
ENGROSSED 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 60.11.040; reenacting and amending RCW 60.13.040; adding new sections
3 to chapter 62A.9 RCW; creating new sections; providing a contingent
4 effective date; providing an effective date; and declaring an
5 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, 2, 3,
6 and 5 of chapter 62A.9 RCW apply to security interests in farm products
7 except RCW 62A.9-307. A farm products statement constitutes a
8 financing statement for the purposes of the provisions of Parts 1, 2,
9 3, and 5 of chapter 62A.9 RCW. Part 4 of chapter 62A.9 RCW does not
10 apply to security interests in farm products.

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

13 (1) "Buyer of farm products" means any person, who buys farm
14 products in the ordinary course of business from a person engaged in
15 farming operations who is in the business of selling farm products.

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

19 (3) "Farm products" means crops or livestock or supplies used or
20 produced in farming operations or products of crops or livestock in
21 their unmanufactured states, such as ginned cotton, wool-clip, maple
22 syrup, milk and eggs, which are in the possession of an obligor engaged
23 in raising, fattening, grazing, or other farming operations.

24 (4) "Obligor" means a debtor as defined in RCW 62A.9-105(d), a
25 seller of farm products pursuant to a purchase and sale contract, or a
26 person subject to a statutory lien.

27 (5) "Purchase and sale agreement" means a written agreement by
28 which a seller of farm products agrees to sell and a buyer agrees to

1 purchase certain farm products. Such a purchase and sale agreement
2 creates a contract interest in the described farm products between the
3 obligor and the buyer of farm products, whether or not money is
4 advanced to the seller by the buyer.

5 (6) "Security agreement" means an agreement which creates or
6 provides for a security interest, which may be perfected by the filing
7 of a farm products statement.

8 (7) "Secured party" means a lender, seller, or other person in
9 whose favor there is a security interest in farm products.

10 (8) "Selling agent" means any person, other than a commission
11 merchant, who is engaged in the business of negotiating the sale and
12 purchase of any farm product on behalf of a person engaged in farming
13 operations.

14 NEW SECTION. **Sec. 4.** (1) In order to perfect a security
15 interest in farm products, a secured party or a statutory lien claimant
16 under chapters 60.11 and 60.13 RCW, must file a farm products statement
17 in the office of the department of licensing. In order to perfect a
18 contract interest in farm products, a buyer of farm products must file
19 a farm products statement in the office of the department of licensing.

20 (2)(a) Except as provided in (b) of this subsection, a farm
21 products statement is filed when the department of licensing has
22 received the farm products statement, the appropriate filing fee has
23 been tendered, and the farm products statement is entered into the
24 central filing system.

25 (b) Any party who is registered with the department of licensing
26 may give the department of licensing verbal notice of intent to file a
27 farm products statement by telephone. The department shall log the
28 notice of intent to file in the central filing system and provide the
29 registrant telephoning a log-in number. If the person calling in files

1 a farm products statement in the department containing the log-in
2 number within three business days, excluding weekends and holidays, of
3 the telephonic notice of intent to file, the filed farm products
4 statement shall relate back to the date and time the notice of intent
5 to file was logged in. If the person calling fails to file a farm
6 products statement with the required information within the time period
7 specified, any subsequent farm products statement shall be effective
8 when filed but shall not relate back in time to the telephonic notice
9 of intent to file.

10 (3) The farm products statement must include the following
11 information:

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

13 (b) The obligor's signature;

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

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

18 (e) A description by category, as prescribed by rule under section
19 13 of this act, of the farm products subject to the security interest
20 or contract interest including the amount of such products if
21 applicable; and

22 (f) A reasonable description of the real estate where the farm
23 products are produced. This provision may be satisfied by a
24 designation of the county or counties, and a legal description shall
25 not be required.

26 If a statutory lien claim is being filed, the farm products
27 statement shall include the additional information required by chapters
28 60.11 and 60.13 RCW.

29 (4) A farm products statement must be amended in writing within
30 three months, and similarly signed and filed, to reflect any material

1 changes, including assignment of the security interest or contract
2 interest. In this Article, unless the context otherwise requires, the
3 term "farm products statement" means the original farm products
4 statement and any amendments.

