

BILL ANALYSIS

Senate Research Center
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S.B. 2221
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Uniform Commercial Code (UCC) financing statement system is vital to extending credit for both individuals and businesses in Texas. Unfortunately, this system can be exploited by fraudulent or malicious filers—recently so-called "sovereign citizens" have increasingly begun filing fraudulent UCC-1 financing statements to harass their targets or commit fraud. Since most victims only discover these false filings when they seek credit, the delay can hamper home loans, business lines of credit, and other crucial financing. Under current law, Texans have only one remedy for clearing these fraudulent filings: filing suit in civil court, a process that is time-consuming and expensive. This gap in Texas law weakens the integrity of the UCC system, discourages legitimate investment, and negatively impacts businesses and individuals.

S.B. 2221 seeks to address these abuses by creating a streamlined administrative mechanism to remove fraudulent or baseless UCC-1 filings through the Office of the Secretary of State (SOS). Modeled after similar laws in at least eight other states, the proposed framework allows victims to file an affidavit (under penalty of perjury) affirming the invalidity of the filing. SOS would then terminate the fraudulent UCC-1 after a set period unless the filing's validity is proven through expedited court review. This ensures legitimate creditors are protected while offering a swift and cost-effective tool for Texans to clear their names. By closing loopholes and facilitating an efficient means to combat fraudulent filings, S.B. 2221 helps safeguard consumer rights, business interests, and the overall reliability of the state's UCC system.

As proposed, S.B. 2221 amends current law relating to the filing of a fraudulent financing statement in relation to certain secured transactions and authorizes the imposition of a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 9.5185, Business & Commerce Code, as follows:

Sec. 9.5185. FRAUDULENT FILING. (a) Makes no changes to this subsection.

(b) Provides that a person who violates Subsection (a) (relating to prohibiting a person from intentionally or knowingly presenting for filing or cause to be presented for filing a financing statement that the person knows contains certain falsehoods) is liable to a person injured by the violation for certain costs, including the greater of \$10,000 or the actual damages caused by the violation.

Deletes existing text providing that a person who violates Subsection (a) is liable to the owner of property covered by the financing statement for certain costs, including the greater of \$5,000 of the owner's actual damages.

(c)-(d) Makes no changes to these subsections.

(e) Authorizes a person identified as a debtor in a financing statement that the person believes was not permitted to be filed under certain provisions of the Business & Commerce Code or was otherwise filed in violation of Subsection (a), under penalty of perjury, to file an affidavit stating the impermissibility of the statement with the filing office in which the statement was filed. Requires the secretary of state to make available a form affidavit for use under this subsection. Requires the filing office to reject an affidavit filed under this subsection if the affidavit is incomplete; the affidavit is prohibited under Subsection (q); or the filing office believes in good faith that the affidavit was filed without a reasonable basis or with the intent to harass or defraud.

(f) Requires the filing office, on receipt of an affidavit filed under Subsection (e), to promptly file a termination statement with respect to the financing statement identified in the affidavit. Requires that the termination statement indicate that the statement was filed under this section. Requires that a termination statement filed under this subsection, except as provided by Subsections (i) and (k), be effective until the 30th day after the date the statement is filed.

(g) Requires the filling office, on the same day that the office files a termination statement under Subsection (f), to send to each secured party of record identified in the financing statement a notice that the termination statement has been filed. Requires that the notice be sent by certified mail, return receipt requested, to the mailing address provided for the secured party of record in the financing statement.

(h) Authorizes a secured party of record identified in a financing statement for which a termination statement has been filed under Subsection (f) to bring an action against the person who filed the affidavit under Subsection (e) seeking a determination of whether the person who filed the financing statement was entitled to file the statement. Requires that an action under this subsection have priority on the court's calendar and proceed by expedited hearing. Requires that the action be brought in the district court in the county where the filing office in which the financing statement was filed is located. Requires that an action under this subsection be filed not later than the 60th day after the date on which the termination statement becomes effective.

(i) Authorizes a court, in an action brought under Subsection (h), to order, in appropriate circumstances, preliminary relief, including an order preventing the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. Provides that, if the court issues an order under this subsection, and the filing office receives a certified copy of the order before the termination statement takes effect, the termination statement is prohibited from taking effect and the filing office is required to promptly file an amendment to the financing statement indicating that an order has prevented the termination statement from taking effect.

(j) Provides that, if an order issued under Subsection (i) to prevent the termination statement from taking effect ceases to be effective due to a subsequent order or final judgment of a court, and the filing office receives a certified copy of the subsequent order or final judgment, the termination statement is required to immediately become effective on receipt of the certified copy by the filing office, and the filing office is required to promptly file an amendment to the financing statement indicating that the termination statement is effective.

(k) Provides that, if a court determines in an action brought under Subsection (h) that the financing statement was filed by a person entitled to file the statement, and the filing office receives a certified copy of the court's final judgment or order before the termination statement takes effect, the termination statement is prohibited from taking effect and the filing office is required to promptly remove

the termination statement and any amendments filed under Subsection (i) from its public records.

(l) Requires the filing office, if a court determines in an action brought under Subsection (h) that the financing statement was filed by a person entitled to file the statement, and the filing office receives a certified copy of the court's final judgment or order after the termination statement takes effect, to promptly file an amendment to the financing statement indicating that the financing statement has been reinstated.

(m) Provides that a financing statement reinstated under Subsection (l) is effective from the initial filing date and is considered to have never been ineffective against all persons and for all purposes except against a purchaser of the collateral described in the financing statement who gave value in reliance on the termination statement.

(n) Provides that, if the period of effectiveness of a financing statement reinstated under Subsection (l) would have lapsed during the period of termination, the secured party of record is authorized to file a continuation statement not later than the 30th day after the financing statement is reinstated, and the continuation statement is required to have the same effect as if it had been filed during the six-month period prescribed by Section 9.515(d) (relating to providing that a continuation statement is authorized to be filed only within certain timeframes).

(o) Requires the filing office to collect a fee for the filing of an affidavit under Subsection (e) in an amount sufficient to recover the cost of administering this section. Prohibits the filing office from returning a fee paid for filing a financing statement identified in the affidavit, even if the financing statement is subsequently reinstated.

(p) Prohibits the filing office or an employee of the filing office from being subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the filing office under this section.

(q) Prohibits an affidavit from being filed under Subsection (e) with respect to a financing statement filed by or on behalf of a regulated lending institution. Defines "regulated lending institution."

SECTION 2. Amends Section 9.510(c), Business & Commerce Code, to create an exception under Section 9.5185(n).

SECTION 3. Amends Section 9.515(d), to create an exception under Section 9.5185(n).

SECTION 4. Effective date: September 1, 2025.