

By: Parker  
(Lambert)

S.B. No. 2221

A BILL TO BE ENTITLED

AN ACT

relating to the filing of a fraudulent financing statement in relation to certain secured transactions; authorizing the imposition of a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9.5185, Business & Commerce Code, is amended to read as follows:

Sec. 9.5185. FRAUDULENT FILING. (a) A person may not intentionally or knowingly present for filing or cause to be presented for filing a financing statement that the person knows:

(1) is forged;

(2) contains a material false statement; or

(3) is groundless.

(b) A person who violates Subsection (a) is liable to a person injured by the violation ~~[the owner of property covered by the financing statement]~~ for:

(1) the greater of \$10,000 ~~[\$5,000]~~ or the ~~[owner's]~~ actual damages caused by the violation;

(2) court costs; and

(3) reasonable attorney's fees.

(c) A person who violates Subsection (a) also may be prosecuted under Section 37.101, Penal Code.

(d) An owner of property covered by a fraudulent financing statement described in Subsection (a) also may file suit in a court

1 of suitable jurisdiction requesting specific relief, including,  
2 but not limited to, release of the fraudulent financing statement.  
3 A successful plaintiff is entitled to reasonable attorney's fees  
4 and costs of court assessed against the person who filed the  
5 fraudulent financing statement. If the person who filed the  
6 fraudulent financing statement cannot be located or is a fictitious  
7 person, the owner of the property may serve the known or unknown  
8 defendant through publication in a newspaper of general circulation  
9 in the county in which the suit is brought.

10 (e) A person identified as a debtor in a financing statement  
11 that the person believes was not permitted to be filed under Section  
12 9.509, 9.708, or 9.808, or was otherwise filed in violation of  
13 Subsection (a), may, under penalty of perjury, file an affidavit  
14 stating the impermissibility of the statement with the filing  
15 office in which the statement was filed. The secretary of state  
16 shall make available a form affidavit for use when filing an  
17 affidavit with the secretary of state under this subsection. The  
18 affiant shall file the affidavit together with proof of notice  
19 required by Subsection (f). The filing office shall reject an  
20 affidavit filed under this subsection if:

21 (1) the affidavit is incomplete; or  
22 (2) the affiant did not file the affidavit together  
23 with proof of notice required by Subsection (f).

24 (f) A person who files an affidavit under Subsection (e)  
25 shall send each secured party of record a written notice of the  
26 person's intention to file the affidavit, together with a copy of  
27 the financing statement. The notice must contain the following

language at the beginning of the notice in at least 14-point boldfaced type: "An affidavit will be filed under penalty of perjury that the financing statement enclosed with this notice was impermissible under Texas law. Once the affidavit is accepted, a termination statement will be filed with respect to the financing statement. The termination statement will be effective as of the 30th day after the date it is filed. If you were a regulated lending institution, as defined by Section 9.5185(r), Business & Commerce Code, on the date the financing statement was filed, you must notify the filing office in which the financing statement was filed that you qualify as a regulated lending institution not later than the 90th day after the date the financing statement is filed. If you believe that the financing statement was permitted to be filed under Texas law, you must bring an action against the affiant not later than the 90th day after the date on which the termination statement is filed. The action must be brought in the district court in the county where the filing office in which the financing statement was filed is located." The notice must be sent 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.

(g) On acceptance of an affidavit properly filed under Subsection (e), the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must indicate that the

1 statement was filed under this section. Except as provided by  
2 Subsections (i) and (k), a termination statement filed under this  
3 subsection shall be effective as of the 30th day after the date the  
4 termination statement is filed.

5 (h) A secured party of record identified in a financing  
6 statement for which a termination statement has been filed under  
7 Subsection (g) may bring an action against the person who filed the  
8 affidavit under Subsection (e) seeking a determination of whether  
9 the person who filed the financing statement was entitled to file  
10 the financing statement. An action under this subsection shall  
11 have priority on the court's calendar and shall proceed by  
12 expedited hearing. The action must be brought in the district court  
13 in the county where the filing office in which the financing  
14 statement was filed is located. An action under this subsection  
15 must be brought not later than the 90th day after the date on which  
16 the termination statement is filed.

