



## State Fraudulent Filing Statutes & Rules

# FRAUDULENT UCC FILING REMEDIES BY STATE

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Prepared by

**Paul Hodnefield**  
Associate General Counsel  
CSC® Corporate and Legal Solutions



# State UCC Fraudulent Filing Statutes & Rules

The following list of fraudulent filing laws includes state statutes and administrative rules that either expressly apply to fraudulent UCC financing statements or appear broad enough to encompass fraudulent UCC filing activity.

This is not an exhaustive list of fraudulent UCC filing remedies. Other common-law or state statutory provisions could provide civil remedies for the victims of fraudulent UCC records. Likewise, federal laws may also provide remedies, especially when the fraudulent UCC records were filed against government officials.

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## **ALABAMA**

### **Pre-Filing Remedies:**

- The secretary of state adopted rules that permit the filing office to reject a record that appears fraudulent on its face or identifies the debtor and secured party as the same person. See Ala. Admin. Code r. 820-4-3.02(3). However, this rule appears to conflict with Ala. Code § 7-9A-516(b) and § 7-9A-520(a).

### **Post-Filing Remedies:**

- Alabama enacted the uniform information statement remedy in Ala. Code § 7-9A-518.
- Alabama enacted the uniform Article 9 remedies for noncompliance in Ala. Code § 7-9A-625.
- A person whose rights are affected by the filing of a fraudulent lien or instrument may petition the recording official to nullify or expunge the record. The statute establishes an administrative procedure for petitions. See Ala. Code § 13A-9-12(e).

### **Criminal Penalties:**

- Code of Ala. § 13A-9-12(a) and (b) provide that a person who knowingly presents a materially false written instrument relating to real or personal property with the knowledge that it will be registered, filed or recorded commits the crime of offering a false instrument, a Class A misdemeanor.
- Under Code of Ala. § 13A-9-12(c), offering a false instrument for recording against a public servant is a Class C felony.

## ALASKA

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Alaska enacted the uniform information statement remedy in Alaska Stat. § 45.29.518.
- Alaska enacted the uniform Article 9 remedies for noncompliance in Alaska Stat. § 45.29.625.
- Alaska has adopted a non-consensual common-law lien statute. *See* Alaska Stat. § 09.45.161. If a nonconsensual common law lien is recorded or filed against the property of a public servant based upon the performance or nonperformance of the public servant's duties or having no stated basis and the nonconsensual common law lien was not accompanied by a specific order from a court of competent jurisdiction recognized under state or federal law authorizing the filing of the lien and recorded or filed with the lien, an attorney representing the public servant may sign, submit for recording or filing, and record or file a notice of invalid lien.
- Alaska Stat. § 09.45.164. A person whose real or personal property is subject to a claim of nonconsensual common law lien that has been recorded or filed may submit to a court of competent jurisdiction a request that the court order the release of the claim of the nonconsensual common law lien. If the court determines that the claim of nonconsensual common law lien is invalid, the court shall issue an order releasing the claim of lien and awarding costs and actual reasonable attorney fees to the party making the request.
- Alaska Stat. § 09.45.167. A person who offers a claim of nonconsensual common law lien for recording or filing that is not accompanied by a specific order from a court of competent jurisdiction recognized under state or federal law authorizing the recording or filing of the lien is liable to the owner of the property affected by the lien for actual and punitive damages, as well as costs and actual reasonable attorney fees.

### **Criminal Penalties:**

- Alaska Stat. § 11.46.560. A person commits the crime of offering a false instrument for recording in the second degree, a class A misdemeanor, if the person presents a lien to the recorder for registration, filing, or recording with reckless disregard that the lien is not provided for by a specific state or federal statute; or a lien imposed or authorized by a court recognized under state or federal law.

## ARIZONA

### **Pre-Filing Remedies:**

- The secretary of state may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, illegitimate, false or fraudulent purpose or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity. Ariz. Rev. Stat. § 14-121(B).

### **Post-Filing Remedies:**

- Arizona enacted the uniform Article 9 remedies for noncompliance in Ariz. Rev. Stat. § 47-9518.
- Arizona enacted the uniform Article 9 remedies for noncompliance in Ariz. Rev. Stat. § 47-9625.
- Ariz. Rev. Stat. § 47-9527(A). A person who causes a record to be filed or recorded in a filing office and who knows or has reason to know that the record is unauthorized under § 47-9509 or that the record contains a material misstatement or false claim is liable to a debtor, a consumer obligor, a person named as a debtor or the owner or holder of collateral affected by the record for the sum of at least five hundred dollars or for treble the actual damages caused by the record, whichever is more, and reasonable attorney fees and costs of the action, if the person who causes the record to be filed or recorded willfully refuses to terminate or correct the record within twenty days after the date of a written request from the debtor, the consumer obligor, the person named as a debtor or the owner or holder of collateral affected by the record.
- Ariz. Rev. Stat. § 47-9527(B). Any debtor, any consumer obligor, any person named as a debtor or the owner or holder of collateral affected by a record that is unauthorized under § 47-9509 or that contains a material misstatement or false claim may bring an action pursuant to this section in the superior court for any temporary or permanent relief as is necessary to clear or otherwise correct the records of the filing office of the record as provided for in the rules of procedure for special actions.

## **ARIZONA, Continued**

- Arizona enacted a non-consensual common-law lien statute and integrated it into Article 9. *See* Ariz. Rev. Stat. § 47-9528. A nonconsensual lien, other than a lien filed by a governmental entity or political subdivision or agency, a validly licensed utility or water delivery company, a mechanics' lien claimant or an entity created under covenants, conditions, restrictions or declarations affecting real property, is not valid unless the lien is accompanied by an order or judgment from a court of competent jurisdiction authorizing the filing of the lien and does not have the force or effect of law. If a nonconsensual lien is accepted for filing, the recording officer shall accept for filing a notice of invalid lien that is signed and submitted by the attorney general or county attorney.

### **Criminal Penalties:**

- Ariz. Rev. Stat. § 47-9527(E). A person who is not entitled to file a record under § 47-9509, who causes a record to be filed in the records of a filing office and who knows or has reason to know that the record is unauthorized under § 47-9509 or the record contains a material misstatement or false claim is guilty of a class 1 misdemeanor.

## ARKANSAS

### **Pre-Filing Remedies:**

- House Bill 1463, which was enacted in 2019 and takes effect on July 24, 2019, adds a non-uniform subsection to Ark. Code § 4-9-520. New § 4-9-520(e) gives the filing office authority to refuse to accept UCC records that appear fraudulent.
- Subsection (e)(2) provides a list of criteria for the filing officer to consider when making the determination. The list includes indications common to certain types of fraudulent UCC records.
- After refusal, § 4-9-520(e)(3) and (4) provide a process for notice to the secured party of the refusal and for the secured party to seek reinstatement.

### **Post-Filing Remedies:**

- Arkansas enacted the uniform information statement remedy in Ark. Code Ann. § 4-9-518.
- In 2017, Arkansas added a non-uniform post-filing remedy for fraudulent filing as Ark. Code Ann. § 4-9-529. This provision allows the victim of a fraudulent UCC record to file an affidavit or sworn statement with the filing office. Upon filing of the affidavit or sworn statement, the filing office may terminate the relevant financing statement. The filing office must provide notice to the secured party of the termination and the secured party can then bring an action for reinstatement.
- Arkansas enacted the uniform Article 9 remedies for noncompliance in Ark. Code Ann. § 4-9-625.
- Ark. Code Ann. § 5-37-215(d). A person aggrieved or damaged by the filing of a fraudulent Uniform Commercial Code financing statement has a civil cause of action against the defendant for injunctive and other curative relief and may also recover: the greater of ten thousand dollars (\$10,000) or the actual damages caused by the violation; Court costs; Reasonable attorney's fees; Costs and expenses reasonably related to the expenses of investigating and bringing the civil action; and Exemplary or punitive damages in an amount determined by the fact finder.

