

Regulatory Analysis

TITLE 75 IAC 10 Secretary of State LSA Document 25-149

I. Description of Rule

With the advent of the Secretary of State's office "Business One Stop" and "INBiz" initiatives (circa 2011) the agency was charged with developing and maintaining a state of the art, highly automated on-line business registration hub, which other state agencies could easily interface with (i.e. DOR, IDWD, IPLA), that provided 24-7 self-service access to millions of imaged and digital business records administered by the agency. The agency's array of IT applications, which the public and other state agencies depend on, exists in a state of nearly constant revision and reinvention – to keep with the pace of IT evolution. The statutory framework for the agency's Business Services Division calls for its IT infrastructure to be entirely transaction funded from "enhanced access" transaction fees. The fee structure contentiously developed by previous administrations) appears to have struck a reasonable balance between low filing and transaction fees (Indiana ranks among the 10% lowest in the nation for low-cost business registration costs) and costs of hosting, sustaining, and advancing the necessary IT infrastructure for the array of business services the agency is charged with providing.

In keeping with HEA 1623's directives and intent, the agency will be promulgating administrative rules for its transaction fee-based UCC services.

Pursuant to IC 26-1-9.1-501 the Secretary of State administers the filing office for commercial secured transaction filings. Pursuant to IC 26-1-9.1-525 the Secretary of State collects statutory fees for commercial secured transaction filings and services ranging from \$5 to \$12. In addition to, or in specific instances in lieu of, statutory filing fees, pursuant to IC 4-5-10-2 and IC 4-5-10-5 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. "Enhanced Access" fees collected by the agency for online commercial secured transaction filings range from \$3 to \$13. Note: in the case of online filings, the agency collects "Enhanced Access" fees *in lieu of* statutory "paper filing" fees. Pursuant to IC 26-1-9.1-523 (f) the agency collects "Enhanced Access" fees for commercial bulk data file upload services ranging from \$425 for limited record upload service to \$3,000 for comprehensive record upload service.

Secretary of State Business Services Division "Enhanced Access" ("EA") UCC statement filing fees:

1) Online Financing Statement Filing	\$13.00
2) Online Public Finance Transaction Filing	\$3.00
3) Online Mfg. Home Financing Statement Filing	\$3.00
4) Online Transmitting Utility Financing Filing	\$13.00
5) Online Financing Statement Amendment	\$13.00
6) Online Information Statement Search Filing	\$13.00

7) Online Search Certificate Filing	\$11.00
8) Online Bulk Data Upload (one time)	\$3,000.00
9) Online Bulk Data Upload (w/weekly update)	\$2,900.00
10) Online Bulk Data Upload (weekly update only)	\$425.00

IC 4-5-10-5Electronic and enhanced access fund

Sec. 5. (a) The electronic and enhanced access fund is established to do the following:

- (1) Improve and enhance the technology necessary and desirable to fulfill the duties of the secretary of state and state agencies as provided in section 1 of this chapter.
- (2) Improve service to customers of the secretary of state and state agencies as provided in section 1 of this chapter.
- (3) Provide the public electronic and other enhanced access to information maintained by:
 - (A) the secretary of state under IC 23, IC 24, IC 26, or IC 33; and
 - (B) the secretary of state and state agencies as provided in section 1 of this chapter.
- (4) Allow the public to conduct business electronically with the secretary of state and state agencies as provided in section 1 of this chapter.
- (5) Acquire and finance technology necessary or desirable to accomplish the purposes stated in subdivisions (1) through (4), including the purchase or lease of hardware, software, and other appropriate goods and services.

The secretary of state may enter into one (1) or more agreements in furtherance of the purposes of this chapter.

(b) The fund consists solely of the following:

- (1) Electronic and enhanced access fees established and collected by the secretary of state under section 2 of this chapter.
- (2) Other money specifically provided to the fund by law.

Fees collected by the secretary of state under IC 23, IC 24, IC 26, or IC 33 may not be deposited into the fund.

- (c) The secretary of state shall administer the funds.
- (d) The expenses of administering the fund shall be paid from money in the fund.
- (e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.
- (f) The secretary of state may use money in the fund to pay expenses related to the purposes of the fund as set forth in section 5 of the chapter, to make payments under any agreement authorized by subsection (a) or authorized by law and directly relating to the purpose of the fund, and monies in the fund are continuously appropriated for the purposes set forth in this chapter.
- (g) Money in the fund not currently needed to meet the obligations of the fund may be invested by either of the following:

- (1) The treasurer of state in the same manner as other public funds may be invested.
- (2) A financial institution designated by trust agreement with the secretary of state.

Interest that accrues from investment of money in the fund shall be deposited into the fund.

As added by P.L.260-1997(ss), SEC.38. Amended by P.L.114-2011, SEC.2; P.L.177-2019, SEC.2.

