The bill anticipates that certain fraudulent filings could occur outside the context of the Uniform Commercial Code and provides that the civil action outlined above will also be applicable to those fraudulent filings.

The bill also provides that a person commits a crime of the second degree if he files or records, or directs another to file or record, in any public record or in any private record which is generally available to the public, any document, lien, encumbrance, or court action against the real or personal property of a current or former public servant, the public servant's immediate family or estate, a current or former federal officer or employee, or the officer's or employee's immediate family or estate, on account of the performance or non-performance of that public servant's, officer's or employee's official duties, knowing or having reason to know that such document, lien, encumbrance, or court action is false or contains any materially false, fictitious, or fraudulent statement or representations, or with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of that public servant's, officer's or employee's duties.

A person convicted under the bill, in addition to any other penalty imposed by the court, may be enjoined from filing any future liens, encumbrances, or court actions against persons specified by the court without approval of the court.

As reported, this Senate Committee Substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 2481(1R), as amended and reported by the committee.