### **Criminal Penalties:**

- Ark. Code Ann. § 5-37-215(b). A person commits the offense of fraudulently filing a Uniform Commercial Code financing statement if, with the purpose to defraud or harass an alleged debtor or any other person, the person knowingly presents or conspires with another person to present a financing statement under the Uniform Commercial Code § 4-1-101 et seq., for filing that the person knows is not based on a bona fide security agreement or was not authorized or authenticated by the alleged

debtor identified in the financing statement or an authorized representative of the alleged debtor. Fraudulently filing a Uniform Commercial Code financing statement is a Class A misdemeanor. A subsequent offense of fraudulently filing a Uniform Commercial Code financing statement is a Class D felony, *see* § 5-37-215(c)(2)(A).

## **CALIFORNIA**

### **Pre-Filing Remedies:**

- Cal. Gov't. Code § 12181. The Secretary of State's office may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.

### **Post-Filing Remedies:**

- California enacted the uniform information statement remedy in Cal U Com Code § 9518.
- California enacted the uniform Article 9 remedies for noncompliance in Cal U Com Code § 9625.
- Any person who knowingly records or files, or directs another to record or file, a lawsuit, lien, or encumbrance against a public officer or employee, knowing it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties, shall be liable to the person subject to the lawsuit, or the owner of the property bound by the lien or other encumbrance for a civil penalty not to exceed five thousand dollars (\$5,000). *See* Cal. Gov't. Code § 6223.

### **Criminal Penalties:**

- Cal Pen Code § 115 provides that every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of a felony.

## COLORADO

### **Pre-Filing Remedies:**

- Colo. Rev. Stat. § 38-35-202(1). Any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, may accept or reject for recording or filing any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.  
*Comment:* In practice the Colorado Secretary of State mandates the electronic filing of UCC records and consequently does not have the ability to review and reject fraudulent records or spurious liens. These records generally have to be addressed with post-filing remedies.

### **Post-Filing Remedies:**

- Colorado enacted the uniform information statement remedy in Colo. Rev. Stat. § 4-9-518.
- Colorado enacted the uniform Article 9 remedies for noncompliance in Colo. Rev. Stat. § 4-9-625.
- Colo. Rev. Stat. § 38-35-204. Any person whose real or personal property is affected by a recorded or filed lien or document that the person believes is a spurious lien or spurious document may petition the district court in the county or city and county in which the lien or document was recorded or filed or the federal district court in Colorado for an order to show cause why the lien or document should not be declared invalid. If, following the hearing on the order to show cause, the court determines that the lien or document is a spurious lien or spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or spurious document and any related notice of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against any respondent and in favor of the petitioner. A certified copy of such order may be recorded or filed in the office of any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state.

## **COLORADO, Continued**

### **Criminal Penalties:**

- Colo. Rev. Stat. § 18-5-114. A person commits offering a false instrument for recording in the second degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee. Offering a false instrument for recording in the second degree is a class 1 misdemeanor.

## CONNECTICUT

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Connecticut enacted a non-uniform addition to the information statement remedy in Conn. Gen. Stat. § 42a-9-518(f). Subsection (f) provides an expedited process that allows the victim of a fraudulent financing statement to petition the Tax and Administrative Appeals Session of the Superior Court to invalidate a record, when such record was falsely filed or amended.
- Connecticut enacted the uniform Article 9 remedies for non-compliance in Conn. Gen. Stat. § 42a-9-625.

### **Criminal Penalties:**

- None specified.

## **DELAWARE**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Delaware enacted the uniform information statement remedy in Del. Code Ann. tit. 6 § 9-518.
- Delaware enacted the uniform Article 9 remedies for non-compliance in Del. Code Ann. tit. 6 § 9-625.

### **Criminal Penalties:**

- Del. Code Ann. tit. 11 § 877. A person is guilty of offering a false instrument for filing when, knowing that a written instrument contains a false statement or false information, and intending to defraud the State, a political subdivision thereof or another person, the person offers or presents it to a public office or a public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of the public office or public servant..

## **DISTRICT OF COLUMBIA**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- The District of Columbia enacted the uniform information statement remedy in D.C. Code § 28:9-518.
- The District of Columbia enacted the uniform Article 9 remedies for non-compliance in D.C. Code § 28:9-625.

### **Criminal Penalties:**

- D.C. Code § 41-204(a). Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by § 28:9-404 of the Code, shall be fined not more than \$ 500 or imprisoned not more than 1 year, or both.
- Note – this section mistakenly cites the sections of former Article 9 in effect prior to July 1, 2001.

## FLORIDA

### Pre-Filing Remedies:

- None.

### Post-Filing Remedies:

- Florida enacted the uniform information statement remedy in Fla. Stat. § 679.518.
- Florida enacted the uniform Article 9 remedies for noncompliance in Fla. Stat. § 679.625.
- Fla. Stat. § 817.535(8)(a) provides that any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action. Upon a finding that the instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person the court may declare the instrument null and void ab initio and may order the instrument sealed and removed from any searchable electronic database. *See* § 817.535(8)(b)(1). The court may also award the victim injunctive relief, damages, civil penalties, costs and attorney fees. *See* § 817.535(8)(b)(3).

### Criminal Penalties:

- Fla. Stat. § 817.535(2)(a) makes it a felony to file a financing statement that contains a materially false, fictitious, or fraudulent statement or representation with the intent to defraud or harass another. The felony degree enhanced for multiple offenses, § 817.535(2)(b), or the owner of the property subject to the false instrument is a public officer or employee under § 817.535(3).
- Fla. Stat. § 817.568(2) provides that any person who willfully and without authorization fraudulently uses personal identification information concerning an individual, defined to include name and address, without first obtaining that individual's consent commits a felony. The sentencing court may issue such orders as are necessary to correct any public record that contains false information given in violation of this section.
- Fla. Stat. § 835.02 provides that whoever utters and publishes as true a false, forged or altered record, deed or instrument knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony.

## **GEORGIA**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Georgia enacted the uniform information statement remedy in Ga. Code Ann. § 11-9-625.
- Georgia enacted the uniform Article 9 remedies for non-compliance in Ga. Code Ann. § 11-9-625.

### **Criminal Penalties:**

- Ga. Code Ann. § 16-10-20.1(b) makes unlawful for any person to knowingly file, enter, or record any document in a public record or court of this state or of the United States knowing or having reason to know that such document is false or contains a materially false, fictitious, or fraudulent statement or representation.
- Violation of § 16-10-20.1(b) is punishable by up to 10 years in prison and up to a \$10,000 fine. *See* § 16-10-20.1(c).

## HAWAII

### **Pre-Filing Remedies:**

- The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien. Haw. Rev. Stat. § 507D-5(c).

### **Post-Filing Remedies:**

- Hawaii enacted the uniform information statement remedy in Haw. Rev. Stat. § 490:9-518.
- Hawaii enacted the uniform Article 9 remedies for noncompliance in Haw. Rev. Stat. § 490:9-625.
- Haw. Rev. Stat. § 507D-4(b). A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing. Upon the receipt of the request, the registrar shall send a demand to the secured party by certified or registered mail, at the address set forth on the financing statement, that the secured party provide a copy of the security agreement which purportedly authorized the filing of the financing statement to the registrar no later than thirty days following the postmarked date of the registrar's notice. If the registrar does not receive the security agreement within the thirty-day period, the registrar shall issue to the debtor and accept for filing, a notice of unauthorized filing of financing statement. The filing of a notice of unauthorized filing of financing statement shall effectively terminate the unauthorized financing statement.
- Haw. Rev. Stat. § 507D-5(a). Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer's or employee's duties shall designate in the pleading header that the claim is directed to a federal, state, or county officer or employee, and shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of such lien.
- Haw. Rev. Stat. § 507D-5(b). Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of nonconsensual common law lien.