Historically, these fees have been set by policy; HEA 1623-2023 requires that all fees be set by rule. The proposed rules accomplish that mandate. These rules add divisions fees and clarify rejections per HEA 1623-2023.

No new fees!

II. Fiscal Impact Analysis

The anticipated effective date of the rule is July 1, 2025.

All revenues from UCC financing statement filings and commercial bulk data upload subscriptions are deposited into the agency Enhanced Access Fund. The agency Enhanced Access fund is used for the creation and maintenance of the publicly accessible and searchable UCC financing statement record filing system and administrative functions, pursuant to Indiana Commercial Code (UCC) Secured Transactions law (IC 26-1-9.1-501).

More generally the agency estimates the expenses associated with the collective duties and infrastructure at 15% of the total to meet the requirements of our UCC responsibilities per Indiana Commercial Code (UCC) Secured Transactions law (IC 26-1-9.1-501).

For context the Business Service Division has 10 individuals, one director and one deputy director that are cross trained to handle the variety of UCC transactions, complaints, and bulk data downloads we are charged with completing and recording each day. Those people, our vendor supported call center along with our INBiz portal provide a high level of service to all who need to interact with us.

Note revenue and expenses below

Fiscal Year	All 10 Types of UCC Revenues	Enhanced Access Fund Expenses (15%) of Agency's costs	Number of UCC Filings	Number of Bulk Data Subscriptions
FY 20	\$597,457	\$780,380	83,107	129
FY 21	\$796,105	\$640,722	62,949	221
FY 22	\$946,523	\$791,211	63,060	354
FY 23	\$856,717	\$1,008,416	55,921	352
FY 24 (8 months)	\$500,338	\$716,528	31,863	265
Total	\$ 3,697,140	\$ 3,937,257	296,900	1,321
Average Revenue			\$10.46	\$447.00

1) Revenue for 7 types of UCC financing statement transaction filings: FY20 \$564,245 for 83,107 filings; FY21 \$723,443 for 62,949 filings; FY22 \$763,898 for 63,060 filings; FY23 \$677,417 for 55,921 filings; FY24 (8-months) \$377,813 for 31,863 filings. From FY20 through February 2024 the average filing revenue for 296,900 filing transactions was \$10.46

2) Revenue for 3 types of commercial use bulk data upload subscriptions: FY20 \$33,212 for 129 subscriptions; FY21 \$72,662 for 221 subscriptions; FY22 \$182,625 for 354 subscriptions; FY23 \$179,300 for 352 subscriptions; FY24 (8 months) \$122,525 for 265 subscriptions. From FY20 through February 2024 the average commercial bulk data revenue for 1,321 subscriptions was \$447.

The rule changes do not change or increase fees as explained below but are added for clarity and per requirements of HEA-1623-2023

III. Impacted Parties

A creditor normally files a UCC-1 to provide notice to interested parties that he or she has a security interest in a debtor's property. This property is being used as collateral in some type of transaction, usually a loan or a lease.

The group of financial and individuals that may use this filing is large. The volume of transactions pulled from Table II b.

Fiscal Year	Number of UCC Filings	Number of Bulk Data Subscriptions
FY 20	83,107	129
FY 21	62,949	221
FY 22	63,060	354
FY 23	55,921	352
FY 24 (8 months)	31,863	265
Total	296,900	1,321
Average Revenue	\$10.46	\$447.00

Since these rules are being promulgated in response to HEA-1623 all the above parties are currently in compliance so we will explain the impact of these fees based on a comparison of similar fees charge by states both close to Indiana in distanced and economic cost of living.

IV. Changes in Proposed Rule

The provisions of the proposed rules are an entirely new section. They are the promulgation of fees already permitted to be assessed by the Indiana Code. The following is a table of fees, and IC/IAC which sets forth the applicable law:

Online filing Type	EA Fee	IC Authority	Proposed IAC
Financing Statement	\$13.00	IC 4-5-10-2	75 IAC 10-2-1(2)
Public Finance Transaction	\$3.00	IC 4-5-10-2	75 IAC 10-2-1(1)
Manufactured Home Transaction	\$3.00	IC 4-5-10-2	75 IAC 10-2-1(1)
Transmitting Utility	\$13.00	IC 4-5-10-2	75 IAC 10-2-1(2)
Financing Statement Amendment	\$13.00	IC 4-5-10-2	75 IAC 10-2-2
Information Statement	\$13.00	IC 4-5-10-2	75 IAC 10-2-3
Search Certificate/Information Request	\$11.00	IC 4-5-10-2	75 IAC 10-2-4
One Time Bulk Download	\$3,000.00	IC 4-5-10-2	75 IAC 10-2-5(1)
Bulk Download with Weekly Updates	\$2,900.00	IC 4-5-10-2	75 IAC 10-2-5(2)
Bulk Weekly Update	\$425.00	IC 4-5-10-2	75 IAC 10-2-5(3)

V. Benefit Analysis

The statutory framework for the agency's Business Services Division calls for its IT infrastructure to be entirely transaction funded from "enhanced access" ("EA") transaction fees. The fee structure (contentiously developed by previous administrations) appears to have struck a reasonable balance between low filing and transaction fees (Indiana ranks among the 10% lowest in the nation for low-cost business registration costs) and costs of hosting, sustaining, and advancing the necessary IT infrastructure for the array of business services the agency is charged with providing.

