

HOUSE BILL REPORT

ESHB 2086

*As Passed House
March 20, 1991*

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

Brief History:

Reported by House Committee on:
Judiciary, March 6, 1991, DPS;
Appropriations, March 9, 1991, DPS(JUD)-A;
Passed House, March 20, 1991, 89-9.

**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).

**HOUSE COMMITTEE ON
APPROPRIATIONS**

Majority Report: *The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass.* Signed by 23 members: Representatives Locke, Chair; Inslee, Vice Chair; Silver, Ranking Minority Member; Morton, Assistant Ranking Minority Member; Belcher; Braddock; Brekke; Dorn; Ebersole; Ferguson; Hine; May; McLean; Mielke; Nealey; Pruitt; Rust; H. Sommers; Sprenkle; Valle; Vance; Wang; and Wineberry.

Minority Report: *Without recommendation.* Signed by 2 members: Representatives Bowman; and Fuhrman.

Staff: Susan Kavanaugh (786-7130).

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 Bill: A central filing system for security interests in farm products is established in the Department of Licensing. Implementation of the central filing system is contingent upon 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; if the system has been certified on or before May 1, 1992, to implement the central filing system on or before July 1, 1992; and if the system is certified after May 1, 1992 but before May 1, 1993, the central filing system shall be implemented on July 1, 1993.

All parties with a security interest in farm products, including statutory lien claimants regarding crop liens and processor and preparer liens and all secured parties with a previously filed financing statement or statutory lien claim, are required to file a farm products notice statement in the Department of Licensing. Registrants may give the department verbal notice of intent, which is logged into the central filing system. If a farm products statement is filed 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 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 departmental numbering system which is cross-referenced with the social security number, the tax identification number, and the name of the obligor.

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 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, or the buyer, commission merchant, or selling agent has filed a farm products statement before the secured party has filed a farm products statement. Additionally, a buyer, commission merchant, or selling agent takes free of a security interest if they do not receive direct notice of a security interest from the secured party or a seller, within one year before the sale of the farm products or before the filing of a farm products statement by the buyer, commission merchant, or selling agent.

The risk of loss caused by an error falls on the party committing the error. An obligor who signs a farm products statement with erroneous information regarding the obligor is liable for all losses or damages incurred as a result of the erroneous information; the obligor will be presumed to have committed fraud and the obligor's liability share will be non-dischargeable in bankruptcy.

Fiscal Note: Not requested.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For: (Judiciary): 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.

(Appropriations): Keeping track of agricultural liens is complex. Central filing will be more efficient for farmers and food processors, as well as bankers. The program will be fully fee supported after the start-up phase. Food processors are not fully satisfied with the bill, but support it as a vehicle for continued negotiation.

Testimony Against: (Judiciary): 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.

(Appropriations): None.

Witnesses: (Judiciary): 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).

(Appropriations): Trevor Sandison, Washington Bankers Association (in favor); and Mr. Fritz, Washington Food Processors (in favor).