## **HAWAII, Continued**

- Haw. Rev. Stat. § 507D-7. Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court under § 507D-4 to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar. If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it. In addition, if the court determines the purported claim of lien is frivolous, the prevailing party shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater.

### **Criminal Penalties:**

- Haw. Rev. Stat. § 507D-7(d). Any person who knowingly submits for filing an invalid court order in support of a nonconsensual common law lien against a federal, state, or county officer or employee, shall be guilty of tampering with a government record under § 710-1017, a misdemeanor.

## IDAHO

### Pre-Filing Remedies:

- A filing officer shall not file a record that provides an assumed name; where the debtor and secured party would appear to be the same person; or, the secured party does not provide proof that an individual debtor is in fact a “transmitting utility,” as defined in Article 9. *See* Idaho Code § 28-9-516A.
- Idaho enacted a non-consensual common-law lien statute. *See* Idaho Code § 45-811. Idaho law does not recognize or enforce non-consensual common-law liens. § 45-811(2). A former provision that expressly allowed filing offices to reject non-consensual common-law liens was repealed in 2016 when the former law was replaced with current law. *See* former § 45-1701, *et. seq.*

### Post-Filing Remedies:

- Idaho enacted the uniform information statement remedy in Idaho Code § 28-9-518.
- Idaho enacted the uniform Article 9 remedies for noncompliance in Idaho Code § 28-9-625.
- The Secretary of State may seek an order to show cause why a record that could have been rejected under Idaho Code § 28-9-516A should not be removed from the UCC index. *See* § 28-9-516A(4).
- Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien who believes the claim of lien is invalid can petition the court to have the lien stricken from the record. *See* Idaho Code § 45-811(3)(a).
- Any person who files or records in the office of a county clerk or recorder, or with the secretary of state, any document attempting to create a nonconsensual common law lien against real or personal property, and who has refused or failed to withdraw such document upon written request by the owner of the property, shall be liable to the owner for the sum of not less than five thousand dollars (\$5,000) or for actual damage caused thereby, whichever is greater, together with any court costs and reasonable attorney's fees. *See* Idaho Code § 45-811(4)(a).

## **IDAHO, Continued**

### **Criminal Penalties:**

- Idaho Code § 18-3203. Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of a felony.

## ILLINOIS

### **Pre-Filing Remedies:**

- § 810 ILCS 5/9-516(b)(3)(E) provides an additional reason for rejection. In the case of a record submitted to the filing office described in Section 9-501(b) [810 ILCS 5/9-501], the debtor does not meet the definition of a transmitting utility as described in Section 9-102(a)(80) [810 ILCS 5/9-102];
- § 810 ILCS 5/9-516(b)(3.5) provides the filing office with discretion to reject potentially fraudulent records. In the case of an initial financing statement or an amendment, if the filing office believes in good faith that a document submitted for filing is being filed for the purpose of defrauding any person or harassing any person in the performance of duties as a public servant.
- § 810 ILCS 5/9-516(e) The Secretary of State may refuse to accept a record for filing under subdivision (b)(3)(E) or (b)(3.5) only if the refusal is approved by the Department of Business Services of the Secretary of State and the General Counsel to the Secretary of State.

### **Post-Filing Remedies:**

- Illinois enacted the uniform information statement remedy in § 810 ILCS 5/9-518.
- Illinois enacted the uniform Article 9 remedies for noncompliance in § 810 ILCS 5/9-625.
- § 810 ILCS 5/9-501.1 provides post-filing administrative remedies following the filing of an affidavit by a party identified as a debtor in the fraudulent record. Corresponding amendments to § 810 ILCS 5/9-510 and § 810 ILCS 5/9-509 permits the Secretary of State to effectively terminate the fraudulent record. The secured party may appeal the determination through an administrative process. Records filed by a regulated financial institution or the representative of a regulated financial institution are exempt from this process and remedies. The debtor may recover the greater of actual damages or \$10,000.
- § 55 ILCS 5/3-5010.5 authorizes county recorders to adopt a fraud review and referral process. Documents that appear fraudulent may be referred to an administrative law judge (ALJ). If the ALJ determines the record to be fraudulent, the recorder may be required to record a copy of the order with the document.

## **ILLINOIS - Continued**

### **Criminal Penalties:**

- § 720 ILCS 5/32-4f provides that it is a misdemeanor to retaliate against a judge by false claim, slander of title, or malicious recording of fictitious liens. Subsequent offenses are felonies.
- § 810 ILCS 5/9-501.1(b) provides that it is a crime to file a false UCC record. The first offense is a misdemeanor and each subsequent offense is a felony.

## INDIANA

### **Pre-Filing Remedies:**

- The secretary of state may refuse to file a financing statement if the financing statement is not required or authorized to be filed or recorded with the secretary of state; or the secretary of state has reasonable cause to believe the financing statement is materially false or fraudulent. *See* Burns Ind. Code Ann. § 26-1-9.1-901(a).

### **Post-Filing Remedies:**

- Burns Ind. Code Ann. § 26-1-9.1-502(f). Not later than thirty (30) days after the date the financing statement is filed, the secured party that files the financing statement shall furnish a copy of the financing statement to the debtor. A person who fails to comply with this subsection is subject to the penalties for noncompliance in § 26-1-9.1-625.
- Indiana enacted the uniform information statement remedy for non-compliance in Burns Ind. Code Ann. § 26-1-9.1-518.
- Indiana enacted the uniform Article 9 remedies for non-compliance in Burns Ind. Code Ann. § 26-1-9.1-625.
- A person may seek judicial review of a financing statement. If the court determines that a UCC record is fraudulent it may award the victim costs, attorney's fees and order the filing office to terminate or purge the record. *See* Burns Ind. Code Ann. § 26-1-9.1-902(a).

### **Criminal Penalties:**

- None specified.

## **IOWA**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Iowa enacted the uniform information statement remedy in Iowa Code § 554.9518.
- Iowa enacted the uniform Article 9 remedies for non-compliance in Iowa Code § 554.9625.

### **Criminal Penalties:**

- None specified.

## **KANSAS**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Kansas enacted the uniform information statement remedy in Kan. Stat. Ann. § 84-9-518.
- Kansas enacted the uniform Article 9 remedies for noncompliance in Kan. Stat. Ann. § 84-9-625.
- Kan. Stat. Ann. § 58-4301 provides an expedited judicial process to review and determine validity of purported liens. The court shall enter findings of fact and conclusions of law that may include an order setting aside the lien and directing the filing office to nullify the lien instrument. In the case of a financing statement, the findings of fact and conclusions of law act as a termination statement. It is not clear that the filing office can purge the financing statement from its records.

### **Criminal Penalties:**

- None.

## **KENTUCKY**

### **Pre-Filing Remedies:**

- Ky. Rev. Stat. Ann. § 355.9-516A grants the filing office authority to reject fraudulent UCC records and provides for an appeals process.

### **Post-Filing Remedies:**

- Ky. Rev. Stat. Ann. § 355.9-518(4) provides that an information statement filed by a bank, or subsidiary or affiliate thereof, shall affect the effectiveness of the record to which it relates if:
  - (a) The information statement includes a written statement of an officer of the entity filing the information statement, which provides the information specified in subsection (2) of this section;
  - (b) The officer's written statement provides the officer's title and information identifying how the filer qualifies as a bank, or subsidiary or affiliate thereof;
  - (c) The officer's written statement has been duly acknowledged before a notary public; and
  - (d) The record to which the information statement relates was originally filed by or refers to a record filed by the entity filing the information statement.
- Kentucky enacted the uniform Article 9 remedies for non-compliance in Ky. Rev. Stat. Ann. § 355.9-625.
- Ky. Rev. Stat. Ann. § 355.9-513A provides for the filing of an affidavit by the debtor, an administrative determination of fraudulent filing, termination by the filing office and a process for administrative appeal. Regulated financial institutions are exempt.