Uniform Commercial Code (UCC) filings allow creditors to notify other creditors about a debtor's assets used as collateral for a secured transaction. UCC liens filed with Secretary of State offices act as a public notice by the "creditor" of the creditor's interest in the property. This service is a foundational part of the financing community and allows for ease of commerce and complaint based transactional activity.

These are key evidentiary elements to defending these assets in litigation if abuses occur.

Fees for UCC filings, searches and related transactions have not changed in the past 5 years. Costs for the IT infrastructure to administer UCC filings and searches have increased significantly over the same period and exceed transaction filing fee revenues.

VI. Cost Analysis

Comparison cost of UCC-1 Filings (central states)

State	Cost of Filing	Reference
Illinois	\$ 20	https://www.ilsos.gov/publications/business_services/ucc.html
Indiana	\$ 13	https://inbiz.in.gov/business-filings/ucc
Kentucky	\$ 10	https://www.sos.ky.gov/bus/UCC/Pages/FAQs.aspx
Michigan	\$ 15	https://www.michigan.gov/sos/industry-services/ucc
Minnesota	\$ 20	https://www.sos.state.mn.us/business-liens/ucc-tax-cns-forms-fees/uniform-commercial-code-ucc-fee-schedule/
Missouri	\$ 10	https://www.sos.mo.gov/ucc/fees
Ohio	\$ 12	https://www.sos.state.oh.us/businesses/uniform-commercial-code/
Wisconsin	\$ 17	https://dfi.wi.gov/Pages/BusinessServices/UCC/Fees.aspx

Fees for UCC filings, searches and related transactions have not changed in the past 5 years. Costs for the IT infrastructure to administer UCC filings and searches have increased significantly over the same period and exceed transaction filing fee revenues. Compared to states in similar geographic areas and costs of living our fees do not present a burden to someone needing to file a UCC notice.

VII.

- **Division UCC filing Records**
- **Various SOS websites for each state referenced.**

VIII. Regulatory Analysis

Pursuant to IC 26-1-9.1-501 the Secretary of State administers the filing office for commercial secured transaction filings. Pursuant to IC 26-1-9.1-525 the Secretary of State collects statutory fees for commercial secured transaction filings and services ranging from \$5 to \$12. In addition to, or in specific instances in lieu of, statutory filing fees, pursuant to IC 4-5-10-2 and IC 4-5-10-5 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. “Enhanced Access” fees collected by the agency for online commercial secured transaction filings range from \$3 to \$13. Note: in the case of online filings, the agency collects “Enhanced Access” fees *in lieu of* statutory “paper filing” fees. Pursuant to IC 26-1-9.1-523 (f) the agency collects “Enhanced Access” fees for commercial bulk data file upload services ranging from \$425 for limited record upload service to \$3,000 for comprehensive record upload service.

A. Summary of Costs

The Division believes that the direct costs associated with these rules are contained herein. There are no costs to local government. There are no additional costs to state government – the Division already engages in the practice of reviewing and accepting online UCC filings and providing search capability of such to the public. Our fees have not changed in the past 5 years and are equal to or lower than our central state comparative group. These fees do not represent a significant burden to the value they bring to the commercial lending industry.

B. Summary of Benefits

The commercial lending institutions and individuals use this information to calculate the leverage risks and priority of assignment of assets in disputes over nonpayment while those seeking funding can have record of exactly what assets or obligations are in place and when they have been released and satisfied. This provides a valid third-party public record as mandated in Statute IC 26-1-9.1-501

The division has struck a good balance between fees and the costs associated with maintaining and upgrading the IT infrastructure and the staff to validate and maintain accurate records.

IX. Contact Information of Staff to Answer Substantive Questions

Scott Willis Business Services Director

awillis@sos.in.gov

317-775-1769

X. Redline Draft of Proposed Rules

Please provide a link or attachment to the proposed rule that includes a redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB. This draft can include annotations with other sources of requirements as discussed in Section IV above.

XI. Resubmission Information (if applicable)

Pursuant to IC 4-22-2-22.8(e), if an agency revises a proposed rule after it has been approved by OMB and SBA, the agency must submit the revised proposed rule and a revised regulatory analysis for review. If applicable, this section should include (1) a list of the changes in the revised rule from the previously approved version, (2) an explanation for the reason(s) for the

changes, and (3) a description of how those changes impact the regulatory analysis previously submitted.