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172



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 172

Filing of commercial documents; reflecting changes in filing procedures. Director of the Division of Technical Services (DNR) is responsible for the filing system for commercial documents, the place where commercial documents are to be filed, and he is designated the chief filing officer of the State.

The bill gives the director authority to prescribe uniform fees, and forms for filing documents.

1. A copy of a security agreement may be filed as a financing statement if both parties sign the copies.
2. Prescribes rules on the effect of a continuation statement filed with the district recorder before July 1, 1981.
3. Makes it unnecessary to file a continuation statement for a security agreement made by a common carrier if the financing statement contains the citation to AS45.09.302



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SB 172 Related History:

SB 172 transfers the responsibility for the filing system, the place where commercial documents are to be filed, and designates the director of the Division of technical services as the chief filing officer of the State.

Several years ago, commercial documents were filed with the court system, however after the consolidation of the superior court and the trial court, Executive order 40 transferred the responsibility for the filing of commercial documents to the Department of Administration. The Department of Administration felt it would be difficult for them to handle, and executive order 47 required a further transfer to DNR as they had just received a large computer. There were problems with the new computer, and temporarily the Department of Commerce was designated the responsibility for commercial filings. In June of 1980, DNR's computer was functioning correctly and the Department of Commerce transferred the responsibility (per EO47) back to the Commissioner of DNR. SB 172 further transfers the commercial document filing to the Division of technical Services, within the Department of Natural Resources.



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Section by section analysis:

Sec. 1: Establishes the filing of a deed of trust or mortgage with the Division of Technical Services, Dept. of Natural Resources. If the statement contains a citation to this section, it remains effective until terminated without the need for filing a continuation statement. Further provides that assignments, amendments, and partial releases of the instrument may also be filed with the Dir. of the Div. of Technical Services, DNR.

Sec. 2: Addresses the proper place to file security interests if the collateral is farming equipment, farm products, accounts, contract rights, or intangibles resulting from the sale of farm products by a farmer. Security interests shall be filed in the office of the recorder in the debtors district; if the debtor is not a resident, then in the recorders office in the district where the goods are kept; when the collateral is crops, in the office of the recorder in the district where the crops are to be grown.

Sec. 3: Specifies that all commercial documents with the exception of security interests in Sec. 2 are to be filed with the Div of Tech Services, DNR

Sec 4: Technical ammendment addressing the signing of financing statements and providing that the copies be signed by both parties.

Sec.5: Director of the Div. of Technical Services shall prescribe forms and filing fees for filing commercial documents.

Sec 6: A financing Statement or continuation statement for consumer goods filed before July 1, 1981 in the district recorders office is effective until it lapses. Statements filed after 30 June 1981 take effect only if it is filed with the Div of Tech Services, DNR.

Sec 7: Technical ammendment relating to termination statements. If the secured party fails to send the termination statement within 10 days, he is liable to the debtor for \$100, and for any loss incurred

to the debtor by this failure.

Sec 8: Fee for filing and indexing a termination statement is determined by the Dir, Div of Tech Services, DNR.

Sec 9: Technical ammendment for the filing of financing statements.

Sec 10: Technical ammendment addressing the filing of a separate written statement of assignment.

Sec 11: Technical ammendment addressing the release of collateral.

Sec 12: Technical ammendment addressing requests about financing statements presently on file.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Natural Resources	Sponsor (Principal) Rules Committee by request of Governor	Bill Number SB 172
Department Position Favor --		
Division Director Claudi M. Hoffman	Date 2/18/81	Commissioner Robert E. LeResche

GOVERNOR'S OFFICE USE		
Comments:		
<input type="checkbox"/> Position Noted	By	Date

SUMMARY	
1. a) Related Bills (Similar or Conflicting) SB 77	1. b) Other Agencies Affected by Bill NONE
2. a) Organizational Support for Bill not documented (verbal) lending & financial institutions	2. b) Organizational Opposition to Bill unknown

3. Program Effects of Bill simplifies statutes for consumer
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4. Fiscal Impact: <input checked="" type="checkbox"/> None <input type="checkbox"/> Fiscal Note Attached
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5. Amendments Proposed: NONE

6. Comments: Section AS 45.09.402(a) We question whether or not the first sentence means <u>all</u> debtors and <u>all</u> secured parties are required to sign with <u>all</u> original signatures. Originally this was our intent to clean up the existing statutory language.