### **Criminal Penalties:**

- None specified.

## LOUISIANA

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Louisiana enacted the uniform information statement remedy in La. Rev. Stat. Ann. § 10:9-518.
- Louisiana enacted the uniform Article 9 remedies for non-compliance in La. Rev. Stat. Ann. § 10:9-625.

### **Criminal Penalties:**

- La. Rev. Stat. Ann. § 14:133(a). Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following: any forged document, any wrongfully altered document or any document containing a false statement or false representation of a material fact.
- La. Rev. Stat. Ann. § 14:133(c). Whoever commits the crime of filing false public records shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars, or both.

## MAINE

### **Pre-Filing Remedies:**

- Me. Rev. Stat. Ann. 5 § 90-F(1), enacted in 2015, provides authority for the Secretary of State to reject a UCC record that is not required or authorized to be filed or recorded with the Secretary of State or the filing office has reasonable cause to believe the record is materially false or fraudulent.

### **Post-Filing Remedies:**

- Maine enacted the uniform information statement remedy in Me. Rev. Stat. Ann. 11 § 9-1518.
- Maine enacted the uniform Article 9 remedies for noncompliance in Me. Rev. Stat. Ann. 11 § 9-1625.
- Me. Rev. Stat. Ann. 5 § 90-F(2), enacted in 2015, provides authority for the Secretary of State to remove a record from the UCC index if the filing office determines that it was not required or authorized to be filed or recorded with the Secretary of State or the filing office has reasonable cause to believe the record is materially false or fraudulent.
- Me. Rev. Stat. Ann. 5 § 90-E provides for expedited review and determination of the authorization of financing statement records filed under the Uniform Commercial Code. Provides for expedited court review of effectiveness and permits court to order record removed from UCC records. A person who files an unauthorized financing statement with the intent to harass, hinder or defraud a natural person is liable to each debtor for the greater of \$ 10,000, plus actual damages caused by the violation, costs, expenses attorney's fees and punitive damages.

### **Criminal Penalties:**

- Me. Rev. Stat. Ann. 17-A § 706-A. A person is guilty of falsely filing a recordable instrument if, with intent to defraud, harass or intimidate, the person files or causes to be filed a will, deed, mortgage, security instrument or other writing for which the law provides public recording, knowing or believing the writing to be false or without legal authority. Falsely filing a recordable instrument is a Class D crime.

## MARYLAND

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Md. Code Ann. Com. Law § 9-501(c). If a filing office receives a financing statement and both the debtor and secured party are individuals, then the filing office must provide written notice of the filing of the financing statement to the debtor and include a list of remedies available if the debtor believes the financing statement was erroneously or fraudulently filed.
- Maryland enacted the uniform information statement remedy in Md. Code Ann. Com. Law § 9-625.
- Maryland enacted the uniform Article 9 remedies for non-compliance in Md. Code Ann. Com. Law § 9-625.

### **Criminal Penalties:**

- None specified.

## **MASSACHUSETTS**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Massachusetts enacted the uniform information statement remedy in Mass. Gen. Laws ch. 106, § 9-518.
- Massachusetts enacted the uniform Article 9 remedies for non-compliance in Mass. Gen. Laws ch. 106, § 9-625.

### **Criminal Penalties:**

- None specified.

## MICHIGAN

### **Pre-Filing Remedies:**

- Mich. Comp. Laws § 440.9520 authorizes the Secretary of State to refuse to accept records under conditions that indicate the records are false, fraudulent or outside the scope of Article 9.

### **Post-Filing Remedies:**

- Mich. Comp. Laws § 440.9501 provides that the Secretary of State shall send a notice to any individual debtor named on a financing statement filed in that office.
- If a person is convicted of violating the criminal provisions of § 440.9501, the court may find that the financing statement is ineffective and may order the office of the secretary of state to terminate the financing statement and may order restitution.
- The debtor may file an action for damages and equitable relief, plus an order for the Secretary of State to terminate the record and reasonable attorney's fees. § 440.9501(7).
- Mich. Comp. Laws § 440.9501a provides that the debtor named in a financing statement may file an affidavit with the Secretary of State stating that the record is fraudulent. Upon receipt of such an affidavit, the Secretary of State shall terminate the financing statement. The filer may bring an action in court to reinstate the financing statement. Filing a false affidavit under this section is a felony.
- Mich. Comp. Laws § 440.9515(6) provides that any filed financing statement that purports to designate an individual debtor as a transmitting utility or shows an individual name as an organization designated as a transmitting utility is effective for 5 years and cannot be continued.
- Michigan enacted the uniform Article 9 noncompliance remedies in Mich. Comp. Laws § 440.9625.

### **Criminal Penalties:**

- Filing a false or fraudulent financing statement in violation of § 440.9501 is a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both.
- Mich. Comp. Laws § 750.368 provides that a person simulating legal process, which is defined to include liens, is guilty of a misdemeanor or felony, depending on the circumstances.

## MINNESOTA

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Minnesota enacted the uniform information statement remedy in Minn. Stat. § 336.9-518.
- Minnesota enacted the uniform Article 9 remedies for noncompliance in Minn. Stat. § 336.9-625.
- Minn. Stat. § 514.99 NONCONSENSUAL COMMON LAW LIENS. Prohibits filing office from accepting nonconsensual common law lien without a court order; makes a claim of lien against a public official or employee based on the performance or nonperformance of that official's or employee's duties invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien; provides \$5000 statutory damages.
- Minn. Stat. § 545.05 EXPEDITED PROCESS TO REVIEW AND DETERMINE THE EFFECTIVENESS OF FINANCING STATEMENTS. Provides for expedited court review of effectiveness and permits court to order record removed from UCC records. A person who files an unauthorized financing statement with the intent to harass, hinder or defraud a natural person is liable to each debtor for the greater of \$ 10,000, plus actual damages caused by the violation, costs, expenses attorney's fees and punitive damages.

### **Criminal Penalties:**

- § 609.64 RECORDING, FILING OF FORGED INSTRUMENT. Whoever intentionally presents for filing, registering, or recording, or files, registers, or records a false or forged instrument relating to or affecting real or personal property may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$5,000, or both.

## MISSISSIPPI

### **Pre-Filing Remedies:**

- Miss. Code Ann. § 75-9-501.1(b). The filing office may initiate a pre-filing administrative review and refuse to accept a record if it has reason to believe that the record was filed with the intent to harass or defraud, if the record was not authorized or if the record is not related to a legitimate transaction.

### **Post-Filing Remedies:**

- Miss. Code Ann. § 75-9-501.1(b) provides that the filing office may initiate a review of a filed record following receipt of an information statement that alleges the record was filed with the intent to harass or defraud, if the record was not authorized or if the record is not related to a legitimate transaction.
- Upon initiating review of a filed record, the filing office shall request additional information from the secured party of record. If the information is not forthcoming or the filing office determines that the record was filed in violation of the applicable fraudulent filing provisions, then the filing office may terminate the record. *See* Miss. Code Ann. § 75-9-501.1(c).
- Regulated financial institutions are exempt from these provisions. *See* Miss. Code Ann. § 75-9-501.1(h).
- Mississippi enacted the uniform information statement remedy in Miss. Code Ann. § 75-9-518.
- Mississippi enacted the uniform Article 9 remedies for non-compliance in Miss. Code Ann. § 75-9-625.

### **Criminal Penalties:**

- None specified.

