

4042--A

Cal. No. 637

2013-2014 Regular Sessions

I N S E N A T E

March 5, 2013

Introduced by Sens. BONACIC, HASSELL-THOMPSON, MAZIARZ -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the judiciary law, the penal law and the uniform commercial code, in relation to financing statements falsely filed under the uniform commercial code

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the retali-
2 iatory filing of false financing statements under the uniform commercial
3 code by members of separatist groups against New Yorkers in public
4 service and private service is a growing and pernicious practice. As a
5 result of the proliferation of such filings, the credit of New Yorkers
6 in public service and private service has been impaired solely because
7 they were doing their jobs on behalf of the citizens of the state. It is
8 vital that all appropriate steps be taken to counter this practice.
9 Accordingly, it is the objective of this act to discourage the filing of
10 false financing statements and to provide a meaningful and expeditious
11 remedy for those who have been harmed by such filings. It is also the
12 objective of this measure to declare the state's interest in future
13 effectuation of a second step: careful review of procedures authorizing
14 the filing of financing statements under the uniform commercial code and
15 subsequent modification of laws and procedures as may be necessary to
16 ensure that the public is adequately protected against the kind of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 retaliatory filing of false financing statements to which this act is
2 addressed.

3 S 2. Subdivision 2 of section 212 of the judiciary law is amended by
4 adding a new paragraph (s) to read as follows:

5 (S) ESTABLISH RULES FOR SPECIAL PROCEEDINGS AUTHORIZED BY SUBSECTION
6 (D) OF SECTION 9--518 OF THE UNIFORM COMMERCIAL CODE. SUCH RULES MAY
7 AUTHORIZE THE COURT IN WHICH SUCH A SPECIAL PROCEEDING IS PENDING TO
8 ORDER A REFEREE TO HEAR AND DETERMINE SUCH SPECIAL PROCEEDING.

9 S 3. Section 175.35 of the penal law, as amended by chapter 99 of the
10 laws of 1998, is amended to read as follows:

11 S 175.35 Offering a false instrument for filing in the first degree.

12 A person is guilty of offering a false instrument for filing in the
13 first degree when[,]:

14 1. knowing that a written instrument contains a false statement or
15 false information, and with intent to defraud the state or any political
16 subdivision, public authority or public benefit corporation of the
17 state, he OR SHE offers or presents it to a public office, public serv-
18 ant, public authority or public benefit corporation with the knowledge
19 or belief that it will be filed with, registered or recorded in or
20 otherwise become a part of the records of such public office, public
21 servant, public authority or public benefit corporation[.]; OR

22 2. (A) HE OR SHE COMMITS THE CRIME OF OFFERING A FALSE INSTRUMENT FOR
23 FILING IN THE SECOND DEGREE; AND

24 (B) SUCH INSTRUMENT IS A FINANCING STATEMENT THE CONTENTS OF WHICH ARE
25 PRESCRIBED BY SECTION 9--502 OF THE UNIFORM COMMERCIAL CODE, THE COLLAT-
26 ERAL ASSERTED TO BE COVERED IN SUCH STATEMENT IS THE PROPERTY OF A
27 PERSON WHO IS A STATE OR LOCAL OFFICER AS DEFINED BY SECTION TWO OF THE
28 PUBLIC OFFICERS LAW OR WHO OTHERWISE IS A JUDGE OR JUSTICE OF THE
29 UNIFIED COURT SYSTEM, SUCH FINANCING STATEMENT DOES NOT RELATE TO AN
30 ACTUAL TRANSACTION, AND HE OR SHE FILED SUCH FINANCING STATEMENT IN
31 RETALIATION FOR THE PERFORMANCE OF OFFICIAL DUTIES BY SUCH PERSON.

