

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2350

2007 SENATE JUDICIARY

SB 2350

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2350**

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2422

Committee Clerk Signature

*Maria L. Solby*

**Minutes:** Relating to filing fraudulent and harassing financing statement records.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

### Testimony In Support of Bill:

**Al Jaeger**, ND Secretary of State – Introduced bill (meter 1:00) Spoke of sponsor Sen. Freborg and reviewed bills history along with the bill – Att. #1a and Amendments – Att. #1b  
**Sen. Fiebiger** asked why we need to add another bill? Would (,meter 4:08) **Mr. Jaeger** gave the Senator a copy of the National Uniform Law Act, that we are working into ND Law – Att. #2  
**Sen. Nelson** asked for an example of why this would be better then current law. (meter 5:25)  
**Mr. Jaeger** gave an example, citing how this bill strengthens current law with a penalty. **Sen. Olafson** (meter 7:23) asked if he had seen any cases? Yes. Discussion of the amendment being of clerical in context.

### Testimony in Opposition of the Bill:

None

### Testimony Neutral to the Bill:

None

**Senator David Nething**, Chairman closed the hearing.

**Sen. Olafson** made the motion to Do Pass Amendment 1b and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

**Discussion:** **Sen. Fiebiger** stated (meter 14:58) on page 2 the offence being a class C felony, and becoming after additional offences a class B felony, he was not comfortable with the level of penalty. Mr. Jaeger stated that this came down from the Legislative council to imitate Uniform Law

**Tracy Fiebrant**, Secretary of states office (meter 16:16) The larger first offence was a deterrent to make a second. **Sen. Fiebiger** still stated that he understands the process but still is not comfortable with this and he still would rather see it changed to reflect what current state laws are.

**Sen. Fiebiger** made the motion to Do Pass a second amendment to reflect his change in penalty (Section 2 offence from a C to an A and the second offence B with a C and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

**Sen. Olafson** made the motion to Do Pass and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

**Senator David Nething**, Chairman closed the hearing.







**REPORT OF STANDING COMMITTEE**

**SB 2350: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2350 was placed on the Sixth order on the calendar.**

Page 2, line 9, replace "C felony" with "A misdemeanor"

Page 2, line 11, replace "B" with "C"

Page 2, line 12, after the underscored boldfaced period insert:

"1."

Page 2, line 15, replace "1." with "a."

Page 2, line 18, replace "2." with "b."

Page 2, line 19, replace "a." with "(1)"

Page 2, line 22, replace "b." with "(2)"

Page 2, line 23, replace "3." with "2." and replace "subdivision a" with "subsection 1"

Renumber accordingly



2007 HOUSE JUDICIARY

SB 2350

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2350

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4831

Committee Clerk Signature

*R. Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2350.

**Al Jaeger, Secretary of State:** Sen. Freborg was very kind to introduce this bill on our behalf.

We had some initial struggles and had to withdraw it from the House side because of some provisions that forced us wait. Essentially what this bill pertains to is the filing of fraudulent and harassing financing statements. As some of you know, my office has a Division called the Central Indexing System, it is connected with all of the 53 counties through the County Recorder and in that, we can file Uniform Commercial Code documents such as liens, etc. Occasionally we have people come along that file documents that are really not legitimate and they are intended to harass, a lot of the times, public officials. We do have some methods in our laws to take care of them, but this bill is designed to create some definitions. First of all, in section 1, page 1, lines 7-19 (see testimony). This is a good piece of legislation. On the national level, there is a group that has been working to strengthen the laws throughout the country regarding the fraudulent filing and this is our effort here in ND to strengthen our process to some extent.

**Chairman DeKrey:** Did we have something in place before this, just because I know that this popped up as a problem in early '80s and I thought we had dealt with it.

**Al Jaeger:** We do have another section of law that was introduced I guess in 4 or 5 sessions ago, I remember that we took the best from all over. This is actually a new chapter and also just another avenue to take care of it.

**Rep. Delmore:** Can you give us some examples of filing fraudulent and harassing financial statements.

**Chairman DeKrey:** People that file 1099's on people for work that they hadn't done, but they would file a 1099 that they had done the work. Then, of course, the person would get contacted by the IRS, because that was reported to the IRS and they would have this big 1099 sitting out there that they didn't know anything about and then they would have to prove to the IRS that that hadn't happened. I never heard of a W2's, but I know it was rampant with 1099's for a while, and it was a lot in the Ag community because people were getting foreclosed on in the 1980's and just to make trouble for other people, they would file these statements. There isn't a cost to file anything and there are no taxes due on a 1099, it is just an information document that you send to the IRS.