## MISSOURI

### **Pre-Filing Remedies:**

- Mo. Rev. Stat. § 400.9-516(b)(8) provides the filing office with authority to reject UCC records that the filing office reasonably believes are materially false or fraudulent. A record is presumed materially false or fraudulent if it was filed by or on behalf of an offender (defined as an inmate in the custody of the Department of Corrections), § 400.9-516(c)(3).
- Mo. Rev. Stat. § 400.9-516(b)(9) provides the filing office with authority to reject a UCC record if the record on its face reveals, based on factors such as whether the debtor and the secured party are substantially the same person, the individual debtor is a transmitting utility, or whether the collateral described is within the scope of this chapter, that the record is being filed for a purpose other than a transaction that is within the scope of this chapter. This includes a record that asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction.
- Mo. Rev. Stat. § 428.110(1). Any filing officer may reject for filing or recording any nonconsensual common law lien.
- The Missouri Secretary of State adopted administrative rules to implement § 400.9-516(b)(8) and (9) that depart from the statutory text to include records intended for an improper purpose, "such as to hinder, harass or otherwise wrongfully interfere with any person." See 15 CSR 30-90.090(7).

### **Post-Filing Remedies:**

- Missouri enacted the uniform Article 9 remedies for noncompliance in Mo. Rev. Stat. § 400.9-625.
- Mo. Rev. Stat. § 400.9-516(e) provides a non-uniform remedy for fraudulently filed UCC records. Upon the filing of an information statement with the secretary of state that alleges a previously filed record was wrongfully filed, the secretary of state shall, without undue delay, determine whether the contested record was wrongfully filed. If the secretary of state finds that the record was wrongfully filed, the secretary of state shall terminate the record and the record shall be void and ineffective.

## **MISSOURI, Continued**

- Mo. Rev. Stat. § 428.120. Any person who has real or personal property or an interest therein, which is subject to a recorded nonconsensual common law lien, who believes such lien is invalid, may petition the circuit court of the county in which the lien has been recorded or filed for an order, which may be granted ex parte, directing the lien claimant to appear before the court within ten business days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be declared void and other relief should not be granted.
- Mo. Rev. Stat. § 428.135. Any person who records or files in the office of a filing officer any document purporting to create a nonconsensual common law lien against real or personal property shall be liable to the damaged party for actual damages or five thousand dollars, whichever is greater plus costs and reasonable attorney's fees.

### **Criminal Penalties:**

- Mo. Rev. Stat. § 400.9-501(c). A person who knowingly or intentionally files, attempts to file, or records any document related to real property with a recorder of deeds or a financing statement with the secretary of state with the intent that such document or statement be used to harass or defraud any other person or knowingly or intentionally files, attempts to file, or records such a document or statement that is materially false or fraudulent is guilty of a class D felony.
- Mo. Rev. Stat. § 575.130(4). Filing a nonconsensual common law lien is a class B misdemeanor.

## MONTANA

### **Pre-Filing Remedies:**

- If a filing officer has reason to believe that a lien submitted with the filing officer's office is improper or fraudulent, the filing officer may reject the submission after giving notice and an opportunity to respond to the secured party and the debtor. *See* Mont. Code Anno. § 30-9A-420(1).

### **Post-Filing Remedies:**

- If a filing officer receives a complaint that a lien filed with the filing officer's office is improper or fraudulent, the filing officer may remove the filing from existing files after giving notice and an opportunity to respond to the secured party and the debtor. *See* Mont. Code Anno. § 30-9A-420(1).
- Montana enacted the uniform information statement remedy in Mont. Code Anno., § 30-9A-518.
- Montana enacted the uniform Article 9 remedies for noncompliance in Mont. Code Anno. § 30-9A-625.
- A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien. *See* Mont. Code Anno. § 30-9A-420(2).
- Mont. Code Anno. § 27-1-1505. If a nonconsensual common-law lien is filed against the real or personal property of an individual or organization, the individual or organization may petition the district court in the county in which the affected property is located to remove the nonconsensual common-law lien. If the district court determines that the lien in question is a nonconsensual common-law lien, the district court shall enter an order directing the appropriate public official to remove the nonconsensual common-law lien. The person filing the nonconsensual common-law lien is liable for the costs of removing the nonconsensual common-law lien, including reasonable attorney fees, court costs, and actual damages sustained by the aggrieved individual or organization as a result of the nonconsensual common-law lien.

### **Criminal Penalties:**

- None.

## NEBRASKA

### **Pre-Filing Remedies:**

- Neb. Rev. Stat. U.C.C. § 9-516(b)(8). The filing office must refuse to accept the record if the same person or entity is listed as both debtor and secured party.
- Neb. Rev. Stat. § 52-1903. The Secretary of State, county clerk, register of deeds, or clerk of any court shall refuse to accept for filing any nonconsensual common-law lien.

### **Post-Filing Remedies:**

- Nebraska enacted the uniform information statement remedy in Neb. Rev. Stat. U.C.C. § 9-518.
- Nebraska enacted the uniform Article 9 remedies in Neb. Rev. Stat. U.C.C. § 9-625.
- Neb. Rev. Stat. U.C.C. § 9-513A substantially adopts the ULC Hip-Pocket Amendments. It provides for the filing of an affidavit by the debtor, administrative determination of fraudulent filing, termination by the filing office and administrative appeal. Regulated financial institutions are exempt.
- Neb. Rev. Stat. § 52-1904. Any lien determined to be a nonconsensual common-law lien pursuant to any proceeding shall be stricken from the record of the Secretary of State, county clerk, register of deeds, or clerk of any court upon the issuing of a valid court order from a court of competent jurisdiction. There shall be no filing fee for a court order issued pursuant to this section.
- Neb. Rev. Stat. § 52-1902. If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of this section and such document is so filed or recorded, the person submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

### **Criminal Penalties:**

- Fraudulently filing a financing statement, lien, or document is a Class IV felony. *See* Neb. Rev. Stat. § 28-935(2).
- Abuse of public records is a class II misdemeanor. *See* Neb. Rev. Stat. § 28-911.

## NEVADA

### **Pre-Filing Remedies:**

- Nev. Rev. Stat. § 104.9516(2)(h). The filing office must refuse to accept the record if the record lists a public official of a governmental unit as a debtor and the public official has not authorized the filing in an authenticated record.

### **Post-Filing Remedies:**

- Nevada enacted the uniform Article 9 remedies in Nev. Rev. Stat. § 104.9625.
- Nev. Rev. Stat. § 225.084 provides that a person who knowingly files a false or fraudulent record with the Secretary of State is liable for the greater of \$10,000 or actual damage, whichever is greater, plus costs, attorney's fees and punitive damages. This provision expressly applies to financing statements filed under Article 9. See § 225.084(7)(b).
- The Secretary of State adopted administrative rules to implement Nev. Rev. Stat. § 225.084. The rules set forth procedures for aggrieved parties to file complaints, investigation by the Secretary of State and correction of the record through the use of a filing officer statement. See Nev. Admin. Code § 225.020, *et. seq.*

### **Criminal Penalties:**

- Nev. Rev. Stat. § 239.330. A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in a public office under any law of Nevada or of the United States, is guilty of a category C felony.

## NEW HAMPSHIRE

### **Pre-Filing Remedies:**

- If a register of deeds or other public official believes in good faith that a document filed with the registry of deeds or other public office purports to create a lien that is fraudulent, the register or other public official shall index the document only under the signer of the document in the grantor index and shall identify the document as a notice in the document type. No other names appearing on the document shall be indexed. N.H. Rev. Stat. Ann. § 478:42(IV).

### **Post-Filing Remedies:**

- N.H. Rev. Stat. Ann. § 382-A:9-529(a) A person may not intentionally or knowingly present for filing or cause to be presented for filing a financing statement if the person knows that the filing of the financing statement has not been authorized pursuant to Section 9-509 or 9-708, and the person does not have a good-faith expectation that proper authorization will be given in a pending transaction; the financing statement contains a material false statement (including a false name or identification number); or the financing statement is groundless.
- N.H. Rev. Stat. Ann. § 382-A:9-529(b). A person who violates subsection (a) is liable to the owner of property covered by the financing statement or the secured party, as the case may be, for: the greater of \$5,000 or the person's actual damages; court costs; and reasonable attorney's fees.
- N.H. Rev. Stat. Ann. § 382-A:9-529(c). An owner of an interest in property covered by a fraudulent financing statement described in subsection (a) may, in addition to any other remedy provided by law, file suit in a court of suitable jurisdiction, requesting specific relief including, but not limited to, release or cancellation of such fraudulent financing statement.
- New Hampshire enacted the uniform information statement remedy in N.H. Rev. Stat. Ann. § 382-A:9-518.
- New Hampshire enacted the uniform Article 9 remedies in N.H. Rev. Stat. Ann. § 382-A:9-625.
- Any document or instrument on file with the registry of deeds or other public office presumed to be fraudulent or deemed fraudulent as described in this section shall be considered invalid, void, and having no force or effect on any named person or persons named within the document or instrument. See N.H. Rev. Stat. Ann. § 478:42(IV)(c).

