

1 AN ACT relating to reorganization.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 14.025 is amended to read as follows:

4 (1) The Department of State shall be divided into ***three (3) offices***~~[two (2) divisions]~~,  
5 each headed by ***an executive director***~~[a director]~~ appointed by the Secretary of State  
6 pursuant to KRS 12.050.

7 (2) The ***Office***~~[Division]~~ of Administration shall be responsible for fiscal and personnel  
8 matters,~~[elections,]~~ public documents, legal affairs, and special projects and  
9 commissions.

10 (3) The ***Office***~~[Division]~~ of Business~~[Filings]~~:

11 (a) Shall be responsible for all functions of the department relating to business  
12 filings, including business entity filings and filings under the Uniform  
13 Commercial Code, ***business records, trademarks and service mark***  
14 ***registration, notary appointments, and apostilles***; and

15 (b) May promulgate administrative regulations in accordance with KRS Chapter  
16 13A in furtherance of its responsibilities.

17 ***(4) The Office of Elections shall be responsible for assisting the Secretary of State in***  
18 ***his or her duties as the chief election official of Kentucky and shall be***  
19 ***responsible for candidate filings and collection of filing fees.***

20 ➔Section 2. KRS 355.9-513A is amended to read as follows:

21 (1) No person shall communicate a financing statement to a filing office for filing  
22 which is:

23 (a) Not authorized or permitted under KRS 355.9-509 or 355.9-708;

24 (b) Not related to a valid existing or potential commercial or financial transaction;  
25 and

26 (c) Filed with the intent to harass, hinder, or defraud a qualified person identified  
27 as an individual debtor in the financing statement.

- 1 (2) A qualified person may file in the office of the Secretary of State's Office~~[Division]~~  
2 of Business~~[Filings]~~ a notarized affidavit, signed under penalty of perjury, stating  
3 that:
- 4 (a) The affiant is a qualified person;
  - 5 (b) None of the secured parties of record are financial institutions as defined in  
6 subsection (15) of this section;
  - 7 (c) All secured parties of record are individuals; and
  - 8 (d) The financing statement was filed by an individual not authorized or permitted  
9 to do so under KRS 355.9-509 or 355.9-708.
- 10 (3) (a) The Secretary of State shall adopt and make available a form of affidavit for  
11 use under this section.
- 12 (b) The filing office shall not charge a fee for the filing of an affidavit or a  
13 termination statement under this section. The filing office shall not return any  
14 fee paid for filing the financing statement identified in the affidavit, whether  
15 or not the financing statement is subsequently reinstated.
  - 16 (c) In a case in which KRS 355.9-501 provides that the proper office to file a  
17 financing statement is the office designated for the filing or recording of a  
18 record of a mortgage on real property, the Secretary of State shall promptly  
19 transmit to that office copies of all communications regarding an affidavit  
20 filed under this section, including the affidavit itself, any termination  
21 statement filed under subsection (4) of this section, and any amendment filed  
22 or preliminary or final court order received pursuant to subsection (7) or (8) of  
23 this section, and upon receipt the receiving office shall execute the actions  
24 described herein.
- 25 (4) If an affidavit is filed under subsection (2) of this section, the filing office shall  
26 promptly file a termination statement with respect to the financing statement  
27 identified in the affidavit. The termination statement shall indicate that it was filed

1       pursuant to this section. Except as provided in subsections (7) and (8) of this  
2       section, a termination statement filed under this subsection shall take effect thirty  
3       (30) days after it is filed.

4       (5) On the same day that a filing office files a termination statement under subsection  
5       (4) of this section, it shall send to each secured party of record for the financing  
6       statement a notice advising the secured party of record that the termination  
7       statement has been filed. The notice shall be sent by certified mail, return receipt  
8       requested, to the address provided for the secured party in the financing statement.

9       (6) An individual indicated as a secured party of record on a financing statement for  
10       which a termination statement has been filed under subsection (4) of this section  
11       may, before or after the termination statement takes effect:

12       (a) Request from the Secretary of State an expedited administrative review of the  
13       decision to terminate the filing; or

14       (b) Bring an action against the individual who filed the affidavit under subsection  
15       (2) of this section seeking a determination that the financing statement was  
16       filed by a person entitled to do so under KRS 355.9-509(1). An action under  
17       this subsection shall have priority on the court's calendar and shall proceed by  
18       expedited hearing. If the individual who filed the affidavit resides in this state,  
19       the exclusive venue in this state for the action shall be in the Circuit Court for  
20       the county where the individual principally resides in this state. If the  
21       individual who filed the affidavit does not reside in this state, the exclusive  
22       venue in this state shall be in the Circuit Court for the county where the filing  
23       office in which the financing statement was filed is located.