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

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

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

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

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

29 (d) Collateral acquired after a change of name, identity, or
30 corporate structure of the obligor.

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

4 NEW SECTION. **Sec. 5.** A secured party with a previously filed
5 financing statement or statutory lien claim covering farm products is
6 required to file a farm products statement. The secured party may, at
7 its option, reference the previously filed financing statement or
8 statutory lien claim on the farm products statement and the signature
9 of the debtor/obligor on the previously filed statement or lien claim
10 shall constitute compliance with the obligor signature requirement
11 under section 4(3)(b) of this act. The priority of the filing of the
12 farm products statement shall relate back to the filing date of the
13 previously filed financing statement or statutory lien claim, for the
14 purposes of determining priority against other farm products statements
15 filings made under this section. The secured party with a previously
16 filed financing statement or statutory lien claim covering farm
17 products may file its farm products statement anytime during a thirty-
18 day time period preceding the implementation of the central filing
19 system.

20 NEW SECTION. **Sec. 6.** (1) Except as provided in subsection (2)
21 of this section, conflicting security interests and contract interests
22 in farm products created by farm products statements rank according to
23 priority in time of filing.

24 (2) The priorities set forth in chapter 60.11 RCW regarding crop
25 liens and in chapter 60.13 RCW regarding processor and preparer liens
26 shall govern the priorities regarding security interests and contract
27 interests in farm products where applicable.

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

9 (a) The buyer, commission merchant, or selling agent has registered
10 with the department of licensing under section 12 of this act, and:

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

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

16 (iii) The buyer, commission merchant, or selling agent has filed a
17 farm products statement before the secured party has filed a farm
18 products statement; or

19 (b) The buyer of farm products, commission merchant, or selling
20 agent has not received from the secured party or seller, within one
21 year before the sale of the farm products or before the filing of a
22 farm products statement by the buyer of farm products, commission
23 merchant, or selling agent, written notice of the security interest
24 containing:

25 (i) The name and address of the secured party;

26 (ii) The name and address of the obligor;

27 (iii) The social security number of the obligor or, in the case of
28 an obligor doing business other than as an individual, the obligor's
29 federal internal revenue service taxpayer identification number;

1 (iv) A description by category of the farm products subject to the
2 security interest, including the amount of such products, if
3 applicable;

4 (v) The crop year;

5 (vi) The county or counties where the farm products are produced
6 and, if less than all of such farm products in a county are claimed, a
7 reasonable description of the real property; and

8 (vii) Any payment obligations imposed by the secured party as a
9 condition for waiver or release of the security interest; or

10 (c) The buyer, commission merchant, or selling agent has obtained
11 a waiver from the secured party by performing any payment obligation or
12 otherwise.

13 NEW SECTION. **Sec. 7.** (1) A filed farm products statement is
14 effective for a period of five years from the date of filing unless a
15 shorter time period is elected by the person filing the statement. A
16 person electing a shorter time period shall indicate the time period of
17 effectiveness on the farm products statement and the statement shall
18 automatically terminate upon expiration of the time period elected. If
19 the person filing the statement fails to make an election, the filing
20 party is required to file a termination statement under section 8 of
21 this act if they wish to terminate the statement prior to the
22 expiration of the five-year period. The effectiveness of a filed farm
23 products statement lapses on the expiration of the applicable time
24 period, unless a continuation statement is filed prior to the lapse.

25 (2) A continuation statement may be filed by the secured party or
26 buyer of farm products regarding a farm products statement within six
27 months prior to the expiration of the five-year or other applicable
28 time period specified in subsection (1) of this section. Any such
29 continuation statement must be signed by the secured party or buyer of

1 farm products, must identify the original statement by file number, and
2 must state that the original statement is still effective.

3 (3) Upon timely filing of the continuation statement, the
4 effectiveness of the original statement is continued for the same time
5 period as the original statement, from the date it would have expired
6 whereupon it lapses in the same manner as provided in subsection (1) of
7 this section unless another continuation statement is filed prior to
8 such lapse. Succeeding continuation statements may be filed in the
9 same manner to continue the effectiveness of the original statement.

