

Senate Engrossed House Bill
false filings; UCC; penalty

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2645

AN ACT

AMENDING SECTIONS 41-323 AND 47-9527, ARIZONA REVISED STATUTES; RELATING
TO THE UNIFORM COMMERCIAL CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-323, Arizona Revised Statutes, is amended to
3 read:
4 41-323. Change of address; lost, stolen or compromised
5 journal or seal; civil penalty
6 A. Within thirty days after the change of a notary public's
7 mailing, business or residential address, the notary public shall deliver
8 to the secretary of state, by certified mail or other means providing a
9 receipt, a signed notice of the change that provides both the old and new
10 addresses.
11 B. Within ten days after the loss, theft or compromise of an
12 official journal or stamping device, the notary public shall deliver to
13 the secretary of state, by certified mail or other means providing a
14 receipt, a signed notice of the loss, theft or compromise. The notary
15 also shall inform the appropriate law enforcement agency in the case of
16 theft.
17 C. If a notary public fails to comply with subsection A or B of
18 this section, the notary public has failed to fully and faithfully
19 discharge the duties of a notary public. ~~and~~ IF THE NOTARY PUBLIC FAILED
20 TO COMPLY WITH SUBSECTION A OF THIS SECTION, the secretary of state may
21 impose a civil penalty of \$25 against the notary. IF THE NOTARY PUBLIC
22 FAILED TO COMPLY WITH SUBSECTION B OF THIS SECTION, THE SECRETARY OF STATE
23 SHALL IMPOSE A CIVIL PENALTY OF \$1,000 AGAINST THE NOTARY. The notary
24 public shall pay any civil penalty imposed by the secretary of state
25 pursuant to this subsection before the renewal of the notary's commission.
26 FAILURE TO PAY A PENALTY MAY BE REFERRED TO THE ATTORNEY GENERAL FOR
27 COLLECTION.
28 D. IN A JUDICIAL PROCEEDING WHERE THE IDENTITY OF A PARTY TO A
29 NOTARIZED INSTRUMENT IS IN QUESTION, THE OFFICIAL JOURNAL OF THE NOTARY
30 PUBLIC IS LOST, STOLEN OR COMPROMISED AND THE NOTARY COMPLIED WITH THIS
31 SECTION, A PRESUMPTION SHALL BE GIVEN TO THE VALIDITY OF THE IDENTITY OF
32 THE PARTY WHO SIGNED THE INSTRUMENT. IF IT IS DETERMINED THAT THE
33 OFFICIAL JOURNAL NEVER EXISTED OR THAT THE NOTARY PUBLIC FAILED TO COMPLY
34 WITH THIS SECTION, NO PRESUMPTION SHALL APPLY THAT THE IDENTITY OF THE
35 PARTY WHO SIGNED THE NOTARIZED INSTRUMENT IN QUESTION IS VALID.
36 E. IN AN ACTION IN WHICH THE VALIDITY OF A NOTARIZED DOCUMENT IS AT
37 ISSUE AND IT IS DETERMINED THAT THE NOTARY PUBLIC DID NOT COMPLY WITH THIS
38 SECTION, THE COURT SHALL PROVIDE NOTICE OF SUCH FINDINGS TO THE SECRETARY
39 OF STATE AND THE COUNTY ATTORNEY FOR THE COUNTY IN WHICH THE VIOLATION
40 OCCURRED.

1 Sec. 2. Section 47-9527, Arizona Revised Statutes, is amended to
2 read:

3 47-9527. Unauthorized records; material misstatements; false
4 claims; liability; special action; damages;
5 violation; classification

6 A. A person who causes a record to be filed or recorded in a filing
7 office and who knows or has reason to know that the record is unauthorized
8 under section 47-9509 or that the record contains a material misstatement
9 or false claim is liable to a debtor, a consumer obligor, a person named
10 as a debtor or the owner or holder of collateral affected by the record
11 for the sum of at least ~~five hundred dollars~~ \$500 or for treble the actual
12 damages caused by the record, whichever is more, and reasonable attorney
13 fees and costs of the action, if the person who causes the record to be
14 filed or recorded wilfully refuses to terminate or correct the record
15 within twenty days after the date of a written request from the debtor,
16 the consumer obligor, the person named as a debtor or the owner or holder
17 of collateral affected by the record.

18 B. Any debtor, any consumer obligor, any person named as a debtor
19 or the owner or holder of collateral affected by a record that is
20 unauthorized under section 47-9509 or that contains a material
21 misstatement or false claim may bring an action pursuant to this section
22 in the superior court for any temporary or permanent relief as is
23 necessary to clear or otherwise correct the records of the filing office
24 of the record as provided for in the rules of procedure for special
25 actions. The relief shall be consistent with the practical limitations of
26 the filing system used by the filing office. This special action may be
27 brought based on the ground that the record is not authorized under
28 section 47-9509 or contains a material misstatement or false claim. A
29 debtor, a consumer obligor, a person named as a debtor or the owner or
30 holder of collateral affected by the record may bring a separate special
31 action to clear or otherwise correct the records of a filing office of the
32 record or join the special action with an action for damages as described
33 in this section.

34 C. If a debtor, a consumer obligor, a person named as a debtor or
35 the owner or holder of collateral affected by a record that is
36 unauthorized under section 47-9509 or that contains a material
37 misstatement or false claim prevails in a special action pursuant to this
38 section, **BOTH OF THE FOLLOWING APPLY:**

39 1. The court may mandate any legal or equitable remedy that is
40 consistent with the practical limitations of the filing system used by the
41 filing office and that is necessary to immediately and effectively clear
42 or otherwise correct the records of the filing office of the record,
43 including ordering the person responsible for filing the record to file a

1 termination statement or take any other action as is necessary to clear or
2 otherwise correct the records of a filing office of the record. ~~;~~ ~~and~~

3 2. The debtor, the obligor, the person named as a debtor or the
4 owner or holder of collateral affected by the record may recover
5 reasonable attorney fees and costs of the action.

6 D. The remedies provided in this section are cumulative and are not
7 exclusive to and do not limit any other legal or equitable remedies that
8 may be available to any debtor, any obligor, any person named as a debtor
9 or the owner or holder of collateral affected by a record that is
10 unauthorized under section 47-9509 or contains a material misstatement or
11 false claim.

12 E. A person who is not entitled to file a record under section
13 47-9509, who causes a record to be filed in the records of a filing office
14 and who knows or has reason to know that the record is unauthorized under
15 section 47-9509 or the record contains a material misstatement or false
16 claim is guilty of a class ~~1 misdemeanor~~ 3 FELONY.

17 F. THE ATTORNEY GENERAL OR COUNTY ATTORNEY FOR THE COUNTY IN WHICH
18 AN ALLEGED VIOLATION OF THIS SECTION OCCURRED MAY PROSECUTE A VIOLATION OF
19 THIS SECTION.