

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 404  
 Finance

(Senator Kelley, *et al.*)

Economic Matters

**Maryland Uniform Commercial Code - Secured Transactions - Notice of Filing of Financing Statement**

This bill requires the State Department of Assessments and Taxation (SDAT) or other office that receives a specified financing statement for filing to provide a written notice of the filing to the debtor identified on the financing statement if the secured party and the debtor identified on the financing statement are individuals. The office required to provide the notice must determine the form of the notice.

**Fiscal Summary**

**State Effect:** Special fund expenditures increase by \$49,000 in FY 2015 for SDAT for additional staff to mail notices and pay one-time programming costs to upgrade its Uniform Commercial Code (UCC) filings database to comply with the bill. Future year expenditures reflect annualization and inflation. Any impact the notices and associated complaints have on the Judiciary and the Office of Attorney General is expected to be minimal and absorbable with existing resources.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	49,000	53,200	55,600	58,100	60,800
Net Effect	(\$49,000)	(\$53,200)	(\$55,600)	(\$58,100)	(\$60,800)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Any impact on local governments operations or finances is expected to be minimal.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill applies to financing statements (1) required to be filed if the local law of Maryland governs perfection of a security interest or agricultural lien and (2) when the office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is SDAT. The bill does not apply to a financing statement that is a mortgage or deed of trust.

The written notice to the debtor must contain at least the following information: (1) the debtor's name and address as shown on the financing statement; (2) the secured party's name and address as shown on the financing statement; and (3) the remedies available to the debtor if the debtor believes that the financing statement is erroneously or fraudulently filed.

### **Current Law/Background:**

#### *Financing Statements Serve as Public Notice of a Security Interest*

Maryland is a "notice filing" jurisdiction. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. A financing statement alone is not a security interest, but only a notice to the public that a security interest was claimed on the collateral indicated. *Mid-Eastern Elecs., Inc. v. First Nat'l Bank*, 380 F.2d 355 (4th Cir. 1967).

However, the presence of a financing statement may influence a debtor's ability to obtain credit or financing. Financing statements are part of the credit information that potential creditors consider when reviewing the present credit standing of the debtor.

Generally, a financing statement is required to provide the name of the debtor, the name of the secured party or a representative of the secured party, and the collateral covered by the financing statement. A former requirement that the debtor's signature appear on a financing statement was eliminated to facilitate paperless filing.

#### *Role of Filing Office*

If the local law of Maryland governs perfection of a security interest or agricultural lien, and a party is required to file a financing statement to perfect its interest, the party must file the financing statement in the appropriate filing office (either SDAT or the office designated for the filing or recording of a record of a mortgage on the real property in specified instances).

The filing office is not required to provide the debtor with notice of the financing statement. The filing office is only required to respond to written record requests and make available to the general public records indexed both in the names of debtors and by unique file numbers, based upon which copies of filed records may be obtained.

### *Fraudulent Filings*

According to the National Association of Secretaries of State (NASS), fraudulent financing statement filings are on the rise across the country. The target of fraudulent filings may not be aware of the filing until he or she attempts a transaction that uncovers the fraudulent financing statement. The fraudulent filing may result in damage to the target's credit and require the target to defend against the financing statement. In response to an increase in fraudulent filings, at least one other state, Michigan, requires the filing office to provide written notice of the filing of a financing statement to the debtor.

**State Expenditures:** Special fund expenditures increase by \$49,034 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring one office service clerk in the Charter Division of SDAT to open mail, review and process the filings, answer phones, and update the UCC filings database with required data. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including mailings. The information and assumptions used in calculating the estimate are stated below:

- about 45,000 to 60,000 UCC filings are received each year by SDAT, 6,000 of which are human-to-human filings; and
- 7,500 mailings (human-to-human filings plus amended filings) are anticipated to be sent annually.

Position	1
Salary and Fringe Benefits	\$35,698
Contractual Services for One-time Database Upgrade	6,000
Other Operating Expenses	<u>7,336</u>
<b>Total FY 2015 State Expenditures</b>	<b>\$49,034</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 99 (Delegate Arora) - Economic Matters.

**Information Source(s):** Department of Legislative Services

**Fiscal Note History:** First Reader - January 28, 2014  
mm/kdm Revised - Senate Third Reader/Clarification - March 18, 2014

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