10 (4) If a filed farm products statement exists at the time
11 insolvency proceedings are commenced by or against the obligor, the
12 farm products statement remains in effect until termination of the
13 insolvency proceedings and thereafter for a period of sixty days, or
14 until expiration of the applicable time period, whichever occurs later.

15 (5) Upon lapse of the farm products statement, the security
16 interest or contract interest in the farm products becomes unperfected
17 and the farm products statement is void and of no further force and
18 effect. If the security interest or contract interest becomes
19 unperfected upon lapse, it is deemed to have been unperfected as
20 against a person who became a purchaser or lien creditor before lapse.

21 NEW SECTION. **Sec. 8.** (1) A secured party or buyer of farm
22 products is required to file a termination statement with the
23 department of licensing whenever there is no outstanding secured
24 obligation and no commitment to make advances, incur obligations, or
25 otherwise give value. The termination statement must provide that the
26 secured party or buyer of farm products no longer claims a security
27 interest or contract interest under the farm products statement, which
28 shall be identified by file number.

1 (2) If a secured party or a buyer of farm products who has filed a
2 farm products statement fails to file a termination statement regarding
3 that farm products statement as required under subsection (1) of this
4 section, the obligor may demand in writing that the secured party or
5 buyer of farm products file a termination statement. If a secured
6 party or buyer of farm products fails to file the termination statement
7 within ten days of demand by the obligor, then the secured party or
8 buyer of farm products shall be liable to the obligor for the sum of
9 one hundred dollars plus an additional one hundred dollars per day for
10 each day of delay without reasonable excuse between the date the
11 termination statement should have been filed and the date it is filed,
12 plus compensation for any loss caused to the obligor by the failure.

13 NEW SECTION. **Sec. 9.** A secured party or buyer of farm
14 products of record may by his or her signed statement release all or a
15 part of any collateral described in a filed farm products statement.
16 The statement of release is sufficient if it contains a description of
17 the collateral being released, the name and address of the obligor, the
18 name and address of the secured party or buyer of farm products, and
19 the file number of the farm products statement.

20 NEW SECTION. **Sec. 10.** (1) A farm products statement may
21 disclose an assignment of a security interest or contract interest in
22 the collateral described in the farm products statement by indication
23 in the farm products statement of the name and address of the assignee
24 or by an assignment itself or a copy thereof on the face or back of the
25 statement.

26 (2) A secured party or buyer of farm products may assign all or a
27 part of his or her rights under a farm products statement by the filing
28 in the department of licensing of an amended farm products statement

1 providing the name and address of the assignee as the secured party or
2 buyer of farm products in addition to the other information required in
3 a farm products statement.

4 (3) After the disclosure or filing of an amended farm products
5 statement under this section, the assignee shall be the secured party
6 or buyer of farm products of record.

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

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

25 NEW SECTION. **Sec. 12.** (1) The department of licensing shall
26 develop and implement a central filing system containing the
27 information filed with it pursuant to section 4(3) of this act. Under

1 this system, the department shall record the date and time of filing
2 and compile the information into a master list:

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

5 (i) In alphabetical order according to the last name of the
6 individual obligors, or, in the case of obligors doing business other
7 than as individuals, the first word not an article in the name of such
8 obligors; and

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

13 (iii) Geographically by county; and

14 (iv) By crop year; and

15 (b) That is capable of being reported by a departmental numbering
16 system which shall be cross-referenced with the social security number,
17 the tax identification number, and the name of the obligor.

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

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

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

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

28 (3) The department of licensing shall distribute periodically to
29 each registrant who subscribes to the service, a copy in written or
30 printed form of those portions of the master lists that cover the farm

1 products in which such buyer, commission merchant, or selling agent has
2 registered an interest.

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

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

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

13 (7) Upon the request of any person, the department shall furnish
14 copies of particular filed farm products statements if the requestor
15 provides the department with the file numbers of the statement to be
16 copied.

