

HOUSE BILL No. 5033

July 28, 1989, Introduced by Rep. Niederstadt and referred to the Committee on Towns and Counties.

A bill to amend sections 9403, 9404, and 9410 of Act No. 174 of the Public Acts of 1962, entitled as amended "Uniform commercial code," sections 9403 and 9404 as amended by Act No. 130 of the Public Acts of 1988, being sections 440.9403, 440.9404, and 440.9410 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 9403, 9404, and 9410 of Act No. 174 of
2 the Public Acts of 1962, sections 9403 and 9404 as amended by Act
3 No. 130 of the Public Acts of 1988, being sections 440.9403,
4 440.9404, and 440.9410 of the Michigan Compiled Laws, are amended
5 to read as follows:

6 Sec. 9403. (1) Presentation for filing of a financing
7 statement and tender of the filing fee or acceptance of the

1 statement by the filing officer constitutes filing under this
2 article.

3 (2) Except as provided in subsection (7), a filed financing
4 statement is effective for a period of 5 years after the date of
5 filing. The effectiveness of a filed financing statement lapses
6 on the expiration of the 5-year period, unless a continuation
7 statement is filed within 6 months before the lapse. If a secur-
8 ity interest perfected by filing exists at the time insolvency
9 proceedings are commenced by or against the debtor, the security
10 interest remains perfected until termination of the insolvency
11 proceedings and thereafter for a period of 60 days or until expi-
12 ration of the 5-year period, whichever occurs later. Upon lapse,
13 the security interest becomes unperfected, unless it is perfected
14 without filing. If the security interest becomes unperfected
15 upon lapse, it is considered to have been unperfected as against
16 a person who became a purchaser or lien creditor before the
17 lapse.

18 (3) A continuation statement may be filed or recorded by the
19 secured party within 6 months before the expiration of the 5-year
20 period specified in subsection (2). A continuation statement
21 shall be signed by the secured party, identify the original
22 statement by file number ~~—~~ and, if the original financing
23 statement describes real property, by the liber and page where
24 the property is recorded, and state that the original statement
25 is still effective. A continuation statement also may, but is
26 not required to, include the debtor's tax identification number.
27 A continuation statement signed by a person other than the

1 secured party of record shall be accompanied by a separate
2 written statement of assignment signed by the secured party of
3 record and complying with section 9405(2), including payment of
4 the required fee. Upon timely filing of the continuation state-
5 ment, the effectiveness of the financing statement is continued
6 for 5 years after the last date to which the filing was effective
7 whereupon it lapses in the same manner as provided in subsection
8 (2) unless another continuation statement is filed before the
9 lapse. Succeeding continuation statements may be filed in the
10 same manner to continue the effectiveness of the financing
11 statement. Unless a statute on disposition of public records
12 provides otherwise, the filing officer may remove a lapsed state-
13 ment from the files and destroy it immediately if he or she has
14 retained a ~~microfilm or other photographic~~ record PURSUANT TO
15 THE RECORDS MEDIA ACT, or in other cases after 1 year after the
16 lapse. The filing officer shall so arrange matters by physical
17 annexation of financing statements to continuation statements or
18 other related filings, or by other means, that if he or she phys-
19 ically destroys the financing statements of a period more than 5
20 years past, those which have been continued by a continuation
21 statement or which are still effective under subsection (7) shall
22 be retained.

23 (4) Except as provided in subsection (8), a filing officer
24 shall mark a statement with a file number and with the date and
25 hour of filing and shall hold the statement or a ~~microfilm or~~
26 ~~other photographic copy~~ REPRODUCTION of the statement PURSUANT
27 TO THE RECORDS MEDIA ACT for public inspection. In addition, the

1 filing officer shall index the statements according to the name
2 of the debtor and shall note in the index the file number and the
3 address of the debtor given in the statement.

4 (5) The uniform fee for filing and indexing and for stamping
5 a copy furnished by the secured party to show the date and place
6 of filing for an original financing statement, for a continuation
7 statement, for an amendment of a financing statement, or for an
8 assignment shall be as follows:

9 (a) For a filing with the secretary of state or the register
10 of deeds, \$3.00 if the statement includes the information
11 required under this act for the filing, and is in the standard
12 form prescribed by the secretary of state. For a statement not
13 complying with these requirements, the fee is \$6.00.

14 (b) For a filing with a register of deeds, if the financing
15 statement, continuation statement, assignment, or amendment indi-
16 cates that it is to be recorded in the real estate records, as
17 provided in sections 9402(3) and 9402(5), \$5.00 for the first
18 page and \$2.00 for each additional page.

19 (6) The uniform fee for each name more than 1 required to be
20 indexed is \$3.00. The secured party may, at his or her option,
21 show a trade name for a person, and an extra uniform indexing fee
22 of \$3.00 shall be paid with respect to that name.