24       (7) In an action brought pursuant to subsection (6) of this section, a court may, in  
25       appropriate circumstances, order preliminary relief, including but not limited to an  
26       order precluding the termination statement from taking effect or directing a party to  
27       take action to prevent the termination statement from taking effect. If the court

1 issues such an order and the filing office receives a certified copy of the order  
2 before the termination statement takes effect as provided in subsection (4) of this  
3 section, the termination statement shall not take effect and the filing office shall  
4 promptly file an amendment to the financing statement that indicates that an order  
5 has prevented the termination statement from taking effect. If such an order ceases  
6 to be effective by reason of a subsequent order or a final judgment of that court or  
7 by an order issued by another court, and the filing office receives a certified copy of  
8 the subsequent judgment or order, the termination statement shall become  
9 immediately effective upon receipt of the certified copy and the filing office shall  
10 promptly file an amendment to the financing statement indicating that the  
11 termination statement is effective.

12 (8) If the Secretary of State determines in an expedited administrative review initiated  
13 under subsection (6)(a) of this section, or if a court determines in an action brought  
14 pursuant to subsection (6)(b) of this section, that the financing statement was filed  
15 by a person entitled to do so under KRS 355.9-509(1) and the filing office receives  
16 a certified copy of the administrative determination or court's final judgment or  
17 order before the termination statement takes effect, the termination statement shall  
18 not take effect and the filing office shall remove the termination statement and any  
19 amendments filed under subsection (7) of this section from the files. If the filing  
20 office receives the certified copy after the termination statement takes effect and  
21 within thirty (30) days after the final judgment or order was entered, the filing office  
22 shall promptly file an amendment to the financing statement that indicates that the  
23 financing statement has been reinstated.

24 (9) Except as provided in subsection (10) of this section, upon the filing of an  
25 amendment reinstating a financing statement under subsection (8) of this section,  
26 the effectiveness of the financing statement is retroactively reinstated and the  
27 financing statement shall be considered never to have been ineffective against all

1 persons and for all purposes.

2 (10) A financing statement whose effectiveness was terminated under subsection (4) of  
3 this section and has been reinstated under subsection (8) of this section shall not be  
4 effective as against a person that purchased the collateral in good faith between the  
5 time the termination statement was filed and the time of the filing of the amendment  
6 reinstating the financing statement, to the extent that the person gave new value in  
7 reliance on the termination statement.

8 (11) (a) A person who violates subsection (1) of this section shall be civilly liable to  
9 an injured qualified person for:

- 10 1. Actual damages caused by the violation;
- 11 2. Reasonable attorney fees; and
- 12 3. Exemplary damages in an amount determined by the court.

13 (b) Civil damages under paragraph (a) of this subsection are in addition to any  
14 recovery to which the qualified person is entitled under KRS 355.9-625, or  
15 under law other than this article.

16 (12) Neither the filing office nor any of its employees shall be subject to liability for the  
17 termination or amendment of a financing statement in the lawful performance of the  
18 duties of the office under this section.

19 (13) A person may not file an affidavit under this section with respect to a financing  
20 statement filed by a financial institution, as defined in subsection (15) of this section  
21 or a representative of a financial institution.

22 (14) In this section, the term "qualified person" means an individual who, at the time the  
23 financing statement referred to in subsection (2) of this section was filed or within  
24 five (5) years prior to the time of filing, was:

25 (a) An elected or appointed official of this state or a governmental unit of this  
26 state as defined in KRS 355.9-102(1);

27 (b) An officer or employee of a federal, state, or local judicial or prosecutorial

1 office;

2 (c) An officer or employee of a federal, state, or local law enforcement office,  
3 including a correctional officer or employee; or

4 (d) An officer or employee of an office designated in KRS 355.9-501 as a place to  
5 file a financing statement.

6 (15) In this section, the term "financial institution" means a person that:

7 (a) Is in the business of extending credit and servicing loans, including acquiring,  
8 purchasing, selling, and brokering, or other extensions of credit; and

9 (b) Where applicable, holds whatever license, charter, or registration that is  
10 required to engage in such business.

11 The term includes banks, savings banks, savings associations, building and loan  
12 associations, credit unions, consumer and commercial finance companies, industrial  
13 banks, industrial loan companies, insurance companies, investment companies,  
14 installment sellers, mortgage servicers, sales finance companies, and leasing  
15 companies.

16 ➔Section 3. The General Assembly confirms Secretary of State Executive Order  
17 2018-01, dated April 24, 2018, to the extent that it is not otherwise confirmed or  
18 superseded by this Act.