17 (8) The department shall mark each farm products statement,
18 termination statement, and statement of release with a file number and
19 with the date and hour of filing and shall hold the statement or a
20 microfilm or other photographic copy of the statement for public
21 inspection. The original statement may be destroyed at any time after
22 a microfilm or other photographic copy is made of the original
23 statement. This microfilm or other photographic copy shall thereafter
24 be treated as if it were the original filing for all purposes. The
25 original, microfilm, or photographic record of any lapsed farm product
26 statement shall not be destroyed earlier than one year after the lapse
27 of such statement.

28 NEW SECTION. **Sec. 13.** The department of licensing shall:

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

4 (2) Fully implement the farm products central filing system as
5 provided in this part;

6 (3) Develop a proposed fee schedule for filing farm products
7 statements, registration of interested parties with the department, and
8 regular distribution, electronic transmission, or other transmission of
9 the information described in section 12 of this act. The fees
10 established must be set in a sufficient amount to recover the initial
11 request appropriation within three years after the appropriation is
12 made. The annual fee for registering with the department of licensing
13 shall not exceed fifty dollars. There shall be no fee for filing a
14 termination statement. The actual fee schedule must be adopted by the
15 legislature during the 1992 legislative session;

16 (4) Have the authority under chapter 34.05 RCW to adopt rules
17 necessary to implement this part, including:

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

20 (b) Distribution of the master lists to registrants; and

21 (c) Implementation of the operating farm products central filing
22 system;

23 (5) Assist buyers, commission merchants, selling agents, and other
24 persons by initially providing field training sessions or written
25 instruction on the utilization of the central filing system created by
26 this part; and

27 (6) Study the following issues:

28 (a) The feasibility of including all farm products liens, statutory
29 or otherwise, in the farm products central filing system; and

1 (b) The impact of (a) of this subsection on proposed fees for
2 central filing.

3 NEW SECTION. **Sec. 14.** The central filing system program fund
4 is created in the custody of the state treasurer. All receipts from
5 the fees collected by the director under this part shall be deposited
6 into the fund. Expenditures from the fund may be used only for the
7 purposes of sections 1 through 13 of this act. Only the director of
8 licensing or the director's designee may authorize expenditures from
9 the fund. The fund is subject to allotment procedures under chapter
10 43.88 RCW, but no appropriation is required for expenditures.

11 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act are
12 each added to chapter 62A.9 RCW as Part 6 under the subchapter heading
13 "farm products liens.

14 **Sec. 16.** RCW 60.11.040 and 1989 c 229 s 1 are each amended to read
15 as follows:

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

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

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

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

5 (c) The date of commencement of performance for which the lien is
6 claimed;

7 (d) A description of the labor services, materials, or supplies
8 furnished;

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

11 (f) The signature of the claimant.

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

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

27 **Sec. 17.** RCW 60.13.040 and 1987 c 189 s 7 and 1987 c 148 s 3 are
28 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 18.** 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 judiciary and agriculture
28 committees of the house of representatives and the law and justice and
29 agriculture committees of the senate.

1 NEW SECTION. **Sec. 19.** The effectiveness of sections 2 through
2 12 and 14 through 17 of this act is contingent on certification of the
3 central filing system by the United States department of agriculture.
4 Sections 2 through 12 and 14 through 17 of this act shall take effect
5 July 1, 1992, if the central filing system has been certified by May 1,
6 1992. If certification is not received by May 1, 1992, but is received
7 by May 1, 1993, sections 2 through 12 and 14 through 17 of this act
8 shall take effect July 1, 1993.

9 NEW SECTION. **Sec. 20.** Sections 1, 13, and 18 of this act are
10 necessary for the immediate preservation of the public peace, health,
11 or safety, or support of the state government and its existing public
12 institutions, and shall take effect July 1, 1991.

13 The director of licensing may immediately take such steps as are
14 necessary to ensure that this act is implemented on its effective date.

15 NEW SECTION. **Sec. 21.** This act may be cited as the Washington
16 farm products central filing act.

17 NEW SECTION. **Sec. 22.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.