23 (7) If the debtor is a transmitting utility under section
24 9401(5) and a filed financing statement so states, it is effec-
25 tive until a termination statement is filed. A real estate mort-
26 gage ~~which~~ THAT is effective as a fixture filing under section
27 9402(6) remains effective as a fixture filing until the mortgage

1 is released or satisfied of record or its effectiveness otherwise
2 terminates as to the real estate.

3 (8) If a financing statement covers timber to be cut, covers
4 minerals or the like including oil and gas, ~~or~~ COVERS accounts
5 subject to section 9103(5), or is filed as a fixture filing, it
6 shall be recorded, and the filing officer shall index it under
7 the names of the debtor and any owner of record shown on the
8 financing statement in the same fashion as if they were the mort-
9 gagors in a mortgage of the real estate described, and, to the
10 extent that the law of this state provides for indexing of mort-
11 gages under the name of the mortgagee, under the name of the
12 secured party as if he or she were the mortgagee of the mortgage,
13 or where indexing is by description, in the same fashion as if
14 the financing statement were a mortgage of the real estate
15 described.

16 Sec. 9404. (1) If a financing statement covering consumer
17 goods is filed on or after ~~the effective date of this 1978 amen-~~
18 ~~datory act~~ JANUARY 1, 1979, then within 1 month or within 10
19 days following written demand by the debtor, whichever occurs
20 first, after there is no outstanding secured obligation and no
21 commitment to make advances, incur obligations, or otherwise give
22 value, and the secured party does not in good faith expect to
23 make optional future advances, the secured party ~~must~~ SHALL
24 file with each filing officer with whom the financing statement
25 was filed ~~—~~ a termination statement to the effect that he or
26 she no longer claims a security interest under the financing
27 statement, which shall be identified by file number, and where

1 the original financing statement describes real property, by
2 liber and page of recording of the financing statement. In other
3 cases whenever there is no outstanding secured obligation and no
4 commitment to make advances, incur obligations, or otherwise give
5 value and the secured party does not in good faith expect to make
6 future optional advances, the secured party shall, on written
7 demand of the debtor, send for each filing officer with whom the
8 financing statement was filed a termination statement to the
9 effect that he or she no longer claims a security interest under
10 the financing statement, which shall be identified by file
11 number. With respect to original financing statements filed
12 before July 1, 1976 with a filing officer other than the secre-
13 tary of state, the secured party may elect to send the statement
14 directly to the debtor instead of the filing officer. A termina-
15 tion statement may, but is not required to, include the debtor's
16 tax identification number. A termination statement signed by a
17 person other than the secured party of record ~~must~~ SHALL be
18 accompanied by a separate written statement of assignment signed
19 by the secured party of record complying with section 9405(2),
20 including payment of the required fee. If the affected secured
21 party fails to file such a termination statement as required by
22 this subsection, or to send such a termination statement within
23 the required period, he or she shall be liable to the debtor for
24 any loss caused to the debtor by that failure. In addition, the
25 secured party shall be liable to the debtor for \$100.00 if he or
26 she fails to file the termination statement within 20 days after
27 written demand for the termination statement by the debtor.

1 (2) On presentation to the filing officer of a termination
2 statement, the filing officer shall note it in the index. If the
3 filing officer has received the termination statement in dupli-
4 cate, he or she shall return 1 copy of the termination statement
5 to the secured party stamped to show the time of receipt of the
6 termination statement. If the filing officer has a ~~microfilm or~~
7 ~~other photographic record~~ REPRODUCTION of the financing state-
8 ment PURSUANT TO THE RECORDS MEDIA ACT, and of any related con-
9 tinuation statement, statement of assignment, and statement of
10 release, he or she may remove the originals from the files at any
11 time after receipt of the termination statement, or if the filing
12 officer has no such record, he or she may remove them from the
13 files at any time after 1 year after receipt of the termination
14 statement.

15 (3) If the termination statement is in the standard form
16 prescribed by the secretary of state, the uniform fee for filing
17 and indexing a termination statement is \$1.00, and otherwise is
18 \$1.00, plus, in each case an additional fee of \$1.00 for each
19 additional name against which the termination statement is
20 required to be indexed, except that a fee shall not be charged
21 for the filing and indexing of a termination statement with
22 respect to an original financing statement filed after June 30,
23 1976, unless the filing was made with the register of deeds as
24 provided in sections 9402(3) and 9402(5), and in that event the
25 fee shall be the same as that required to file a discharge of a
26 real estate mortgage.

1 Sec. 9410. The secretary of state may establish a
2 ~~microfilm~~ subscription service USING MEDIA PURSUANT TO THE
3 RECORDS MEDIA ACT to provide for the sale in bulk of documents
4 filed with the secretary of state pursuant to article 9. The fee
5 for this service shall be \$50.00 per month or actual cost, which-
6 ever is greater.

7 Section 2. This amendatory act shall not take effect unless
8 Senate Bill No. _____ or House Bill No. 5013 (request
9 no. 03301'89) of the 85th Legislature is enacted into law.