

HB

97

Introduced: 1/21/77
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 97

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to termination of financing statements
7 under the Uniform Commercial Code; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 45.05.774(a) is amended to read:

11 (a) If there is no outstanding secured obligation and no commit-
12 ment to make advances, incur obligations, or otherwise give value, the
13 secured party must terminate a filed financing statement by filing
14 [, ON WRITTEN DEMAND BY THE DEBTOR, SEND THE DEBTOR] a termination
15 statement that he no longer claims a security interest under the
16 financing statement, which shall be identified by file number. A
17 termination statement signed by a person other than the secured party
18 of record must include or be accompanied by the assignment or a
19 statement by the secured party of record that he has assigned the
20 security interest to the signer of the termination statement. The
21 uniform fee for filing and indexing such an assignment or statement is
22 as prescribed by the administrative director of courts. If the affected
23 secured party fails to file [SEND] the termination statement within 10
24 days after the date of satisfaction of the obligation or commitment to
25 make advances, incur obligations, or otherwise give value which is
26 secured by the filed financing statement [AFTER PROPER DEMAND FOR IT],
27 he is liable ~~to the debtor for \$100, and in addition,~~ for any loss
28 caused to the debtor by this failure.

29 * Sec. 2. This Act takes effect on July 1, 1977.

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR
DIVISION OF BANKING AND SECURITIES
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE
HOUSE JUDICIARY COMMITTEE

April 3, 1978

Good afternoon, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am Director of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to offer comments on HB 97.

The bill before you amends the Alaska Uniform Commercial Code found at AS 45.05. The code sets out numerous procedures affecting contracts and follows the Uniform Commercial Code which has been adopted by 49 states in one form or another.

Under the UCC, a creditor may perfect his interest in goods purchased by a debtor by filing a financing statement and tendering a filing fee. The filing is good for as much as five years. Very often the debtor will pay the debt in full before the five year period is up. However, the financing statement filing remains a matter of record until it is terminated under AS 45.05.774(a).

Section 1 of the bill proposes a mandatory termination of filings when the obligation is paid off. The burden of filing the termination would be on the secured party not on the debtor as required by the present law.

The result of this proposed amendment would be more current information on file in the UCC filing office. As the records are filed now, a record search may show an outstanding secured obligation when in fact the obligation has been satisfied but no termination statement has been filed. This eventuality would result in an incorrect reporting of the ownership of the goods involved and perhaps affect the debtor's credit standing.

The secured party is in a better position to assume the burden of terminating the filing because the date of the transaction and the awareness of the statutory requirements fall within their purview.

The effect of this proposed amendment on the UCC filing office would be dramatic. That is, the records of the office indicate between 1,200 and 1,600 new filings are processed per month and on the average about 400 termination notices are processed per month of which about 300 are terminated because they go the full maturity period of five years. The filings with the UCC office pertaining to goods on which secured parties no longer have secured interests could be culled from the active filings and thus reduce the volume of filings held by the office. With fewer files, record searches requested by the public may be accomplished more quickly and efficiently in the best interest of the requester and the Alaskan taxpayer.

The present law provides that the Department of Administration operate the UCC filing office. However, the UCC filing office more logically falls within the purview of the Division of Banking and Securities within the Department of Commerce and Economic Development. That is, the filing and office procedures and the nature of the filings are not dissimilar from the filing operations of the division's corporation section required under the Alaska Corporation Title, AS 10.

I therefore recommend that the statutory duty of maintaining the UCC filing office be transferred to the Department of Commerce and Economic Development. The attached amendments and changes are then respectfully submitted to this committee for inclusion in the bill.

Proposed amendments to HB 97

Change title of bill to read: "An Act relating to termination of financing statements and transferring administration of Uniform Commercial Code; and providing for an effective date."

Line 29, delete Sec. 2 and add the following sections:

*Sec. 2. AS 45.05.768(a)(3) is amended to read:

(3) in all other cases, in the office of the Department of Commerce and Economic Development [ADMINISTRATION].

*Sec. 3. AS 45.05.734(e) is amended to read:

(e) the requirements of secs. 768(a)(1) and (2), 772(b), (c) and (e) and 780 of this chapter do not apply to a security interest in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water, but this security interest may be perfected under secs. 690-794 of this chapter by filing the deed of trust or mortgage in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. When filed, the instrument remains effective until terminated, without the need for filing a continuation statement. Assignments and releases of the instrument may also be filed in the office of the commissioner of the Department of Commerce and Economic Development [ADMINISTRATION]. The commissioner is a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data under this subsection is \$10.00.

*Sec. 4. Sections 2 and 3 of this Act are effective immediately in accordance with AS 01.10.070(c).

*Sec. 5. Section 1 of this Act takes effect July 1, 1978.

14B99

January 21, 1977

Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the termination of financing statements under the Uniform Commercial Code, AS 45.05. This bill would shift, from the debtor to the secured party, the burden of clearing the records when an outstanding secured obligation no longer exists.

Currently there is no requirement that a secured party terminate a financing statement when the obligation it secures has been satisfied. As a result, many financing statements remain on file until they automatically lapse five years from the date of filing. In the meantime, a records search may result in the reporting of incorrect information concerning the ownership of property, information which would reflect unfavorably on the debtor's credit.

Under the existing statute, the debtor must request that the secured party send a termination statement to him, and then file the statement with the recorder. This bill would shift the filing requirement to the secured party, the party possessing a greater awareness of statutory provisions governing such secured interests.

Sincerely,

Jay S. Hammond
Governor