
SUBSTITUTE HOUSE BILL 2086

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representative Appelwick).

Read first time March 6, 1991.

1 AN ACT Relating to security interests in farm crops; amending RCW
2 62A.9-404 and 60.11.040; reenacting and amending RCW 60.13.040; adding
3 new sections to chapter 62A.9 RCW; creating new sections; prescribing
4 penalties; making an appropriation; providing effective dates;
5 providing an expiration date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The availability of credit is vital for
8 agriculture. For that reason, the legislature has traditionally
9 promoted the availability of agricultural credit. The legislature
10 finds that lenders lack a uniformly effective means of providing notice
11 of a lender's security interest in farm products to purchasers of the
12 products. The legislature further finds that purchasers lack any
13 practical method for discovering the existence of security interests in
14 farm products.

1 Accordingly, it is the intent of the legislature to promote the
2 development of a central filing system as provided in 7 U.S.C. Sec.
3 1631 and to encourage private businesses to provide for expeditious
4 discovery of liens and security interests in farm products.

5 NEW SECTION. **Sec. 2.** All of the provisions of Parts 1 through
6 5 of chapter 62A.9 RCW apply to security interests in farm products
7 except the following:

8 (1) RCW 62A.9-307; and

9 (2) RCW 62A.9-402.

10 A farm products statement constitutes a financing statement for the
11 purposes of the provisions of Parts 1 through 5 of chapter 62A.9 RCW.

12 NEW SECTION. **Sec. 3.** Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this part.

14 (1) "Commission merchant" means any person engaged in the business
15 of receiving any farm product for sale, on commission, or for or on
16 behalf of another person.

17 (2) "Obligor" means a debtor as defined in RCW 62A.9-105(d), a
18 seller of farm products pursuant to a purchase and sale contract, and
19 a person subject to a statutory lien.

20 (3) "Selling agent" means any person, other than a commission
21 merchant, who is engaged in the business of negotiating the sale and
22 purchase of any farm product on behalf of a person engaged in farming
23 operations.

24 NEW SECTION. **Sec. 4.** (1) In order to perfect a security
25 interest in farm products, a secured party under this Article or a
26 statutory lien claimant under chapters 60.11 and 60.13 RCW must file a

1 farm products statement in the office of the department of licensing.

2 The farm products statement must include the following information:

3 (a) The name and address of the obligor;

4 (b) The obligor's signature;

5 (c) The name, address, and signature of the secured party;

6 (d) The social security number of the obligor or, in the case of
7 an obligor doing business other than as an individual, the obligor's
8 federal internal revenue service taxpayer identification number;

9 (e) A description by category, as prescribed by rule under section
10 6 of this act, of the farm products subject to the security interest
11 including the amount of such products if applicable;

12 (f) A reasonable description of the real estate where the farm
13 products are produced or located. This provision may be satisfied by
14 a designation of the county or counties, and a legal description shall
15 not be required.

16 If a statutory lien claim is being filed, the farm products
17 statement shall include the additional information required by chapters
18 60.11 and 60.13 RCW.

19 (2) A secured party with a previously filed financing statement or
20 statutory lien claim is required to file a farm products statement.
21 The priority of the filing of the farm products statement shall relate
22 back to the filing date of the previously filed financing statement or
23 statutory lien claim. The secured party may file its farm products
24 statement during a thirty-day time period preceding the implementation
25 of the central filing system.

26 (3) A farm products statement must be amended in writing within
27 three months, and similarly signed and filed, to reflect any material
28 changes. In this Article, unless the context otherwise requires, the
29 term "farm products statement" means the original farm products
30 statement and any amendments.

1 (4) Notwithstanding any provisions to the contrary in RCW
2 62A.9-404, if a secured party fails to file a termination statement
3 within ten days after proper demand for the statement, the secured
4 party is liable to the debtor for one hundred dollars plus the sum of
5 one hundred dollars per day for each day between the date the
6 termination statement should have been filed and the date it is filed
7 and in addition for any loss caused to the debtor by the failure.

8 (5) A farm products statement may be filed before a security
9 agreement is made or a security interest otherwise attaches. A copy of
10 the security agreement is sufficient as a farm products statement if it
11 contains the above information and is signed by the debtor. A carbon,
12 photographic, or other reproduction of a security agreement or a farm
13 products statement is sufficient as a farm products statement if the
14 security agreement so provides or if the original has been filed in
15 this state.