## **NEW HAMPSHIRE, Continued**

### **Criminal Penalties:**

- Any person who knowingly files a document or instrument to fraudulently create a lien on real or personal property shall be guilty of a class B felony. N.H. Rev. Stat. Ann. § 478:42(V).

## NEW JERSEY

### Pre-Filing Remedies:

- N.J. Stat. § 12A:9-516(b)(8) provides additional reasons for rejection based on record contents commonly used by fraudulent UCC filers.
- The filing office adopted administrative rules that grant the filing office broad discretion to reject records. The filing office may refuse to accept a record if the filing office determines that the record contains confusing, conflicting or contradictory matter that gives rise to uncertainty, ambiguity, or lack of clarity as to information in the record. *See* N.J. Admin. Code § 17:33-5.2(a)(8)(iii). Among the specific reasons listed for rejection in the rules are that the record contains an address that includes parenthesis or describes the collateral in a confusing, unclear, or ambiguous manner. *See* N.J. Admin. Code § 17:33-5.2(a)(8)(iii)(3) and (5).

### Post-Filing Remedies:

- New Jersey enacted the uniform information statement remedy in N.J. Stat. § 12A:9-518.
- New Jersey enacted the uniform Article 9 remedies for noncompliance in N.J. Stat. § 12A:9-625.
- N.J. Stat. § 12A:9-502(a)(2) requires that a financing statement must provide a name for the secured party or representative of the secured party that is sufficient to identify the party. A secured party name that fails to comply arguably renders the financing statement insufficient.
- N.J. Stat. § 12A:9-502(a)(3) to require that a financing statement must indicate the collateral and that the collateral is within the scope of Chapter 12A. Failure to include a statement regarding scope arguably renders the financing statement insufficient.
- The filing office may remove a record from the UCC index if it determines that the record could have been rejected under § 12A:9-516(b)(8)(A) through (E). *See* N.J. Stat. § 12A:9-516(b)(8).

### Criminal Penalties:

- N.J. Stat. § 2C:21-3. Offering a false instrument for filing. A person is guilty of a disorderly persons offense when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

## NEW MEXICO

### **Pre-Filing Remedies:**

- N.M. Stat. Ann. § 48-1A-7(A). A filing officer does not have a duty to accept for filing or recording a claim of lien, unless the lien is authorized by statute or imposed by a court of competent jurisdiction having jurisdiction over property affected by the lien.

### **Post-Filing Remedies:**

- New Mexico enacted the uniform information statement remedy in N.M. Stat. Ann. § 55-9-518.
- New Mexico enacted the uniform Article 9 remedies for noncompliance in N.M. Stat. Ann. § 55-9-625.
- N.M. Stat. Ann. § 48-1A-7(C). A filing officer does not have a duty to disclose an instrument of record or filing that attempts to give notice of a nonconsensual common law lien.
- N.M. Stat. Ann. § 48-1A-9(C). A person who offers to have filed and recorded in the office of a filing officer a document purporting to create a nonconsensual common law lien against real or personal property, knowing or having reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid, shall be liable to the owner of the property affected for actual damages or five thousand dollars (\$ 5,000), whichever is greater, plus costs and reasonable attorney fees as provided in this section.

### **Criminal Penalties:**

- None.

## NEW YORK

### **Pre-Filing Remedies:**

- None

### **Post-Filing Remedies:**

- New York enacted the uniform Article 9 remedies for noncompliance in NY U.C.C. Law § 9-625.
- NY U.C.C. Law § 9-518(d) provides for special judicial proceedings to redact or expunge a falsely filed or amended financing statement. This remedy is only available to employees of the state or a subdivision thereof. A currently pending bill would delete this provision entirely. *See* N.Y. Senate Bill 5502 (2015). Although the bill did not pass in 2015, it is expected to carry over into the 2016 legislative session.

### **Criminal Penalties:**

- NY Penal Law § 175.30. A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant. Offering a false instrument for filing in the second degree is a class A misdemeanor.

## **NORTH CAROLINA**

### **Pre-Filing Remedies:**

- N.C. Gen. Stat. § 25-9-516(b)(8). The filing office must refuse to accept the record if the Secretary of State determines that the record is not created pursuant to Article 9 or is otherwise intended for an improper purpose.

### **Post-Filing Remedies:**

- N.C. Gen. Stat. § 25-9-518(b1). Upon the filing of a correction statement alleging that a record was wrongfully filed and should have been rejected, the Secretary of State shall determine whether the contested record was wrongfully filed and should have been rejected. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under § 25-9-516(b)(8), the Secretary of State shall cancel the record and it shall be void and of no effect.
- North Carolina enacted the uniform Article 9 remedies for noncompliance in N.C. Gen. Stat. § 25-9-625.

### **Criminal Penalties:**

- None specified.

## **NORTH DAKOTA**

### **Pre-Filing Remedies:**

- N.D. Cent. Code, § 35-35-03. Any filing officer may reject for filing or recording any nonconsensual common-law lien.
- Based on its powers under the nonconsensual common-law lien statute, the Secretary of State's policy is to refuse to accept a UCC record that indicates an individual is a transmitting utility or where the debtor and secured party names appear to be the same or if the filing office determines the collateral is "invalid" under Article 9.

### **Post-Filing Remedies:**

- North Dakota enacted the uniform information statement remedy in N.D. Cent. Code, § 41-09-89 (9-518).
- North Dakota enacted the uniform Article 9 remedies for noncompliance in N.D. Cent. Code, § 41-09-120 (9-625).
- N.D. Cent. Code, § 35-35-03. If a nonconsensual common-law lien has been accepted for filing or recording, the filing officer shall accept for filing any sworn notice of invalid lien signed and submitted by the person against whom such a lien was filed or that person's attorney.
- Any person who has real or personal property or an interest therein, which is subject to a filed or recorded nonconsensual common-law lien may petition the district court for the county in which the lien is filed or recorded for an order directing the lien claimant to appear before the court to show cause why the lien should not be declared void and the relief provided for by section 35-35-06 granted to the petitioner. If, after a hearing on the matter, the court determines that the document is a nonconsensual common-law lien, the court shall issue an order declaring the lien void ab initio, directing the filing officer to release and remove the lien from the files and records and awarding damages as provided in section 35-35-06 to the petitioner.
- N.D. Cent. Code, § 35-35-06. Any person who submits for filing or recording to the office of a filing officer any document purporting to create a nonconsensual common-law lien against real or personal property is liable to the person against whom the lien is claimed for actual damages or one thousand dollars, whichever is greater, plus costs and reasonable attorney's fees.

## **NORTH DAKOTA, Continued**

- N.D. Cent. Code, § 41-10-03 provides that a person who knowingly causes to be presented for filing in a filing office, or promotes the filing in a filing office, of a financing statement record that the person knows was not authorized by the natural person whose name was provided as an individual debtor in the financing statement and was filed or presented for filing with the intent to harass, hinder or defraud is liable to the debtor for the greater of \$10,000 or actual damages for each violation, costs, attorney's fees and exemplary damages in an amount determined by the court.

