

SENATE BILL REPORT

ESHB 2086

AS REPORTED BY COMMITTEE ON AGRICULTURE & WATER RESOURCES,  
APRIL 5, 1991

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

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

HOUSE COMMITTEE ON JUDICIARY

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON AGRICULTURE & WATER RESOURCES

**Majority Report:** Do pass as amended.

Signed by Senators Barr, Chairman; Conner, Gaspard, Hansen, and Newhouse.

**Staff:** Steve Nelsen (786-7535)

**Hearing Dates:** March 28, 1991; April 5, 1991

**BACKGROUND:**

In 1985, federal law preempted Washington law regarding security interests in farm products to provide 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 so secured parties in this state can enforce their security interests against buyers only if they provide direct notice of their security interest to the buyers.

**SUMMARY:**

A central filing system for security interests in farm products is established in the Department of Licensing.

All parties with a security interest in farm products, including some statutory lien claimants and parties with a previously filed financing statement or statutory lien, are required to file a farm products statement with 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 selected categories and subcategories. In addition, the central filing system must be capable of cross-referencing the grower's name, social security number, and tax identification number.

The Department of Licensing is required to distribute the master list, or requested 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 information to any person requesting it, followed by written confirmation to be mailed within 24 hours after the call.

Registrants may give the department verbal notice of intent to file a farm products statement, which is logged into the central filing system. If the 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 to file was logged in. Priority is determined according to priority in time of filing but the existing rules of priority regarding statutory liens are unchanged.

A buyer, commission merchant, or selling agent buys 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; 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 buys 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.

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.

**Appropriation:** none

**Revenue:** yes

**Fiscal Note:** none requested

**SUMMARY OF PROPOSED SENATE AMENDMENT:**

A buyer, commission merchant, or selling agent who has registered with the Department of Licensing does not buy and take free and clear of a security interest if they file a farm products statement before the secured party files a farm products statement.

**TESTIMONY FOR:**

Requiring direct notice of secured interests to buyers is difficult, inefficient, and not cost effective. The development of a central filing system will enhance the availability of agricultural financing. Existing lien priorities are not changed. Discovery of agricultural liens will be eased. The program will be funded by fees after the start-up phase.

**TESTIMONY AGAINST:**

A central filing system creates a greater risk that a buyer will be required to make a double payment. Performing the searches required under a central filing system will result in greatly increased administrative costs for buyers of farm products. Direct notice is working and has worked for six years. Central filing systems operated by other states have performed very poorly.

**TESTIFIED:** Ron Ellis, Nalley's Fine Foods (con); Dennis Conley, Basic American Foods (con); Lou Hiatt, Twin City Foods (con); Dave Klick, Washington Food Processing Council (con); William Van Valkenberg, Bogle and Gates (con); Les Clemons, Washington Seed Council (con); John Gilbert, Bank of Latah (pro); Douglas Marshall, Darigold (con); Jonathan F. Schlueter, Pacific Northwest Grain and Feed Association (con); Maryta Deck, Washington Cattlemen's Association (con); Karl Kottman, Washington Council Farm Coops (con); Trevor Sandison, Washington Bankers Association (pro)