16 (6) A farm products statement which otherwise complies with
17 subsection (1) of this section is sufficient when it is signed by the
18 secured party instead of the obligor if it is filed to perfect a
19 security interest in:

20 (a) Collateral already subject to a security interest in another
21 jurisdiction when it is brought into this state or when the obligor's
22 location is changed to this state. Such a farm products statement must
23 state that the collateral was brought into this state or that the
24 obligor's location was changed to this state under such circumstances;
25 or

26 (b) Proceeds under RCW 62A.9-306 if the security interest in the
27 original collateral was perfected. Such a farm products statement must
28 describe the original collateral; or

29 (c) Collateral as to which the filing has lapsed; or

1 (d) Collateral acquired after a change of name, identity, or
2 corporate structure of the debtor.

3 (7) A farm products statement substantially complying with the
4 requirements of this section is effective even though it contains minor
5 errors which are not seriously misleading.

6 NEW SECTION. **Sec. 5.** (1) The department of licensing shall
7 develop and implement a central filing system containing the
8 information filed with it pursuant to section 4 of this act. Under
9 this system, the department shall record the date and time of filing
10 and compile the information into a master list:

11 (a) That is capable of being reported according to categories of
12 farm products, further subdivided in the following ways:

13 (i) In alphabetical order according to the last name of the
14 individual obligors, or, in the case of obligors doing business other
15 than as individuals, the first word in the name of such obligors; and

16 (ii) In numerical order according to the social security number of
17 the individual obligors or, in the case of obligors doing business
18 other than as individuals, the internal revenue service taxpayer
19 identification number of such obligors; and

20 (iii) Geographically by county; and

21 (iv) By crop year; and

22 (b) That is capable of being reported by the obligor's name, social
23 security number, or tax identification number, by county, by crop year,
24 or by any other identifier determined by the department.

25 (2) The department of licensing shall maintain a list of all buyers
26 of farm products, commission merchants, selling agents, and other
27 persons who register with the department on a form indicating:

28 (a) The name and address of each buyer, commission merchant, and
29 selling agent;

1 (b) The interest of each buyer, commission merchant, and selling
2 agent in receiving the lists described in subsection (3) of this
3 section; and

4 (c) The farm products in which each buyer, commission merchant, and
5 selling agent has an interest.

6 (3) The department of licensing shall distribute periodically to
7 each registrant who subscribes to the service, a copy in written or
8 printed form of those portions of the master lists that cover the farm
9 products in which such buyer, commission merchant, or selling agent has
10 registered an interest.

11 (4) The information described in subsection (1) of this section
12 shall be made available to registrants through electronic data
13 transmission.

14 (5) The information described in subsection (1) of this section
15 shall be made available to registrants through a toll-free telephone
16 line.

17 (6) Upon the request of any person, the department of licensing
18 shall orally provide the information described in subsection (1) of
19 this section, followed by a written confirmation to be mailed within
20 twenty-four hours after the telephone call.

21 (7) Upon the request of any person, the department shall furnish
22 copies of particular filed farm products statements or statements of
23 assignment if the requestor provides the department with the file
24 numbers of the statement to be copied.

25 NEW SECTION. **Sec. 6.** The department of licensing shall:

26 (1) Apply for certification of the farm products central filing
27 system from the United States department of agriculture on or before
28 September 30, 1991;

1 (2) Fully implement the farm products central filing system
2 described in this part on or before July 1, 1992;

3 (3) Have the authority under chapter 34.05 RCW to adopt rules
4 regarding the following:

5 (a) Designation of the categories of farm products to be used in
6 compiling the master list;

7 (b) Distribution of the master lists to registrants;

8 (c) Establishment of the fee schedule for filing farm products
9 statements, registration of interested parties with the department, and
10 regular distribution, electronic transmission, or other transmission of
11 the information described in section 5 of this act. The annual fee for
12 registering with the department of licensing shall not exceed fifty
13 dollars; and

14 (d) Implementation of the operating farm products central filing
15 system;

16 (4) Assist buyers, commission merchants, selling agents, and other
17 persons by initially providing field training sessions or written
18 instruction on the utilization of the central filing system created by
19 this part;

20 (5) Study the following issues:

21 (a) The feasibility of cross-referencing social security numbers
22 and tax identification numbers, and cross-referencing both of those
23 numbers with a departmental numbering system;

24 (b) The feasibility of including all farm products liens, statutory
25 or otherwise, in the farm products central filing system.

26 NEW SECTION. **Sec. 7.** (1) A buyer who in the ordinary course
27 of business buys farm products from a person engaged in farming
28 operations buys and takes free of a security interest created by his or
29 her seller, and a commission merchant or selling agent who in the

1 ordinary course of business sells farm products for a person engaged in
2 farming operations buys, takes, and sells free of a security interest
3 created by his or her seller, even though the security interest is
4 perfected and the buyer, commission merchant, or selling agent knows of
5 the existence of such interest if, prior to the purchase of farm
6 products:

7 (a) The buyer, commission merchant, or selling agent has registered
8 with the department of licensing under section 5 of this act; and

9 (i) The secured party has not filed a farm products statement with
10 the department of licensing under section 4 of this act; or

11 (ii) The department of licensing fails to disclose a filed farm
12 products statement in its distribution of master lists or response to
13 inquiry from such buyer, commission merchant, or selling agent; or

14 (b) The buyer, commission merchant, or selling agent has obtained
15 a waiver from the secured party by performing any payment obligation or
16 otherwise.

