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An Act To Implement the Recommendations of a Joint Task Force on Fraudulent Uniform Commercial Code Filings as Adopted by the National Association of Secretaries of State and the International Association of Commercial Administrators

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §90-E is enacted to read:

§ 90-E. Expedited review and determination of the authorization of financing statement records filed under the Uniform Commercial Code; criminal penalties; civil penalties and injunctive relief

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Authorized,” when used with reference to a financing statement record, means that the financing statement record was filed by a person authorized to do so as provided in Title 11, sections 9-1509 and 9-1708.

B. “Court” means the Kennebec County Superior Court.

C. “Debtor” means a natural person whose name was provided in a financing statement record as:

(1) An individual debtor; or

(2) One of the types of persons listed in Title 11, section 9-1505, subsection 1.

D. “Filing office” or “filing officer” means the appropriate office or officer where or to whom a financing statement record is to be filed as provided by Title 11, section 9-1501.

E. “Financing statement record” means:

(1) An initial financing statement;

(2) An amendment that adds collateral covered by a financing statement; or

(3) An amendment that adds a debtor to a financing statement.

An Act To Implement the Recommendations of a Joint Task Force on Fraudulent Uniform Commercial Code Filings as Adopted by the National Association of Secretaries of State and the International Association of Commercial Administrators

For purposes of this paragraph, "collateral," "debtor" and "financing statement" have the same meanings as defined in Title 11, section 9-1102.

F. "Movant" means the person filing the motion.

2. Expedited process to review and determine authorization of filing of financing statement records. This subsection governs the procedure for disputing the authorization for a filing of a financing statement.

A. Any individual who asserts that the filing of a financing statement record that provides that individual's name as a debtor is not an authorized filing may file, at any time, a motion for a judicial declaration that the financing statement record is not an authorized filing under Title 11, section 9-1509 and thus is not effective with respect to that individual under Title 11, section 9-1510. This motion must be filed with the Kennebec County Superior Court. The motion must be supported by the affidavit of the movant setting forth a concise statement of the facts upon which the claim for relief is based. The motion must be in the form that follows:

MISC. DOCKET No.

In Re: A Purported
Financing Statement In the Kennebec County Superior Court
Against.....In and For
(Name of Movant).....Kennebec
County, State of Maine

Motion for Judicial Review of the Authorization of a Financing Statement Record Filed Under the Uniform Commercial Code, the Maine Revised Statutes, Title 11, Article 9-A

Now Comes

.....

(name)

(movant) and files this motion requesting a judicial determination of whether the financing statement record filed in the filing office, a copy of which is attached hereto, is not an authorized filing with respect to the movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and in support of the motion would show the court as follows:

I.

(Name), movant, herein is an individual whose name was provided as an individual debtor in a financing statement record filed under the Uniform Commercial Code, Title 11, Article 9-A, a copy of which is attached hereto.

II.

On (date), in the exercise of the filing officer's official duties as (Secretary of State or Register of Deeds), the filing officer received and indexed the financing statement providing the movant's name as an individual debtor and assigned the following file number, to the record, bearing the following date of filing,

III.

Movant alleges that the financing statement record is not an authorized filing with respect to movant and that this court should declare the financing statement record ineffective with respect to movant for that reason.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of any person and asserts that this motion does not seek review of an effective financing statement record. Movant acknowledges that movant may be subject to sanctions if this motion is determined to be frivolous or intentionally wrongful.

PRAYER

Movant requests the court to review the attached documentation and enter an order finding that said financing statement record was filed by a person not authorized to do so with respect to movant and is for that reason not an authorized filing with respect to movant and, therefore, has no effect with respect to movant, together with such other findings as the court deems appropriate.

Respectfully submitted,

.....
(Signature and typed name and address)

B. The completed form for ordinary certificate of acknowledgment must be as follows:

AFFIDAVIT

STATE OF MAINE

COUNTY OF

BEFORE ME, the undersigned authority, personally appeared who, being by me duly sworn, deposed as follows:

"My name is..... I am over 18 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify. I further attest that the assertions contained in the accompanying motion are true and correct."

Further affiant sayeth not.

SUBSCRIBED and SWORN TO before me, this day of,

NOTARY PUBLIC, State of Maine

Notary's signature:

Notary's printed name:

My commission expires:

C. The clerk of the court may not collect a filing fee for filing a motion as provided in this subsection.

D. The court's finding may be made solely on a review of the documentation attached to the motion and the responses, if any, of the person named as a secured party in the financing statement record and without hearing any oral testimony if none is offered by the secured party. The court's review may be made only upon not less than 20 days' notice to each person named as a secured party in the financing statement record. Notice must be given to each secured party. Notice may be given to each secured party at the address given in the financing statement record as an address of that secured party by mail or personal service as provided in the Maine Rules of Civil Procedure. Each person named as a secured party in the financing statement record may respond to the motion based on pleadings, depositions, admissions and affidavits. The court's review of the pleadings, depositions, admissions and affidavits must be made on an expedited basis.