**Al Jaeger:** Actually a 1099 isn't filed in our system. There are other documents that are filed, such as a lien against your property. Sometimes they are tax-type protests. To answer your question, this particular bill was drafted with the assistance of the AG's office, if there would have been a conflict with the law, it would have been found.

**Rep. Wolf:** Don't you have to have identifying information on the 1099, such as SS# on these filings.

**Al Jaeger:** In some cases, those aren't necessarily criteria for putting something on file. It doesn't happen very often but we basically want a strong statement in law that says if you do it intentionally and it's discovered to be fraudulent, that there is a penalty involved with it.

**Chairman DeKrey:** In another life, I was an H & R franchise owner, and you cannot believe how sloppy some documents can be and the IRS will accept them. I'd have taxpayers come in and have me do their taxes and they were doing a lot of the other stuff on their own, they wouldn't put addresses on W2's, they wouldn't put SS# on W2's, they'd send that stuff into the IRS and I never knew once of any of them getting a letter back from the IRS telling them to straighten out their mess, they just take them.

**Rep. Klemin:** What procedures would a person follow now, in order to have a fraudulent financial financing statement.

**Tracy Fillbrandt, Secretary of State's office:** At this time, if someone files a fraudulent statement, we explain to them that it is a legal issue and our office does not get involved in, because we are just a filing office. From there they have to contact some legal representative to explain what recourse they would have.

**Al Jaeger:** The intent of this is to put a little bit more teeth in it, in terms of it either being criminal or civil and also to indicate what jurisdiction it will be in.

**Rep. Klemin:** Under this bill, it doesn't really change any of that that I can see. I mean it provides civil and criminal penalties but there is no shortcut way of getting it off your files, is there.

**Al Jaeger:** No, there isn't. One of the things that was attempted in the original introduction of the bill on the House side, was to have a shorter time period. When the Chief Justice reviewed the bill, he became somewhat concerned because the procedures laid out in the bill were contrary to accepted court practices. In other words, we had different people in the legal community that had differences of opinion in terms of how to best do that, so we had that bill withdrawn so that we could actually restructure and concentrate on this part. There was kind of an expedited way, but it was not, apparently, in keeping with court procedures. Even though

our legal counsel thought it was okay, others didn't. So we didn't want to lead into a bill of that type, we just wanted to get this so that we could have the strength of this in the law.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2350

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4905

Committee Clerk Signature *A Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2350. What are the committee's wishes.

**Rep. Koppelman:** I move a Do Pass.

**Rep. Griffin:** Second.

**13 YES 0 NO 1 ABSENT**

**DO PASS**

**CARRIER: Rep. Koppelman**

Date: 3/12/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2350

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Koppelman Seconded By Rep. Guffin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2007 3:21 p.m.

**Module No: HR-46-5039**  
**Carrier: Koppelman**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2350, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2350 was placed on the Fourteenth order on the calendar.**



2007 TESTIMONY

SB 2350

Att # 1a  
1-31-07

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STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 31, 2007

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2350 – Filing of Fraudulent and Harassing Financing Statements

Title 41 of the North Dakota Century Code pertains to the Uniform Commercial Code.

This bill creates a new chapter in that Title and is intended as a deterrent.

Section 1, page 1, lines 7 thru 19: Definitions used in chapter

Section 1, page 1, lines 21 thru 23, and page 2, lines 1 thru 11: Establishes the criteria under which the filing of a fraudulent and harassing financing statement is a crime and provides a criminal penalty

Section 1, page 2, lines 12 thru 30: Establishes the criteria under which the filing of a fraudulent and harassing financing statement is subject to a civil penalty

Section 1, page 2, line 31, and page 3, lines 1 thru 19: Establishes who can bring an action, the venue where the action can be filed, and makes it clear that other laws may be applicable for securing relief

The attached amendments are to correct the format of the bill.