FISCAL ANALYSIS

DEPARTMENT Natural Resources	SPONSOR (PRINCIPAL Rules Committee by request. of the Governor	BILL NO. SB 172
DIVISION POSITION Favor	CO-SPONSORS OR COMMITTEE SPONSORS	DATE LAST AMENDED
DIVISION DIRECTOR <i>JMH</i> Claud M. Hoffman	DATE 2/3/81	COMMISSIONER Robert E. LeResche
FISCAL EFFECTS OF BILL		
(1) CHANGES IN PERSONNEL		
NONE		
(2) CHANGES IN GOVERNOR'S PROPOSED BUDGET		
Request Centralized UCC system be program receipts instead of General Fund appropriation.		
(3) CAN COSTS BE ABSORBED		
YES		
(4) REVENUE/EXPENDITURE CLASSIFICATION AND FUND — SOURCE (GENERAL FUND/BUDGET, FEDERAL FUNDS, BONDS, SPECIAL APPROPRIATIONS)		
General Fund		

COMMENTS

Would like to work with Code Revision Commission to resolve differences between this proposed legislation and SB 77.

§ 45.09.302

No. 748 (File No. 1971).
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Code, 99 ALR3d

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§ 45.09.302

TRADE AND COMMERCE

§ 45.09.302

(e) The requirements of AS 45.09.401(a)(1) and (2), 45.09.403(b), (c), and (e), and 45.09.407 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 this chapter by filing the deed of trust or mortgage in the office of the commissioner of the Department of Natural Resources. 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 Natural Resources. This 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. (§ 9.302 ch 114 SLA 1962; am § 1 ch 65 SLA 1967; am § 1 ch 47 SLA 1976; am Executive Order No. 40 § 4 (1979); am Executive Order No. 47 § 4 (1980))

Effect of amendments. — The 1976 amendment added the language beginning "unless the property is inventory" to the end of paragraph (2) of subsection (c).

Section 4, Executive Order No. 40 (1979) substituted "Department of Commerce and Economic Development" for "Department of Administration" at the end of the first and third sentences of subsection (e).

Section 4, Executive Order No. 47 (1980), substituted "AS 45.09.401(a)(1) and (2), 45.09.403(b), (c) and (e), and 45.09.407" for "secs. 768(a)(1) and (2), 772(b), (c), and (e) and 780 of this chapter" following "The requirements of" near the beginning of subsection (e), substituted "this chapter" for "secs. 690-794 of this chapter" following "be perfected under" near the end of the first sentence in subsection (e), and substituted "Natural Resources" for "Commerce and Economic Development" following "Department of" at the end of the first and third sentences in subsection (e).

Editor's note. — Section 1, Executive Order No. 40 (1979) provides: "Findings. As governor, I find that it would be in the best interests of efficient administration to transfer the receiving function and the Uniform Commercial Code filing function from the Department of Administration to the Department of Commerce and Economic Development."

This section requires filing to perfect a conditional sale agreement. *Blumenstein v. Phillips Ins. Center, Inc.*,

Sup. Ct. Op. No. 748 (File No. 1253), 490 P.2d 1213 (1971).

Surety's right to earned progress payments does not qualify as an interest in personal property subject to the filing provisions of the code since the surety has the right to complete the job it has bonded, and apply any earned funds against its costs. This does not secure the payment or performance of an obligation as a "security interest" as that term is defined in AS 45.01.201 (37). *Alaska State Bank v. General Ins. Co. of America*, Sup. Ct. Op. No. 1564 (File Nos. 2638, 2713), 579 P.2d 1362 (1978).

Quoted in Stanley v. Fabricators, Inc., Sup. Ct. Op. No. 582 (File No. 1061), 459 P.2d 467 (1969).

Cited in Deck v. Aurora Motors, Inc., Sup. Ct. Op. No. 314 (File No. 593), 409 P.2d 603 (1966); *C.Y. Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1275 (1978); *State, Div. of Agriculture v. Fowler*, Sup. Ct. Op. No. 2085 (File No. 4114), 611 P.2d 58 (1980).

ALR references. — What constitutes "security interest" as to which financing statement must be filed under Uniform Commercial Code § 9-302. 11 ALR3d 1231.

Determination of purchase price of farm equipment for purposes of UCC § 9-302(1)(c) excusing filing of financing statement, 85 ALR3d 1037.

Sec. 45.09.401. Place of filing; erroneous filing; removal of collateral. (a) The proper place to file, in order to perfect a security interest, is as follows:

(1) if the collateral is consumer goods, or is equipment used in farming operations or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, then in the office of the recorder in the recording district of the debtor's residence or, if the debtor is not a resident of the state, then in the office of the recorder in the recording district where the goods are kept, and in addition when the collateral is crops, in the office of the recorder in the recording district where the land on which the crops are growing or to be grown is located;

(2) if the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(3) in all other cases, in the office of the Department of Natural Resources.