### **Criminal Penalties:**

- N.D. Cent. Code, § 35-35-02. Any person who submits for filing or recording a nonconsensual common-law lien is guilty of a class B misdemeanor.
- N.D. Cent. Code, § 41-10-02 provides that a person commits an offense if the person knowingly causes to be presented for filing in a filing office, or promotes the filing in a filing office, of a financing statement record that the person knows was not authorized by the natural person whose name was provided as an individual debtor in the financing statement and was filed or presented for filing with the intent to harass, hinder or defraud. The first such offense is a class A misdemeanor, but a felony if the person was previously convicted of this offense on two or more occasions.

## **OHIO**

### **Pre-Filing Remedies:**

- Ohio Rev. Code Ann. § 111.24. permits the secretary of state to refuse to accept a document not required or authorized to be filed or that is materially false or fraudulent.

### **Post-Filing Remedies:**

- Ohio enacted the uniform information statement remedy in Ohio Rev. Code Ann. § 1309.518.
- Ohio enacted the uniform Article 9 remedies for noncompliance in Ohio Rev. Code Ann. § 1309.625.

### **Criminal Penalties:**

- None specified.

## **OKLAHOMA**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Oklahoma enacted the uniform information statement remedy in 12A Okl. St. § 1-9-518.
- Oklahoma enacted the uniform Article 9 remedies for noncompliance in 12A Okl. St. § 1-9-625.

### **Criminal Penalties:**

- 21 Okl. St. § 463. Any person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, shall be guilty of a felony.

## OREGON

### **Pre-Filing Remedies:**

- The filing office has authority to refuse to accept a record that on its face reveals that the record is being filed for a purpose other than a transaction that is within the scope of Article 9. *See* Or. Rev. Stat. § 79.0516(2)(h).
- The secured party may appeal the rejection of a record under Or. Rev. Stat. § 79.0516(2)(h) through an administrative process set forth in § 79.0520(5).

### **Post-Filing Remedies:**

- Oregon enacted the uniform information statement remedy in Or. Rev. Stat. § 79.0518.
- Oregon enacted the uniform Article 9 remedies for noncompliance in Or. Rev. Stat. § 79.0625.
- If an invalid claim of encumbrance against the property of a federal official or employee or against the property of a state or local official or employee is accepted for filing, the filing officer shall accept for filing a notice of invalid encumbrance. *See* Or. Rev. Stat. § 205.445(4). The notice of invalid encumbrance shall clear the title to all property subject to the claim of encumbrance. *See* Or. Rev. Stat. § 205.445(7).

### **Criminal Penalties:**

- None specified.

## **PENNSYLVANIA**

### **Pre-Filing Remedies:**

- None, but the filing office will refuse to accept records that appear to be fraudulent.
- The Department of State's electronic UCC filing system screens collateral and will not allow submission of financing statements that include certain words commonly used with fraudulent filings. Records that cannot be processed electronically should be resubmitted as a written record as soon as possible.

### **Post-Filing Remedies:**

- Pennsylvania enacted the uniform Article 9 remedies for non-compliance in Pa.Cons.Stat. § 9625.
- A non-uniform version of 13 Pa.Cons.Stat. § 9518(f) permits the Department of State to determine if an initial financing statement was fraudulently filed through an administrative hearing. If the department determines that the initial financing statement was fraudulently filed, it shall file an information statement. The filed information statement creates a rebuttable presumption that the initial financing statement is ineffective. The department shall also refer the matter for criminal prosecution to the Office of Attorney General. See § 9518(f)(vi).

### **Criminal Penalties:**

- 18 Pa.Cons.Stat. § 4911 makes filing a fraudulent public record a crime.

## **RHODE ISLAND**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Rhode Island enacted the uniform information statement remedy in R.I. Gen. Laws § 6A-9-518.
- Rhode Island enacted the uniform Article 9 remedies for non-compliance in R.I. Gen. Laws § 6A-9-625.

### **Criminal Penalties:**

- None specified.

## **SOUTH CAROLINA**

### **Pre-Filing Remedies:**

- S.C. Code Ann. § 36-9-516(b)(8) grants the Secretary of State broad authority to refuse to accept a record that the filing office determines is not created pursuant to this chapter or is otherwise intended for an improper purpose, such as to defraud, hinder, harass, or otherwise wrongfully interfere with a person.
- S.C. Code Ann. § 36-9-516(b)(9) permits the Secretary of State to reject a record if the same person or entity is listed as both debtor and secured party, the collateral described is not within the scope of Article 9, or that the record is being filed for a purpose other than a transaction that is within the scope of Article 9.

### **Post-Filing Remedies:**

- South Carolina enacted the uniform Article 9 remedies for noncompliance in S.C. Code Ann. § 36-9-625.
- S.C. Code Ann. § 36-9-518(d) provides that upon the filing of an information statement that alleges a record was wrongfully filed and should have been rejected, the Secretary of State shall determine whether the contested record was wrongfully filed and should have been rejected. If the Secretary of State finds that the record was wrongfully filed and should have been rejected under § 36-9-516(b)(8) or (9), the Secretary of State shall cancel the record and it shall be void and of no effect.

### **Criminal Penalties:**

- None specified.

## **SOUTH DAKOTA**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- South Dakota enacted the uniform information statement remedy in S.D. Codified Laws § 57A-9-518.
- South Dakota enacted the uniform Article 9 remedies for noncompliance in S.D. Codified Laws § 57A-9-625.

### **Criminal Penalties:**

- S.D. Codified Laws § 22-11-28.1 Any person who offers any false or forged instrument, knowing that the instrument is false or forged, for filing, registering, or recording in a public office, which instrument, if genuine, could be filed, registered, or recorded under any law of this state or of the United States, is guilty of a Class 6 felony.

## TENNESSEE

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Tennessee enacted the uniform information statement remedy in Tenn. Code Ann. § 47-9-518.
- Tennessee enacted the uniform Article 9 remedies for noncompliance in Tenn. Code Ann. § 47-9-625.
- Tennessee enacted a non-uniform subsection (e) to § 47-9-513 that addresses fraudulent filing against public officials. Allows a public official who is the victim of fraudulent UCC filing to file an affidavit contesting the UCC record. After receipt of such an affidavit, the secretary of state shall send notice and the affidavit to the secured party. If the secured party does not follow the prescribed procedure to have an administrative law judge review the matter within 20 days after receipt of the affidavit, the filing office shall void and remove the financing statement from the public record. See § 47-9-513(e)(6).
- Provisions similar to those in § 47-9-513(e) also apply to fraudulent real estate records. See § 66-21-101, *et. seq.*

### **Criminal Penalties:**

- Tenn. Code Ann. § 39-17-117 makes it a felony for any person to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property. Subsection (c) exempts licensed attorneys and financial institutions.

## TEXAS

### **Pre-Filing Remedies:**

- Tex. Gov. Code Sec. 405.022 grants authority for the secretary of state to request the assistance of the attorney general to determine whether a record presented for filing is fraudulent and to refuse to accept the record upon such determination.

### **Post-Filing Remedies:**

- Tex. Bus. & Com. Code § 9.5185(a) provides that a person who knowingly files a forged, materially false or groundless financing statement is liable to the owner of property covered by the financing statement for the greater of \$5000 or actual damages, court costs and attorney's fees.
- Tex. Bus. & Com. Code § 9.5185(d) provides that the owner of property covered by the fraudulent financing statement may also seek specific relief by filing suit.
- The filing office will expunge the debtor name on a fraudulent filing from the UCC index upon receipt of an appropriate court order and substitute an image of the order for the image of the fraudulent record. The filing office will also file a judicial finding of fact as an amendment if there is no order to expunge.

### **Criminal Penalties:**

- Tex. Penal Code § 37.101(b) provides that a person who knowingly files a forged financing statement commits a felony in the third degree and that a person who knowingly files a materially false or groundless financing statement commits a Class A misdemeanor. If the person commits the offense with the intent to defraud or harm another, the offense is a state jail felony.