32 Offering a false instrument for filing in the first degree is a class
33 E felony.

34 S 4. Section 9--518 of the uniform commercial code is amended by
35 adding a new subsection (d) to read as follows:

36 (D) SPECIAL PROCEEDING TO REDACT OR EXPUNGE A FALSELY FILED OR AMENDED
37 FINANCING STATEMENT. (1) PROVIDED HE OR SHE IS AN EMPLOYEE OF THE STATE
38 OR A POLITICAL SUBDIVISION THEREOF, A PERSON IDENTIFIED AS A DEBTOR IN A
39 FINANCING STATEMENT FILED PURSUANT TO THIS SUBPART MAY BRING A SPECIAL
40 PROCEEDING AGAINST THE NAMED FILER OF SUCH STATEMENT OR ANY AMENDMENT
41 THEREOF TO INVALIDATE THE FILING OR AMENDMENT THEREOF WHERE SUCH STATE-
42 MENT WAS FALSELY FILED OR AMENDED; EXCEPT THAT AN ATTORNEY WHO IS NOT AN
43 EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF MAY ALSO BRING
44 A SPECIAL PROCEEDING HEREUNDER WHERE HE OR SHE REPRESENTS OR HAS REPRES-
45 ENTED THE RESPONDENT THEREIN IN A CRIMINAL COURT. SUCH SPECIAL PROCEED-
46 ING SHALL BE GOVERNED BY ARTICLE FOUR OF THE CIVIL PRACTICE LAW AND
47 RULES, AND SHALL BE COMMENCED IN THE SUPREME COURT OF ALBANY COUNTY, THE
48 COUNTY OF THE PETITIONER'S RESIDENCE OR A COUNTY WITHIN THE JUDICIAL
49 DISTRICT IN WHICH ANY PROPERTY COVERED BY THE FINANCING STATEMENT IS
50 LOCATED. NO FEE PURSUANT TO ARTICLE EIGHTY OF THE CIVIL PRACTICE LAW AND
51 RULES SHALL BE COLLECTED IN SUCH SPECIAL PROCEEDING.

52 (2) THE PETITION IN A SPECIAL PROCEEDING HEREUNDER SHALL PLEAD THAT:

53 (A) THE FINANCING STATEMENT FILED OR AMENDED BY THE RESPONDENT PURSU-
54 ANT TO SECTION 9--509 WAS FALSELY FILED OR AMENDED TO RETALIATE FOR: (I)
55 THE PERFORMANCE OF THE PETITIONER'S OFFICIAL DUTIES IN HIS OR HER CAPAC-
56 ITY AS AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF, OR

(II) IN THE CASE OF A SPECIAL PROCEEDING BROUGHT BY AN ATTORNEY WHO IS NOT AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF, TO RETALIATE FOR THE PERFORMANCE OF THE PETITIONER'S DUTIES IN HIS OR HER CAPACITY AS AN ATTORNEY FOR THE RESPONDENT IN A CRIMINAL COURT; AND

(B) SUCH FINANCING STATEMENT DOES NOT RELATE TO AN INTEREST IN A CONSUMER-GOODS TRANSACTION, A COMMERCIAL TRANSACTION, OR ANY OTHER ACTUAL TRANSACTION BETWEEN THE PETITIONER AND THE RESPONDENT; AND

(C) THE COLLATERAL COVERED IN SUCH FINANCING STATEMENT IS THE PROPERTY OF THE PETITIONER; AND

(D) PROMPT REDACTION OR INVALIDATION OF THE FINANCING STATEMENT IS NECESSARY TO AVERT OR MITIGATE PREJUDICE TO THE PETITIONER.

(3) IF THE COURT MAKES A WRITTEN FINDING THAT THE ALLEGATIONS IN PARAGRAPH TWO OF THIS SUBSECTION ARE ESTABLISHED, THE COURT SHALL ORDER THE EXPUNGEMENT OF SUCH STATEMENT OR ITS REDACTION IN THE PUBLIC RECORDS IN THE OFFICE IN WHICH THE FINANCING STATEMENT IS FILED, AS APPROPRIATE, AND MAY GRANT ANY ADDITIONAL RELIEF AUTHORIZED BY SECTION 9--625. IN SUCH CASE, THE COURT SHALL CAUSE A COPY OF ITS ORDER TO BE FILED WITH THE SECRETARY OF STATE OR OTHER APPROPRIATE FILING OFFICE PURSUANT TO THIS CHAPTER. UPON A FINDING THAT THE RESPONDENT HAS ENGAGED IN A REPEATED PATTERN OF FALSE FILINGS AS FOUND UNDER THIS SUBSECTION, THE COURT ALSO MAY ENJOIN THE RESPONDENT FROM FILING OR AMENDING ANY FURTHER FINANCING STATEMENT PURSUANT TO THIS ARTICLE WITHOUT LEAVE OF THE COURT. IF THE RESPONDENT IS INCARCERATED AT THE TIME THE COURT ISSUES AN ORDER CONTAINING SUCH AN INJUNCTION, THE COURT SHALL CAUSE THE HEAD OF THE CORRECTIONAL FACILITY IN WHICH THE RESPONDENT IS INCARCERATED TO RECEIVE A COPY OF SUCH DETERMINATION. THE HEAD OF SUCH A FACILITY SHALL CAUSE A COPY OF SUCH ORDER TO BE PROVIDED TO THE RESPONDENT. IN ANY INSTANCES OF THE ISSUANCE OF SUCH AN INJUNCTION WHERE THE RESPONDENT HAS DEFAULTED, THE COURT SHALL DIRECT SERVICE OF SUCH INJUNCTION UPON THE RESPONDENT.

S 5. This act shall take effect immediately; provided that section three of this act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, further, subdivision 2 of section 175.35 of the penal law, as added by section three of this act, shall apply solely to the filing or amendment of financing statements under subpart 1 of part 5 of article 9 of the uniform commercial code on or after such effective date.