17 (2) A buyer, commission merchant, or selling agent who is
18 registered with the department of licensing may give the department of
19 licensing verbal notice of intent to file by telephone and upon such
20 event, the department shall log the notice of intent to file in the
21 central filing system and provide the buyer, commission merchant, or
22 selling agent with a filing number. If the buyer, commission merchant,
23 or selling agent files a farm products statement in the department
24 containing the filing number within three business days, excluding
25 weekends and holidays, of the notice of intent to file, the filed farm
26 products statement shall relate back to the date and time the notice of
27 intent to file was logged in. If the buyer, commission merchant, or
28 selling agent fails to file a farm products statement with the required
29 information within the time period specified, the notice of intent to

1 file shall be void and removed from the filing system and any
2 subsequent farm products statement shall be effective when filed.

3 (3) Conflicting security interests in farm products created by farm
4 products statements rank according to priority in time of filing,
5 subject to subsection (2) of this section regarding the notice of
6 intent to file.

7 NEW SECTION. **Sec. 8.** (1) The risk of loss falls on the party
8 committing the error. If a secured party fails to properly complete or
9 file a farm products statement, the secured party bears the loss. If
10 a buyer, commission merchant, or selling agent fails to provide the
11 department of licensing with the correct information regarding the
12 debtor or fails to observe farm products statements properly disclosed
13 to them, the buyer, commission merchant, or selling agent bears the
14 loss. If the department of licensing fails to properly file or
15 disclose a farm products statement, the department is liable for any
16 losses or damages incurred as a result of such action or inaction.

17 (2) If an obligor signs a farm products statement which contains
18 an erroneous social security number or an erroneous tax identification
19 number, the obligor will be presumed to have committed fraud and will
20 be liable for all losses or damages incurred as a result of the
21 erroneous information. The obligor's liability is intended to be
22 nondischargeable in bankruptcy.

23 NEW SECTION. **Sec. 9.** The central filing system program fund
24 is created in the custody of the state treasurer. All receipts from
25 the fees collected by the director under this part shall be deposited
26 into the fund. Expenditures from the fund may be used only for the
27 purposes of sections 1 through 8 of this act. Only the director of
28 licensing or the director's designee may authorize expenditures from

1 the fund. The fund is subject to allotment procedures under chapter
2 43.88 RCW, but no appropriation is required for expenditures.

3 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act are
4 each added to chapter 62A.9 RCW as PART 6 under the subchapter heading
5 Farm Products Liens.

6 **Sec. 11.** RCW 62A.9-404 and 1982 c 186 s 7 are each amended to read
7 as follows:

8 (1) Whenever there is no outstanding secured obligation and no
9 commitment to make advances, incur obligations or otherwise give value,
10 the secured party must on written demand by the debtor send the debtor,
11 for each filing officer with whom the financing statement or farm
12 products statement was filed, a termination statement to the effect
13 that he no longer claims a security interest under the financing
14 statement, which shall be identified by file number. A termination
15 statement signed by a person other than the secured party of record
16 must be accompanied by a separate written statement of assignment
17 signed by the secured party of record complying with subsection (2) of
18 RCW 62A.9-405, including payment of the required fee. Except as
19 provided in section 4 of this act with respect to farm products
20 statements, if the affected secured party fails to file such a
21 termination statement as required by this subsection, or to send such
22 a termination statement within ten days after proper demand therefor he
23 shall be liable to the debtor for one hundred dollars, and in addition
24 for any loss caused to the debtor by such failure.

25 (2) On presentation to the filing officer of such a termination
26 statement he must note it in the index. If he has received the
27 termination statement in duplicate, he shall return one copy of the
28 termination statement to the secured party stamped to show the time of

1 receipt thereof. If the filing officer has substituted a copy by
2 microfilm or other photographic record of the financing statement, and
3 of any related continuation statement, statement of assignment and
4 statement of release, he may destroy the originals at any time, and
5 shall retain the substituted microfilm or other photographic record for
6 one year after receipt of the termination statement.

7 (3) There shall be no fee for filing and indexing a termination
8 statement including sending or delivering the financing statement or
9 farm products statement.

