
SENATE BILL 6573

State of Washington

54th Legislature

1996 Regular Session

By Senators Owen, Newhouse, Snyder and Smith; by request of Department of Licensing

Read first time 01/18/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to the enforcement of termination statements; and
2 amending RCW 62A.9-404.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 62A.9-404 and 1982 c 186 s 7 are each amended to read
5 as follows:

6 (1) Whenever there is no outstanding secured obligation and no
7 commitment to make advances, incur obligations or otherwise give value,
8 the secured party must on written demand by the debtor send the debtor,
9 for each filing officer with whom the financing statement was filed, a
10 termination statement to the effect that he or she no longer claims a
11 security interest under the financing statement, which shall be
12 identified by file number. A termination statement signed by a person
13 other than the secured party of record must be accompanied by a
14 separate written statement of assignment signed by the secured party of
15 record complying with subsection (2) of RCW 62A.9-405, including
16 payment of the required fee. If the affected secured party fails to
17 file such a termination statement as required by this subsection, or to
18 send such a termination statement within ten days after proper demand
19 therefor he or she shall be liable to the debtor for ((one)) five

1 hundred dollars, and in addition for any loss caused to the debtor by
2 such failure.

3 (2) On presentation to the filing officer of such a termination
4 statement he or she must note it in the index. If he or she has
5 received the termination statement in duplicate, he or she shall return
6 one copy of the termination statement to the secured party stamped to
7 show the time of receipt thereof. If the filing officer has
8 substituted a copy by microfilm or other photographic record of the
9 financing statement, and of any related continuation statement,
10 statement of assignment and statement of release, he or she may destroy
11 the originals at any time, and shall retain the substituted microfilm
12 or other photographic record for one year after receipt of the
13 termination statement.

14 (3) There shall be no fee for filing and indexing a termination
15 statement including sending or delivering the financing statement.

16 (4) If the secured party fails to file a termination statement
17 under this section, any person whose property is subject to a secured
18 obligation under this chapter who believes the financing statement or
19 assignment thereof is invalid may petition the Thurston county superior
20 court for an order, which may be granted ex parte, directing the
21 secured party of record to appear before the court at a time no earlier
22 than six nor later than twenty-one days following the date of service
23 of the petition on the secured party. The secured party must then show
24 cause, if any, why the financing statement or assignment thereof should
25 not be stricken and other relief provided for by this section should
26 not be granted. The petition shall state the grounds upon which relief
27 is requested, and shall be supported by the affidavit of the petitioner
28 or his or her attorney setting forth a concise statement of the facts
29 upon which the motion is based. The order shall be served upon the
30 secured party by personal service, or, if the court determines that
31 service by mail is likely to give actual notice, the court may order
32 that service be made by any person over eighteen years of age, who is
33 competent to be a witness, other than a party, by mailing copies of the
34 petition and order to the secured party at his or her last known
35 address or any other address determined by the court to be appropriate.
36 Two copies shall be mailed, postage prepaid, one by ordinary first
37 class mail and the other by a form of mail requiring a signed receipt
38 showing when and to whom it was delivered. The envelopes must bear the
39 return address of the sender.

1 (5) The order shall clearly state that if the secured party fails
2 to appear at the time and place noted, the financing statement or
3 assignment thereof shall be stricken and released, and future filings
4 may be enjoined unless the secured party first obtains approval of the
5 court and that the secured party shall be ordered to pay the costs
6 incurred by the petitioner and allowed by this section, including
7 reasonable attorneys' fees.

8 (6) The clerk of the court shall assign a cause number to the
9 petition and obtain from the petitioner a filing fee of thirty-five
10 dollars.

11 (7) If, following a hearing on the matter, the court determines
12 that the secured obligation is invalid, the court shall issue an order
13 striking and releasing the secured obligation and awarding costs and
14 reasonable attorneys' fees to the petitioner to be paid by the secured
15 party and may enjoin the secured party from filing subsequent financing
16 statements or assignments thereof unless the secured party first
17 obtains approval of the court. If the court determines that the
18 secured obligation is valid, the court shall issue an order so stating
19 and may award costs and reasonable attorneys' fees to the secured party
20 to be paid by the petitioner.

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