## UTAH

### Pre-Filing Remedies:

- The filing office may reject a record that it reasonably believes was communicated to the filing office with the intent to harass or defraud the person identified as debtor or for another unlawful purpose. See Utah Code Ann. § 70A-9a-516(2)(h).
- Records submitted by a “trusted filer” are exempt from § 70A-9a-516(2)(h).

### Post-Filing Remedies:

- Utah enacted the uniform Article 9 remedies for noncompliance in Utah Code Ann. § 70A-9a-625.
- A person identified as debtor in a filed financing statement may deliver to the filing office an affidavit that states that the affiant believes that the filed record was not authorized and was filed with the intent to harass or defraud the affiant. *See* Utah Code Ann. § 70A-9a-513.5(2). Upon receipt of such an affidavit the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. A termination statement filed under this provision is not effective until 14 days after it is filed. *See* Utah Code Ann. § 70A-9a-513.5(3).
- The filing office may reject an incomplete or potentially fraudulent affidavit. *See* Utah Code Ann. § 70A-9a-513.5(2).
- Utah Code Ann. § 70A-9a-513.5 subsections (5) through (10) require the filing office to provide prompt notice of the termination to the secured party and for judicial review if the secured party seeks reinstatement of the record.
- Any person who believes that he or she is the victim of a wrongful lien may file a verified written petition for a civil wrongful lien injunction against the person filing, making, or uttering the lien, notice of interest, or other encumbrance in the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. *See* Utah Code Ann. § 38-9a-201.
- If the court determines there is reason to believe that a wrongful lien has been made, uttered, recorded, or filed, the court may issue an ex parte civil wrongful lien injunction that includes any of the following: enjoining the respondent from making, uttering, recording, or filing any further liens without specific permission of the court; ordering that the lien be nullified; and, any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances. § 38-9a-202.

## UTAH, Continued

### **Criminal Penalties:**

- Utah Code Ann. § 76-6-503.5 provides that a person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien, including a financing statement, having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets, or if the person files the lien in violation of a civil wrongful lien injunction. The first offense of the crime of wrongful lien is a third degree felony.
- Utah Code Ann. § 76-6-503.7 provides that a person who files a fraudulent UCC record, as defined by that section, is guilty of a misdemeanor or a felony, depending on the specific nature of the violation.

## **VERMONT**

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Vermont enacted the uniform information statement remedy in Vt. Stat. Ann. tit. 9A § 9-518.
- Vermont enacted the uniform Article 9 remedies for noncompliance in Vt. Stat. Ann. tit. 9A § 9-625.

### **Criminal Penalties:**

None.

## **VIRGINIA**

### **Pre-Filing Remedies:**

- Non-uniform Va. Code Ann. § 8.9A-516(b)(8) grants the filing office broad authority to reject potentially fraudulent UCC records.

### **Post-Filing Remedies:**

- Virginia enacted the uniform Article 9 remedies for noncompliance in Va. Code Ann. § 8.9A-625.
- In addition, Va. Code Ann. § 8.9A-516(c)(3)(B) allows the filing office to remove a fraudulent record from the index if it should have been rejected under subsection (b)(8).

### **Criminal Penalties:**

- Va. Code Ann. § 18.2-213.2 provides that any person who maliciously files a lien or encumbrance in a public record against the real or personal property of another knowing that such lien or encumbrance is false is guilty of a Class 5 felony.

## WASHINGTON

### **Pre-Filing Remedies:**

- Rev. Code Wash. (ARCW) § 60.70.030. No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section. Subsection (2) applies to any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

### **Post-Filing Remedies:**

- Washington enacted the uniform information statement remedy in Rev. Code Wash. § 62A.9A-518.
- Washington enacted the uniform Article 9 remedies for non-compliance in Rev. Code Wash. § 62A.9A-625.
- Rev. Code Wash. § 60.70.040. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien.
- Rev. Code Wash. (ARCW) § 60.70.060. Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant.

### **Criminal Penalties:**

- Rev. Code Wash § 40.16.030 provides that a person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office is guilty of a class C felony.

## WEST VIRGINIA

### Pre-Filing Remedies:

- W. Va. Code § 46-9-516(b)(3)(E) allows the filing office to reject a record that indicates the debtor is a transmitting utility if it does not appear the debtor falls within the definition of the term. The filing office may also reject records that indicate they are filed in connection with a manufactured-home or public-finance transaction if it does not appear the transaction meets the definition of those terms.
- W. Va. Code § 46-9-516a(c)(4)(k). A financing statement filed by a regulated financial institution is not subject to the provisions of this section.

### Post-Filing Remedies:

- W. Va. Code § 46-9-516a and related provisions substantially adopt the ULC Hip-Pocket Amendments. It provides for the filing of an affidavit, administrative determination of fraudulent filing, termination by the filing office and administrative appeal. A court may award costs, attorney fees, the greater of actual damages or \$10,000 and punitive damages. Regulated financial institutions are exempt.
- W. Va. Code § 38-16-403 provides that a person who is the purported debtor or obligor and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent may seek expedited judicial review. The court shall enter appropriate findings of fact and conclusions of law.
- W. Va. Code § 38-16-406. (a) If the lien or other claim that is the subject of judicial findings of fact and conclusions of law authorized by this article is one that is authorized by law to be filed with the Secretary of State, any person may file a certified copy of the judicial findings of fact and conclusions of law in the records of the Secretary of State, who shall file the certified copy of the finding in the same class of records as the subject document or instrument was originally filed and index it using the same names that were used in indexing the subject document or instrument.
- W. Va. Code § 38-16-501. A person who knowingly makes, presents or uses a fraudulent lien is liable to each injured person for the greater of \$10,000 or the actual damages caused by the violation; court costs; reasonable attorney's fees; and exemplary damages in an amount determined by the court.

## **WEST VIRGINIA, Continued**

### **Criminal Penalties:**

- W. Va. Code § 46-9-516a(b), any person who files a false UCC record is guilty of a misdemeanor for the first offense. Each subsequent offense is a felony.

## WISCONSIN

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Wisconsin enacted the uniform Article 9 remedies for non-compliance in Wis. Stat. § 409.625.
- Wis. Stat. § 706.13. Any person who submits for filing, entering in the judgment and lien docket or recording, any lien, claim of lien, lis pendens, writ of attachment, *financing statement* or any other instrument relating to a security interest in or the title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is liable in tort to any person interested in the property whose title is thereby impaired, for punitive damages of \$1,000 plus any actual damages caused by the filing, entering or recording (emphasis added).

### **Criminal Penalties:**

- Wis. Stat. § 943.60. Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is guilty of a Class H felony.

## WYOMING

### **Pre-Filing Remedies:**

- None.

### **Post-Filing Remedies:**

- Wyoming enacted the uniform information statement remedy in Wyo. Stat. § 34.1-9-518.
- Wyoming enacted the uniform Article 9 remedies for non-compliance in Wyo. Stat. § 34.1-9-625.

### **Criminal Penalties:**

- None.

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**For further information please contact:**

Paul Hodnefield  
Associate General Counsel  
Phone: (800) 927-9801, ext. 61730  
Email: [paul.hodnefield@cscglobal.com](mailto:paul.hodnefield@cscglobal.com)

Paul Hodnefield is Associate General Counsel for CSC<sup>®</sup>, where he is responsible for advising the company regarding UCC, real estate recording, notary, and other public record transactional services. In addition to his duties at CSC, he currently serves as Co-Chair of the ABA Joint Task Force on Filing Office Operations and Search Logic. In 2013, he served as member of the Bogus Filing Working Group formed by the Permanent Editorial Board for the Uniform Commercial Code. He is a frequent speaker on public record filing, recording and search issues and has participated as a panelist in numerous CLE programs for the ABA, state bar associations, and several other organizations. Paul is a member of the American Bar Association, the Minnesota Bar Association, and a Fellow of the American College of Commercial Finance Lawyers