SENATE BILL No. 234

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-1-9.1.

Synopsis: Secretary of state filings and recordings. Provides that the secretary of state may refuse to accept certain filings or recordings. Provides that if a secured party or remitter demonstrates that the secretary of state should accept a filing or recording that was rejected, the filing officer will file a notice of correction that states the effective date and time of the filing. Provides that the secretary of state does not have a duty to inspect, evaluate, or investigate a document that is presented for filing or recording. Provides that certain individuals may file a motion for judicial review of a financing statement to determine if the document is fraudulent. Allows a court to order certain actions if a financing statement is fraudulent.

Effective: July 1, 2013.

Wyss, Lanane

January 7, 2013, read first time and referred to Committee on Civil Law.

C o p y

Introduced

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 234

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 26-1-9.1-900 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 900. (a) If a person presents a document to the secretary of state for filing or recording, the secretary of state may refuse to accept the document for filing or recording if:**

(1) the document is not required or authorized to be filed or recorded with the secretary of state; or

(2) the secretary of state has reasonable cause to believe the document is materially false or fraudulent.

(b) A fraudulent document that the secretary of state may refuse to accept includes the following:

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

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

(3) Any financing statement that is determined to be intended

for an improper purpose, such as hindering, harassing, or wrongfully interfering with another person or entity.

(4) Any financing statement that is filed:

(A) without the consent of the:

(i) obligor named in the financing statement;

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

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

(B) by consent of an agent, a fiduciary, or another representative of the secured party of record without the consent of the secured party.

(5) Any document that is forged.

(c) If a secured party or remitter demonstrates to the satisfaction of the secretary of state that a Uniform Commercial Code record that was refused for filing should not have been refused, the secretary of state shall file the Uniform Commercial Code record with a filing date and time assigned when the filing occurs. The filing officer shall also file a notice of correction that states the effective date and time of filing, which shall be the date and time the Uniform Commercial Code record was originally tendered for filing.

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

SECTION 2. IC 26-1-9.1-901 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 901. (a) A person who believes that a financing statement is fraudulent under section 900 of this chapter may file a motion for judicial review of the financing statement.**

(b) If a court determines that a financing statement is fraudulent, the court may:

(1) award the prevailing party all costs related to the review, including:

(A) filing fees;

(B) attorney's fees;

(C) administrative costs; and

(D) other reasonable costs;

(2) declare the financing statement ineffective; and

(3) order the office or agency that possesses the financing statement to terminate or purge the financing statement.

C o p y

(c) The secretary of state shall create a form to assist pro se individuals with a filing described in this section, and shall post the form on the secretary of state's Internet web site.

C o p y