E. The court shall enter judgment in favor of the movant only if the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

F. After review, the court shall enter an appropriate finding of fact and conclusion of law in a form as provided in paragraph G regarding the financing statement record, an attested copy of which must be filed and indexed under the movant's name in the filing office where the original financing statement record was filed. The filing office may not collect a filing fee for filing the court's finding of fact and conclusion of law as provided in this section. A copy of the finding of fact and conclusion of law must be sent by the court to the movant, to each person named as a secured party in the financing statement record at the address of each person set forth in the financing statement and to the filing office. The copy must be sent within 7 days following the date that the finding of fact and conclusion

of law are issued by the court. The secured party may appeal the finding of fact and conclusion of law as provided in the Maine Rules of Appellate Procedure. In addition to the notice requirements of those rules, the secured party shall give notice of the appeal to the filing office.

G. The finding of fact and conclusion of law must be in substantially the following form:

MISC. DOCKET No.

In Re: A Purported

Financing Statement In the Kennebec County Superior Court

Against In and For

(Name of Movant) Kennebec County, State of Maine

Judicial Finding of Fact and Conclusion of Law Regarding the Authorization of a Financing Statement Record Filed Under the Uniform Commercial Code

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name), the documentation attached thereto, and the pleadings, depositions, admissions and affidavits submitted by the secured party, if any. Notice was given to each person named as a secured party in the financing statement record as provided by law to the secured party’s address as provided in the Uniform Commercial Code, the Maine Revised Statutes, Title 11, Article 9-A. No oral testimony was taken from any party, the court having made the determination that a decision could be made solely on review of the documentation provided hereunto.

The court finds as follows (only an item initialed is a valid court ruling):

.....The financing statement record providing movant’s name as an individual debtor attached to the motion IS an authorized filing as to movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708.

.....The financing statement record providing movant’s name as an individual debtor attached to the motion IS NOT an authorized filing as to movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and, therefore, is not effective with respect to movant.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to the review of whether authorization for the filing exists. Insofar as it affects movant, the filing officer shall remove the subject financing statement record from the index so that the record is not reflected in or obtained as a result of any search, standard or otherwise, conducted of the records of the filing office under the movant’s name upon the occurrence of both of the following:

An Act To Implement the Recommendations of a Joint Task Force on Fraudulent Uniform Commercial Code Filings as Adopted by the National Association of Secretaries of State and the International Association of Commercial Administrators

A. Receipt of a finding of fact and conclusion of law that the documentation attached to the motion IS NOT an authorized financing statement naming movant as an individual debtor under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and, therefore, is not effective with respect to movant; and

B. The earlier of:

(i) The lapse of any period for appeal without an appeal having been taken; and

(ii) The decision becoming final following any appeal.

The filing office shall retain the subject financing statement record and this finding of fact and conclusion of law in the filing office for the duration of the period for which they would have otherwise been retained. This finding of fact and conclusion of law, but not the financing statement record, shall be indexed under the movant's name.

SIGNED ON THIS THEDAY OF.....

.....Justice, Maine Superior Court

H. This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.

3. Criminal penalty. A person who violates this section commits a Class D crime. A second or subsequent violation of this section is a Class C crime.

4. Civil penalty and injunction. A person who violates this section is subject to civil penalties and other relief as provided in this subsection.

A. A person may not knowingly cause to be presented for filing in a filing office or promote the filing in a filing office of a financing statement record that the person knows:

(1) Is not authorized under Title 11, section 9-1509 or 9-1708 by the natural person whose name was provided as an individual debtor in the financing statement record;

(2) Was filed or presented for filing with the intent that the financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or

(3) Was filed or presented for filing with the intent that the financing statement record be used to defraud any person.

B. A person who violates this section is liable to each debtor under paragraph A for:

(1) The greater of:

(a) \$10,000; and

(b) The actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney's fees;

(4) Related expenses of bringing the action, including investigative expenses; and

(5) Punitive damages in the amount determined by the court.

C. The following persons may bring an action to enjoin a violation of this section or to recover damages under this section:

(1) The natural person whose name was provided as an individual debtor in the financing statement record filed without that person's authorization under Title 11, section 9-1509 or 9-1708 or any guardian, conservator, executor, administrator or other legal representative of that person, a person who owns an interest in the collateral described or indicated in the financing statement record or a person directly harmed by the filing of the financing statement record; and

(2) The Attorney General.

D. A filing officer may refer a matter to the Attorney General for filing the legal actions under this subsection.

E. An action under this subsection may be brought in any court in Kennebec County in which the financing statement record is presented for filing or in a county where any of the persons named in the cause of action under this subsection resides.

F. The fee for filing an action under this section is \$25. The plaintiff must pay the fee to the clerk of the court in which the action is filed. The plaintiff may not be assessed any other fee, cost, charge or expense by the clerk of the court.

G. A plaintiff who is unable to pay the filing fee and fee for service of notice may follow the court procedures to waive such fees.

An Act To Implement the Recommendations of a Joint Task Force on Fraudulent Uniform Commercial Code Filings as Adopted by the National Association of Secretaries of State and the International Association of Commercial Administrators

H. If the fee imposed under paragraph F is less than the filing fee the court imposes for filing other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the difference between the fee paid under paragraph F and the filing fee the court imposes for filing other similar actions.

I. This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document. This subsection is not intended to be an exclusive remedy.

SUMMARY

This bill implements the recommendations of the Joint Task Force on Fraudulent UCC Filings as adopted by the National Association of Secretaries of State and the International Association of Commercial Administrators to provide a remedy to a person who has been adversely affected by the filing of a lien against the person's personal property by an unauthorized filer.