17 (i) In an action brought under Subsection (h), a court may  
18 order, in appropriate circumstances, preliminary relief, including  
19 an order suspending the effectiveness of the termination statement  
20 from taking effect or directing a party to take action to prevent  
21 the termination statement from taking effect. If the court issues  
22 an order under this subsection, and the filing office receives a  
23 certified copy of the order:

24 (1) the effectiveness of the termination statement is  
25 immediately suspended as of the date the order is filed with the  
26 filing office; and

27 (2) the filing office shall promptly file an amendment

1 to the financing statement indicating that an order has suspended  
2 the effectiveness of the termination statement.

3 (j) If an order issued under Subsection (i) to suspend the  
4 effectiveness of the termination statement ceases to be effective  
5 due to a subsequent order or final judgment of a court, and the  
6 filing office receives a certified copy of the subsequent order or  
7 final judgment:

8 (1) the termination statement shall immediately  
9 become effective as of the date the order or judgment is filed with  
10 the filing office; and

11 (2) the filing office shall promptly file an amendment  
12 to the financing statement indicating that the termination  
13 statement is effective.

14 (k) If a court determines in an action brought under  
15 Subsection (h) that the financing statement was filed by a person  
16 entitled to file the statement, and the filing office receives a  
17 certified copy of the court's final judgment or order:

18 (1) the termination statement shall immediately  
19 become ineffective as of the date the order or judgment is filed  
20 with the filing office; and

21 (2) the filing office shall promptly file an amendment  
22 to the financing statement indicating that the financing statement  
23 has been reinstated.

24 (l) A financing statement reinstated under Subsection (k)  
25 or (q) is effective from the initial filing date and is considered  
26 to have never been ineffective against all persons and for all  
27 purposes except against a purchaser of the collateral described in

1 the financing statement who gave value in reliance on the  
2 termination statement.

3 (m) If the period of effectiveness of a financing statement  
4 reinstated under Subsection (k) or (q) would have lapsed during the  
5 period of termination, a secured party of record may file a  
6 continuation statement not later than the 30th day after the  
7 financing statement is reinstated, and the continuation statement  
8 shall have the same effect as if it had been filed during the  
9 six-month period prescribed by Section 9.515(d).

10 (n) The filing office shall collect a fee for the filing of  
11 an affidavit under Subsection (e) in an amount sufficient to  
12 recover the cost of administering this section. The filing office  
13 may not return a fee paid for filing a financing statement  
14 identified in the affidavit, even if the financing statement is  
15 subsequently reinstated.

16 (o) The filing office or an employee of the filing office  
17 may not be subject to liability for the termination or amendment of  
18 a financing statement in the lawful performance of the duties of the  
19 filing office under this section.

20 (p) An affidavit filed under Subsection (e) is not effective  
21 with respect to a financing statement filed by or on behalf of a  
22 regulated lending institution.

23 (q) A regulated lending institution must notify the filing  
24 office that it qualifies as a regulated lending institution under  
25 Subsection (p) not later than the 90th day after the filing of the  
26 termination statement under Subsection (g). The secretary of state  
27 may prescribe a form for use when notifying the secretary of state

1 under this subsection. On timely receipt of a notice under this  
2 subsection, the termination statement shall immediately become  
3 ineffective, and the filing office shall promptly file an amendment  
4 to the financing statement indicating that the financing statement  
5 has been reinstated.

6 (r) For purposes of this section, "regulated lending  
7 institution" means an entity in the business of extending credit or  
8 acquiring, purchasing, selling, brokering, or servicing loans or  
9 other extensions of credit including a bank, savings bank, savings  
10 association, trust company, building and loan association, savings  
11 and loan association, credit union, consumer finance company,  
12 industrial bank, industrial loan company, insurance company,  
13 investment company, investment fund, installment seller, mortgage  
14 company, sales finance company, or leasing company that:

15 (1) is subject to licensure, regulatory oversight, or  
16 examination by a state or federal agency; and

17 (2) is operating as a regulated lending institution as  
18 of the date on which a financing statement is filed.

19 SECTION 2. Section 9.510(c), Business & Commerce Code, is  
20 amended to read as follows:

21 (c) Except as otherwise provided by Section 9.5185(m), a [A]  
22 continuation statement that is not filed within the six-month  
23 period prescribed by Section 9.515(d) is ineffective.

24 SECTION 3. Section 9.515(d), Business & Commerce Code, is  
25 amended to read as follows:

26 (d) Except as otherwise provided by Section 9.5185(m), a [A]  
27 continuation statement may be filed only within six months before

1 the expiration of the five-year period specified in Subsection (a)  
2 or the 30-year period specified in Subsection (b), whichever is  
3 applicable.

4 SECTION 4. This Act takes effect September 1, 2025.