PROPOSED AMENDMENTS TO SENATE BILL 2350

P. 2, line 12, after "penalty." insert "1."

P. 2, line 15, replace "1" with "a"

P. 2, line 18, replace "2" with "b"

P. 2, line 19, replace "a." with "(1)"

P. 2, line 22, replace "b." with "(2)"

P. 2, line 23, replace "3" with "2", replace "a" with "1"

Renumber accordingly

Att #2  
1-31-07

Federal

2350  
~~2350~~

# Final Report and Recommendations

For the National Association of Secretaries of  
State (NASS) and International Association of  
Commercial Administrators (IACA)

Joint Task Force

“Bogus” UCC Documents

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## CONTEXT

Bogus filings in general are a problem for any public record series. This issue has arisen over the last century both in the old Uniform Commercial Code (UCC) and Revised Article 9 (RA9) and in other record systems such as mortgages or other liens filed on real estate at county recorders'. Bogus filers also file phony lawsuits.

In addition to the remedies provided by NCCUSL/PEB, there are criminal laws already in place against a variety of bogus filings within and outside of UCC. Prosecutors, regulatory agencies and bar associations should review these laws to determine whether enforcement of existing laws is sufficient or if new laws need to be created to combat these "crimes". Even a non-UCC remedy, however, requires guidance so that there is some uniformity of approach rather than having numerous jurisdictions taking wildly different directions.

## REASON FOR TASK FORCE

UCC filing offices have seen increased filings or attempted filings of documents purporting to be legitimate financing statements under the Uniform Commercial Code. In fact, some of these documents are intended either to:

- a) defraud third parties into providing value for worthless instruments ('strawman' filings); or
- b) to harass individuals through the placement of what appear to be 'holds' on their assets to inhibit those individuals in obtaining future credit.

The purpose of this Task Force is to provide member jurisdictions in the two sponsoring organizations with effective, viable options for future legislation or rules and regulations, which can be used to mitigate the effects of filing.

Filings such as these have been the cause of:

- A 1999 FDIC alert letter
- FBI, state, and local police investigations
- Court orders for expungement of filings
- Correspondence from threatened members of the law enforcement and judicial systems expressing concern
- State legislative proposals that attempt to resolve the problem

It is essential that the options produced by the Task Force do not:

- Add excessive administrative burden
- Impose large costs on the administrative agencies involved in the filing process
- Impose costs on the victims of these “bogus” filings
- Compromise the reliability of the UCC system
- Impede or interfere with legitimate filers or filings.

Formal action by legislative or rule-adopting bodies may be essential to put the recommended solutions into place.

Failure to provide a solution in any particular jurisdiction will expose blameless individuals to the risk of monetary or opportunity loss. Failure to adopt a solution recommended by NASS or IACA may cause concern for secured interests, who may not be clear about the effect of a local, non-standard remedy on their financing statement.

## **OBJECTIVES**

The objectives of the Task Force are to:

- Define a “bogus” filing
- Summarize and evaluate existing remedies
- Summarize the issues surrounding “bogus” filings
- Produce proposed solutions to the separate problems caused by:
  - “Strawman” filings; and
  - “Harassment” filingsfor recommendation to the executive committees and general memberships, respectively, of NASS and IACA, to consider for acceptance and distribution to the states
- Preserve to the extent possible, the uniformity created with the passage of Revised Article 9 in the various jurisdictions.

## **WORK PRODUCT**

The tangible work product of the Task Force will be a document or documents with:

- Complete options for handling the effects of “bogus” UCC filings
- Proposed statutory or regulatory language that may be adopted by jurisdictions
- Explanations of the options suitable for presentation to legislative or other formal policy-making groups and a listing of the types of legitimate stakeholders likely to be affected by each option
- For each option, there will be an analysis of volumes, nationwide impact, and cost – benefit.

## **FACTORS**

The following limitations and constraints have been identified for this project:

- The limited amount of time available for review and development of solutions
- The lack of any institutional budget for travel, meeting time or space, or other similar logistical costs

## **ASSUMPTIONS**

The following assumptions were made when developing this Project Charter:

- That the filing of these documents may present questions for those named in the filings
- That there is an interest in providing remedies to these filings to the states
- That there is a diversity of approaches that should be represented on this Task Force
- That there is a diversity of interested parties who should be represented on this Task Force
- That existing approaches will be considered by the Task Force, but that the Task Force will not be limited to those approaches in fashioning options
- That the existing language of Revised Article 9 will be recommended to be left unchanged
- That NASS and IACA will receive presentations from this Task Force on these recommendations at their next regularly scheduled meetings
- That substantial progress will be made prior to the next regularly scheduled Executive Committee meetings of both NASS and IACA
- That member states will be able to take these approaches to their legislatures, if they so choose, at or before the 2005 legislative sessions
- That remedies for strawman and harassment are treated as separate issues in the product.



