

HOUSE BILL REPORT

HB 2086

*As Reported By House Committee on:
Judiciary*

Title: An act relating to security interests in farm crops.

Brief Description: Creating a central filing system for security interests in farm crops.

Sponsor(s): Representative Appelwick.

Brief History:

Reported by House Committee on:
Judiciary, March 6, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 2086 be substituted therefor, and the substitute bill do pass.*
Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Susan Kirkpatrick (786-7291).

Background: Under Washington law, farm products purchased in the ordinary course of business are taken subject to existing security interests. For example, if the Bank holds a perfected security interest in all of Farmer Jones' livestock, the Bank can repossess the cattle or the proceeds of the cattle, e.g., steaks, from the food processors or the grocery store.

In 1985, federal law preempted Washington law in this area. It provides that farm products purchased in the ordinary course of business are taken subject to security interests only when the secured party gives buyers actual written notice of the security interest or when notice is given through a central filing system certified by the United States Department of Agriculture. Washington does not have a farm products central filing system which has been certified by the United States Department of Agriculture. At this time, secured parties can enforce their security

interests against buyers only if they provide direct notice of their security interest to the buyers.

Summary of Substitute Bill: A central filing system for security interests in farm products is established in the Department of Licensing. The central filing system is subject to review and certification by the U.S. Department of Agriculture (USDA). The Department of Licensing is required to apply for certification of the central filing system from the USDA on or before September 30, 1991, to report to the Legislature regarding implementation of the system in December 1991 and to implement the central filing system on or before July 1, 1992.

All parties with a security interest in farm products, including statutory lien claimants regarding crop liens and processor and preparer liens, are required to file a farm products notice statement in the Department of Licensing.

The Department of Licensing is required to organize the filing information into a master list that is capable of being reported according to farm categories further broken down into various subcategories. In addition, the master list must be capable of being reported according to obligor name, obligor social security number or tax identification number, by county, by crop year, or other identifiers developed by the department.

The Department of Licensing is required to distribute the master list, or relevant portions of it, to all parties registered with the department who subscribe to the service. The department is also required to make the filing information available to registrants through electronic data transmission and through a toll-free telephone line. In addition, the department is required to orally provide the filing information to any person requesting it, followed by a written confirmation to be mailed within 24 hours after the call.

A buyer, commission merchant, or selling agent of farm products takes free of a security interest if they have registered with the Department of Licensing, and either the secured party has filed a farm products statement or the department has failed to properly disclose a filed farm products statement. The buyer, commission merchant, or selling agent who has registered with the department may give the department verbal notice of intent, which is logged into the central filing system. If the buyer, commission merchant, or selling agent filed a farm products statement within three business days, excluding weekends and holidays, of the notice of intent to file, the filed farm products statement relates back to the date and time the notice of

intent was logged in. Priority is determined according to priority in time of filing.

The risk of loss falls on the party committing the error.

Substitute Bill Compared to Original Bill: Implementation of the central filing system is postponed until July 1, 1992, instead of being implemented immediately. The Department of Licensing is required to report to the Legislature in December 1991 and December 1992 instead of December 1992 and December 1994. A new part of the Uniform Commercial Code (UCC) is created to cover security interests in farm products rather than amending existing UCC provisions. All parties with a security interest in farm products, including certain statutory lien claimants, are required to file a farm products statement. New provisions regarding risk of loss and obligor liability for fraud, as well as a sunset clause, are added.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Original Bill: Central filing is a better way of doing things and will be helpful for everyone. Direct notice is not efficient or cost effective. This bill will be an enhancement for continuing agricultural financing. Priorities are not changed.

Testimony Against: Original Bill: There are two major concerns. One is that a larger burden of risk will be transferred to the buyer. Now, buyers have risk only when they get direct notice from a secured party. The second concern is cost. The bill gives the Department of Licensing a blank check to recover costs. The direct notice system is working beautifully. The risk for double payment is greater with a central filing system than direct notice.

Witnesses: Original Bill: Dave Klick, Washington Food Processors Council (opposed); Lou Hiett, Twin City Foods (opposed); Ron Ellis, Nalley's Fine Foods (opposed); Craig Smith, Northwest Food Processors Association (opposed); Trevor Sandison, Washington Bankers Association (in favor); Joe Niemer, Security Pacific Bank, Washington (in favor); Jonathan Schlueter, Pacific Northwest Grain and Feed Association (opposed); and Karl Kottman, Washington Council of Farm Crops (opposed).