(b) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to collateral as to which the filing complied with the requirements of AS 45.09.101 — 45.09.507, and is also effective with regard to collateral covered by the financing statement against a person who has knowledge of the contents of the financing statement.

(c) A filing which is made in the proper place in the state continues to be effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is later changed.

(d) If collateral is brought into the state from another jurisdiction, the rules stated in AS 45.09.103 determine whether filing is necessary in this state. (§ 9.401 ch 114 SLA 1962; am Executive Order No. 40 § 5 (1979); am Executive Order No. 47 § 5 (1980))

Effect of amendment. — Section 5, Executive Order No. 40 (1979) substituted "Department of Commerce and Economic Development" for "Department of Administration" at the end of paragraph (3) of subsection (a).

Section 5, Executive Order No. 47 (1980), substitutes "Natural Resources" for "Commerce and Economic Development" following "Department of" at the end of paragraph (3) of subsection (a).

Sec. 45.09.402. Formal requisites of financing statement; amendments. (a) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement

covers crops grown on real estate fixtures, the state real estate concerned. financing statement under this subsection and is

(b) A financing statement is sufficient if it is filed to perfect

(1) collateral in a jurisdiction when the jurisdiction must state that the circumstances;

(2) proceeds under original collateral describe the original

(c) A form subsection of this section:

Name of debtor
Address

Name of secured party
Address

(1) This financing statement covers property:

(Describe)

(2) (If collateral is to be grown on

Describe real

(3) (If collateral goods described in

Describe real

(4) (If proceeds are Products of the

Signature of debtor

Signature of secured party

(d) The term "collateral" in AS 45.09.507 means

but if an amendment covers collateral only filed

(e) A financing statement is sufficient if it meets the requirements of this section, notwithstanding errors which are not covered by AS 1 ch 11 SLA

Failure to file a financing statement before the security interest attaches to the holder of a purchase

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covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the information required in this subsection and is signed by both parties.

(b) A financing statement which otherwise complies with (a) of this section is sufficient, although it is signed only by the secured party, if it is filed to perfect a security interest in

(1) collateral already subject to a security interest in another jurisdiction when it is brought into this state; the financing statement must state that the collateral was brought into this state under these circumstances;

(2) proceeds under AS 45.09.306 if the security interest in the original collateral was perfected; the financing statement must describe the original collateral.

(c) A form substantially as follows is sufficient to comply with (a) of this section:

Name of debtor (or assignor)
 Address
 Name of secured party (or assignee)
 Address

(1) This financing statement covers the following types (or items) of property:

(Describe)

(2) (If collateral is crops) The crops described in (1) are growing or are to be grown on:

(Describe real estate)

(3) (If collateral is goods which are or are to become fixtures) The goods described in (1) are affixed or to be affixed to:

(Describe real estate)

(4) (If proceeds or products of collateral are claimed) Proceeds — Products of the collateral are also covered.

Signature of debtor (or assignor)

Signature of secured party (or assignee)

(d) The term "financing statement" as used in AS 45.09.101 — 45.09.507 means the original financing statement and amendments, but if an amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(e) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. (§ 9.402 ch 114 SLA 1962; am § 1 ch 11 SLA 1963)

Failure to file a financing statement before the security interest attached, under this section, did not deprive the holder of a purchase-money interest in noninventory collateral of the favored status given by AS 45.09.312, where the other secured creditor could have protected itself by inquiring into the

debtor's interest in the collateral before Hotel Supply, Inc. v. United States, 431
accepting his chattel mortgage. Brodie F.2d 1316 (9th Cir. 1970).

Sec. 45.09.403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under AS 45.09.101 — 45.09.507.

(b) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until the maturity date and afterward for 60 days. Any other filed financing statement is effective for five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 60-day period after a stated maturity date or on the expiration of the five-year period, as the case may be, unless a continuation statement is filed before the lapse. Upon the lapse the security interest becomes unperfected.