10 **Sec. 12.** RCW 60.11.040 and 1989 c 229 s 1 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (4) of this section with
13 respect to the lien of a landlord, any lien holder must after the
14 commencement of delivery of such supplies and/or of provision of such
15 services, but before the completion of the harvest of the crops for
16 which the lien is claimed, or in the case of a lien for furnishing work
17 or labor within twenty days after the cessation of the work or labor
18 for which the lien is claimed: (a) File a farm products statement
19 evidencing the lien with the department of licensing; and (b) if the
20 lien holder is to be allowed costs, disbursements, and attorneys' fees,
21 mail a copy of such statement to the last known address of the debtor
22 by certified mail, return receipt requested, within ten days.

23 (2) The statement shall be in writing, signed by the claimant, and
24 shall contain in substance the following information:

25 (a) The name and address of the claimant;

26 (b) The name and address of the debtor;

27 (c) The date of commencement of performance for which the lien is
28 claimed;

1 (d) A description of the labor services, materials, or supplies
2 furnished;

3 (e) A description of the crop and its location to be charged with
4 the lien sufficient for identification; and

5 (f) The signature of the claimant.

6 (3) The department of licensing may by rule prescribe standard
7 filing forms, fees, and uniform procedures for filing with, and
8 obtaining information from, filing officers(~~(, including provisions for~~
9 ~~filing crop liens together with financing statements filed pursuant to~~
10 ~~RCW 62A.9-401 so that one request will reveal all filed crop liens and~~
11 ~~security interests))).~~

12 (4) Any landlord claiming a lien under this chapter for rent shall
13 file a statement evidencing the lien with the department of licensing.
14 A lien for rent claimed by a landlord pursuant to this chapter shall be
15 effective during the term of the lease for a period of up to five
16 years. A landlord lien covering a lease term longer than five years
17 may be refiled in accordance with RCW 60.11.050(4). A landlord who has
18 a right to a share of the crop may place suppliers on notice by filing
19 evidence of such interest in the same manner as provided for filing a
20 landlord's lien.

21 **Sec. 13.** RCW 60.13.040 and 1987 c 189 s 7 and 1987 c 148 c 3 are
22 each reenacted and amended to read as follows:

23 (1) A producer or commercial fisherman claiming a processor or
24 preparer lien may file a farm products statement evidencing the lien
25 with the department of licensing after payment from the processor,
26 conditioner, or preparer to the producer or fisherman is due and
27 remains unpaid. For purposes of this subsection and RCW 60.13.050,
28 payment is due on the date specified in the contract, or if not
29 specified, then within thirty days from time of delivery.

1 (2) The statement shall be in writing, verified by the producer or
2 fisherman, and shall contain in substance the following information:

3 (a) A true statement of the amount demanded after deducting all
4 credits and offsets;

5 (b) The name of the processor, conditioner, or preparer who
6 received the agricultural product or fish to be charged with the lien;

7 (c) A description sufficient to identify the agricultural product
8 or fish to be charged with the lien;

9 (d) A statement that the amount claimed is a true and bona fide
10 existing debt as of the date of the filing of the notice evidencing the
11 lien;

12 (e) The date on which payment was due for the agricultural product
13 or fish to be charged with the lien; and

14 (f) The department of licensing may by rule prescribe standard
15 filing forms, fees, and uniform procedures for filing with, and
16 obtaining information from, filing officers.

17 NEW SECTION. **Sec. 14.** The sum of one hundred six thousand
18 dollars, or as much thereof as may be necessary, is appropriated for
19 the biennium ending June 30, 1993, from the general fund to the
20 department of licensing for the purposes of this act. The amount spent
21 shall be repaid to the general fund before the end of the biennium
22 ending June 30, 1995, from the fees imposed pursuant to section 6 of
23 this act.

24 NEW SECTION. **Sec. 15.** The department of licensing shall report
25 to the legislature in December 1991 and December 1992 as to the
26 implementation, operation, and certification of the central filing
27 system. The report shall be directed to the house of representatives
28 and senate agriculture committees

1 NEW SECTION. **Sec. 16.** Sections 2 through 4 and 6 through 13 of
2 this act shall take effect July 1, 1992.

3 NEW SECTION. **Sec. 17.** Sections 1 and 5 of this act are
4 necessary for the immediate preservation of the public peace, health,
5 or safety, or support of the state government and its existing public
6 institutions, and shall take effect July 1, 1991.

7 The director of licensing may immediately take such steps as are
8 necessary to ensure that this act is implemented on its effective
9 dates.

10 NEW SECTION. **Sec. 18.** This act may be cited as the Washington
11 farm products central filing act.

12 NEW SECTION. **Sec. 19.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 20.** This act shall expire on June 30, 1997,
17 unless extended by law for an additional fixed period of time.