## **The 2004 TASK FORCE MEMBERS**

The task force consists of 15 experts from the specialties of the Uniform Commercial Code (UCC) as filing officers and attorneys. Members of the Task Force, listed below, were selected from nominations, based on recognized expertise in the area of UCC.

**Honorable Mary Kiffmeyer (Sponsor)**

Minnesota Secretary of State  
NASS President

**Honorable Ron Thornburgh (Co-Chair)**

Kansas Secretary of State

**Bonita Harvieux (Co-Chair)**

Minnesota UCC Director  
IACA President

**Trish Bogenrief**

Manager, Corporation Service Company

**Carl Ernst**

Publisher, Ernst Publishing Co., LLC

**Bruce Gallo**

Attorney, UCC Direct

**Greg Lemon**

Nebraska Chief Deputy Secretary of State

**Robert Lindsey**

Virginia Assistant Deputy Clerk

**Rodney Maddox**

North Carolina Chief Deputy Secretary of State

**Tim Poulin**

Maine UCC and Corporations Director

**Joe Ross**

Michigan Office of Customer Services Director

**Kathy Sachs**

Kansas Deputy Assistant Secretary of State

**Harry Sigman**

Attorney in Private Practice

**Peter Threlkel**

Oregon Corporations Division Director

**Trish Vincent**

Missouri Deputy Secretary for Business Services

**Lorna Wassdorf**

Texas Director of Business & Public Filings

**OUTSIDE PARTNERS**

In its work of evaluating the effectiveness of new legislation and recommendations, the Task Force will obtain the support of outside experts. Outside experts will be asked to provide extensive review of the charter and supply commentary.

Permanent Editorial Board (PEB), NCCUSL, National Public Records Research Association (NPRRA)

## Document 1: PRINCIPLES FOR SOLUTIONS OF BOGUS LIENS

The Task Force identified specific principles used in considering solutions for each bogus lien type (harassment and strawman). Below is a table showing those principles and an indication of the principles by type (X).

PRINCIPLE	HARASSMENT	STRAWMAN
Impose only reasonable or minimal costs on filing officers or other government agencies	X	X
Impose costs, if any, only upon the appropriate parties	X	X
Impose only minimal costs, direct or indirect, on victims	X	N/A
Not reject filings except for reasons under 9-516 of the Uniform Commercial Code; remedies would be post filing	N/A	X
Ask states to identify their own unique approach to enforcement funding and funding sources.	X	X
Provide a simple, expedited process for review of the alleged 'bogus' filing, preferably without requiring legal representation, with a step-by-step process for both the parties and the finder of fact, and a standard result	X	N/A
Reduce the utility to the filer of the strawman filing through whatever means agreed upon in this process	N/A	X
Discourage the filing of such bogus documents through civil and/or criminal penalties or other means	X	X
Provide that the bogus filing has no legal force and effect, is no longer operative and will not appear on a search of the debtor name, but may be accessible to the filing officer only for authorized retrieval purposes	X	N/A
Provide an implementation strategy for states and national quasi-governmental or trade associations that includes the education of and outreach to filing officers, lenders, law enforcement and other legitimate users of secured financing systems with respect to bogus filings, the ramifications of bogus filings and the remedies thereto	X	X
Recognize that the filing of a financing statement is a claim that an underlying security agreement exists or will exist and the filing officer makes no independent verification of that claim at the time of filing.	X	X
Apply equally whether the alleged bogus filing is filed on paper or electronically	X	X
Apply equally regardless of the location of the filing whether local or state.	X	X

ALVIN A. JAEGER  
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BISMARCK ND 58505-0500

March 12, 2007

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2350 – Filing of Fraudulent and Harassing Financing Statements

Title 41 of the North Dakota Century Code pertains to the Uniform Commercial Code. This bill creates a new chapter under that Title, which is intended as a deterrent to the filing of fraudulent and harassing financing statements.

Section 1, page 1, lines 7 thru 19: Establishes the definitions used in the chapter

Section 1, page 1, lines 21 thru 23, and page 2, lines 1 thru 12: Establishes the criteria under which the filing of a fraudulent and harassing financing statement is a crime and provides a criminal penalty in lines 9 through 12

Section 1, page 2, lines 13 thru 31 and page 3, line 1: Establishes the criteria under which the filing of a fraudulent and harassing financing statement is subject to a civil penalty

Section 1, page 3, lines 2 thru 21: Establishes who can bring an action, the venue where the action can be filed, and makes it clear that other laws may be applicable for securing relief