

BILL ANALYSIS

S.B. 2221
By: Parker
Trade, Workforce & Economic Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that over the last few years, sovereign citizens have begun making fraudulent Uniform Commercial Code filings on entities in various states, but that the only option for removing these fraudulent filings in Texas is to file a civil suit, which can be time-consuming and costly. S.B. 2221 seeks to provide a more effective remedy to this issue by revising current law regarding the existing fraudulent filing removal process.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 2221 amends the Business & Commerce Code to change the entity to whom a person who violates the prohibition against the fraudulent filing of a financing statement is liable from the owner of property covered by the financing statement to a person injured by the violation. The bill increases the amount for which the person who committed the violation is liable in addition to court costs and reasonable attorney's fees from the greater of \$5,000 or the owner's actual damages to the greater of \$10,000 or the actual damages caused by the violation.

S.B. 2221 authorizes a person identified as a debtor in a financing statement that the person believes was not permitted to be filed under applicable state law, or was otherwise filed in violation of the statutory prohibition against the fraudulent filing of a financing statement, to file under penalty of perjury an affidavit stating the impermissibility of the statement with the filing office in which the statement was filed. The bill requires the secretary of state to make available a form affidavit for use when filing such an affidavit with the secretary of state. The bill requires a person who files such an affidavit to send to the mailing address provided for each secured party of record in the financing statement to which the affidavit relates by certified mail, return receipt requested, not earlier than the 30th day before and not later than the 5th day before the date the affidavit is filed, a written notice of the person's intention to file the affidavit, together with a copy of the financing statement. The bill sets out the required formatting and contents of the statement.

S.B. 2221 requires the affiant to file the affidavit together with proof of the required notice and requires the filing office to reject an affidavit if the affidavit is incomplete or the affiant did not file the affidavit together with the proof of notice. On acceptance of a properly filed affidavit, the bill requires the office to promptly file a termination statement with respect to the financing

statement identified in the affidavit. The termination statement must indicate that the financing statement was filed under statutory provisions relating to fraudulent filing. The bill establishes that a termination statement is effective as of the 30th day after the date the termination statement is filed, except as otherwise provided by the bill's provisions.

S.B. 2221 authorizes a secured party of record identified in a financing statement for which a termination statement has been filed to bring an action against the person who filed the affidavit seeking a determination of whether the person who filed the financing statement was entitled to file the financing statement. The bill requires the action to be brought in the district court in the county where the filing office in which the financing statement was filed is located not later than the 90th day after the date on which the termination statement is filed. The bill requires such an action to have priority on the court's calendar and to proceed by expedited hearing. In such an action, the bill authorizes a court to order, in appropriate circumstances, preliminary relief, including an order suspending the effectiveness of the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. The bill establishes that, if the court issues such an order and the filing office receives a certified copy of the order, the effectiveness of the termination statement is immediately suspended as of the date the order is filed with the filing office and the filing office must promptly file an amendment to the financing statement indicating that an order has suspended the effectiveness of the termination statement. The bill establishes that if an order to suspend the effectiveness of the termination statement 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 immediately becomes effective as of the date the order or judgment is filed with the filing office and the filing office must promptly file an amendment to the financing statement indicating that the termination statement is effective.

S.B. 2221 establishes that if a court determines in an action brought under the bill's provisions 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, the termination statement immediately becomes ineffective as of the date the order or judgment is filed with the filing office and the filing office must promptly file an amendment to the financing statement indicating that the financing statement has been reinstated. The bill establishes that a reinstated financing statement 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. The bill authorizes a secured party of record, if the period of effectiveness of a reinstated financing statement would have lapsed during the period of termination, to file a continuation statement not later than the 30th day after the financing statement is reinstated and establishes that the continuation statement has the same effect as if it had been filed during the prescribed six-month period for the continuation of financing statements.

S.B. 2221 establishes that the filing office or an employee of the filing office may not be subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the filing office under statutory provisions relating to fraudulent filing. The bill requires the filing office to collect a fee for the filing of an affidavit under the bill's provisions in an amount sufficient to recover the cost of administering those statutory provisions. The bill 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.

S.B. 2221 establishes that a filed affidavit is not effective with respect to a financing statement filed by or on behalf of a regulated lending institution, defined by the bill as an entity in the business of extending credit or acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit including a bank, savings bank, savings association, trust company, building and loan association, savings and loan association, credit union, consumer finance company, industrial bank, industrial loan company, insurance company, investment company, investment fund, installment seller, mortgage company, sales finance company, or leasing

company that is subject to licensure, regulatory oversight, or examination by a state or federal agency and is operating as a regulated lending institution as of the date on which a financing statement is filed. The bill requires a regulated lending institution to notify the filing office that it qualifies as a regulated lending institution not later than the 90th day after the filing of the termination statement and authorizes the secretary of state to prescribe a form for use when notifying the secretary of state in such a manner. The bill establishes that, on timely receipt of a notice from a regulated lending institution, the termination statement immediately becomes ineffective and the filing office must promptly file an amendment to the financing statement indicating that the financing statement has been reinstated.

EFFECTIVE DATE

September 1, 2025.