(c) A continuation statement may be filed by the secured party (1) within six months before and 60 days after a stated maturity date of five years or less, and (2) otherwise within six months before the expiration of the five-year period specified in (b) of this section. The continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective; it then lapses in the same manner as provided in (b) of this section unless another continuation statement is filed before the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(d) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(e) The uniform fee for filing, indexing, and furnishing filing data for an original or a continuation statement is as prescribed by the administrative director of courts. (§ 9.403 ch 114 SLA 1962)

Sec. 45.09.404. Termination statement. (a) If there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must, on written demand by the debtor, send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by

a person other accompanied by record that he termination sta assignment or director of cou termination sta liable to the deb debtor by this f

(b) On preser he must note it files, mark "ter financing state assignment, or statement.

(c) The unifo including send prescribed by t SLA 1962)

Quoted in R.A. v. Shinjin Motor S No. 141 (File No.

Sec. 45.09.405. Filing officer; fees. (a) a security inte indication in th by an assignme of the statemen sign this statem officer of this t same as provi indexing, and indicating an director of cour

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a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement is as prescribed by the administrative director of courts. If the affected secured party fails to send the termination statement within 10 days after proper demand for it, he is liable to the debtor for \$100, and in addition, for any loss caused to the debtor by this failure.

(b) On presentation to the filing officer of the termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated," and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment, or statement of release pertaining to the financing statement.

(c) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement is as prescribed by the administrative director of courts. (§ 9.404 ch 114 SLA 1962)

Quoted in R.A. Duvenny & Associates (1975); State v. Alaska Int'l Air, Inc., Sup. Ct. Op. No. 1409 (File No. 2808), 562 P.2d No. 1141 (File No. 2411), 533 P.2d 1112 1064 (1977).

Sec. 45.09.405. Assignment of security interest; duties of filing officer; fees. (a) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy of an assignment on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of this financing statement, the filing officer shall mark the same as provided in AS 45.09.403(d). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is as prescribed by the administrative director of courts.

(b) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting out the name of the secured party of record and the debtor, the file number, and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of the separate statement, the filing officer shall mark the separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The

uniform fee for filing, indexing, and furnishing filing data about the separate statement of assignment is as prescribed by the administrative director of courts.

(c) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. (§ 9.405 ch 114 SLA 1962)

Sec. 45.09.406. Release of collateral; duties of filing officer; fees. A secured party of record may, by his signed statement, release all or a part of collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of the statement to the filing officer, he shall mark the statement with the hour and date of filing and shall note this information upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting the statement of release is as prescribed by the administrative director of courts. (§ 9.406 ch 114 SLA 1962)

Sec. 45.09.407. Information from filing officer. (a) If the person filing a financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of it, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(b) Upon request of a person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated in it, a presently effective financing statement naming a particular debtor and a statement of assignment of it, and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party in it. The uniform fee for the certificate is as prescribed by the administrative director of courts for each financing statement and for each statement of assignment reported therein. Upon request, the filing officer shall furnish a copy of a filed financing statement or statement of assignment for a uniform fee as prescribed by the administrative director of courts. (§ 9.407 ch 114 SLA 1962)

Article 5. Default.

Section	Section
501. Default; procedure when security agreement covers both real and personal property	505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation
502. Collection rights of secured party	506. Debtor's right to redeem collateral
503. Secured party's right to take possession after default	507. Secured party's liability for failure to comply
504. Secured party's right to dispose of collateral after default; effect of disposition	

Sec. 45.09.501 covers both real and personal property under a security agreement. Remedies provided by (c) of this section do not reduce his claim against the security interest in the documents, title, or as to the goods in possession held by the debtor. The cumulative effect of §§ 45.09.207, 45.09.501, and 45.09.507 do not reduce the debtor's right to redeem the collateral. (1) AS 45.09.501 — 4

(b) After default, the secured party may not exercise its rights and duties under the security agreement until the debtor has complied with the requirements of AS 45.09.501 — 4 and those provisions.

(c) To the extent of the security interest, the secured party's duties on the security interest set forth below may not be waived by a compulsory disposition of the collateral to redemption. The security agreement does not waive the rights and duties of the secured party unless it is unreasonable. (1) AS 45.09.501 — 4

(2) AS 45.09.501 — 4 collateral; (3) AS 45.09.501 — 4 discharge of obligation; (4) AS 45.09.501 — 4

(5) AS 45.09.501 — 4 failure to comply with the requirements of AS 45.09.501 — 4

(d) If the secured party fails to comply with the requirements of AS 45.09.501 — 4 the secured party is liable for the personal property and the personal property interest in the real property. (1) AS 45.09.501 — 4

(e) If a security agreement provides for a levy which is not a foreclosure, the secured party may exercise its rights and duties under the security agreement. (1) AS 45.09.501 — 4