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HOUSE BILL 2086

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representative Appelwick.

Read first time February 21, 1991. Referred to Committee on Judiciary.

1            AN ACT Relating to security interests in farm crops; amending RCW  
2 62A.9-307, 62A.9-402, and 62A.9-407; adding new sections to chapter  
3 62A.9 RCW; creating new sections; prescribing penalties; making an  
4 appropriation; providing an effective date; and declaring an emergency.

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

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

14            Accordingly, it is the intent of the legislature to promote the  
15 development of a central filing system as provided in 7 U.S.C. Sec.

1 1631 and to encourage private businesses to provide for expeditious  
2 discovery of liens and security interests in farm products.

3 **Sec. 2.** RCW 62A.9-307 and 1987 c 393 s 15 are each amended to read  
4 as follows:

5 (1) A buyer in ordinary course of business (subsection (9) of RCW  
6 62A.1-201) other than a person buying farm products from a person  
7 engaged in farming operations takes free of a security interest created  
8 by his seller even though the security interest is perfected and even  
9 though the buyer knows of its existence.

10 (2) A buyer who in the ordinary course of business buys farm  
11 products from a person engaged in farming operations buys and takes  
12 free of a security interest created by his or her seller, and a  
13 commission merchant or selling agent who in the ordinary course of  
14 business sells farm products for a person engaged in farming operations  
15 buys, takes, and sells free of a security interest created by his or  
16 her seller, even though the security interest is perfected and the  
17 buyer, commission merchant, or selling agent knows of the existence of  
18 such interest if:

19 (a) The buyer, commission merchant, or selling agent has registered  
20 with the department of licensing pursuant to RCW 62A.9-407(4); and

21 (i) The secured party has not filed an effective farm products  
22 notice statement with the department of licensing pursuant to RCW  
23 62A.9-402(9); or

24 (ii) Such buyer, commission merchant, or selling agent does not  
25 receive from the department of licensing written notice that specifies  
26 the seller and farm product pursuant to RCW 62A.9-407(3), (5), (6), and  
27 (8); or

1       (b) The secured party has not filed an effective farm products  
2 notice statement pursuant to RCW 62A.9-402(9) and the buyer, commission  
3 merchant, or selling agent has not received within one year before the  
4 sale from the secured party or seller written notice of the security  
5 interest containing:

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

7       (ii) The name and address of the debtor;

8       (iii) The social security number of the debtor or, in the case of  
9 a debtor doing business other than as an individual, the debtor's  
10 federal internal revenue service taxpayer identification number;

11       (iv) A description by category of the farm products subject to the  
12 security interest, including the amount of such products, if  
13 applicable;

14       (v) The crop year;

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

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

20       The notice described in this subsection (b) must be amended in  
21 writing within three months and similarly signed and transmitted, to  
22 reflect material changes; or

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

26       (3) In the case of consumer goods, a buyer takes free of a security  
27 interest even though perfected if he buys without knowledge of the  
28 security interest, for value and for his own personal, family or  
29 household purposes unless prior to the purchase the secured party has  
30 filed a financing statement covering such goods.

1       (~~(3)~~) (4) A buyer other than a buyer in ordinary course of  
2 business (subsection (1) of this section) takes free of a security  
3 interest to the extent that it secures future advances made after the  
4 secured party acquires knowledge of the purchase, unless made pursuant  
5 to a commitment entered into without knowledge of the purchase.

6       **Sec. 3.** RCW 62A.9-402 and 1989 c 251 s 2 are each amended to read  
7 as follows:

8       (1) Except as provided in subsection (9) of this section, a  
9 financing statement is sufficient if it gives the names of the debtor  
10 and the secured party, is signed by the debtor, gives an address of the  
11 secured party from which information concerning the security interest  
12 may be obtained, gives a mailing address of the debtor and contains a  
13 statement indicating the types, or describing the items, of collateral.  
14 A financing statement may be filed before a security agreement is made  
15 or a security interest otherwise attaches. When the financing  
16 statement covers timber to be cut or covers minerals or the like  
17 (including oil and gas) or accounts subject to subsection (5) of RCW  
18 62A.9-103, or when the financing statement is filed as a fixture filing  
19 (RCW 62A.9-313) and the collateral is goods which are or are to become  
20 fixtures, the statement must also comply with subsection (5). A copy  
21 of the security agreement is sufficient as a financing statement if it  
22 contains the above information and is signed by the debtor. A carbon,  
23 photographic or other reproduction of a security agreement or a  
24 financing statement is sufficient as a financing statement if the  
25 security agreement so provides or if the original has been filed in  
26 this state.

27       (2) A financing statement which otherwise complies with subsection  
28 (1) is sufficient when it is signed by the secured party instead of the  
29 debtor if it is filed to perfect a security interest in

1 (a) collateral already subject to a security interest in another  
2 jurisdiction when it is brought into this state or when the debtor's  
3 location is changed to this state. Such a financing statement must  
4 state that the collateral was brought into this state or that the  
5 debtor's location was changed to this state under such circumstances;  
6 or

7 (b) proceeds under RCW 62A.9-306 if the security interest in the  
8 original collateral was perfected. Such a financing statement must  
9 describe the original collateral; or

10 (c) collateral as to which the filing has lapsed; or

11 (d) collateral acquired after a change of name, identity or  
12 corporate structure of the debtor (subsection (7)).

13 (3) A form substantially as follows is sufficient to comply with  
14 subsection (1):

15 Name of debtor (or assignor) .....  
16 Address .....  
17 Name of secured party (or assignee) .....  
18 Address .....

19 1. This financing statement covers the following types (or  
20 items) of property:

21 (Describe) .....

22 2. (If applicable) The above goods are to become fixtures on\*  
23 (Describe Real Estate) .....

24 and this financing statement is to be filed for record in  
25 the real estate records. (If the debtor does not have an  
26 interest of record) The name of a record owner is .....

27 \* Where appropriate substitute either "The above timber  
28 is standing on ....." or "The above minerals or  
29 the like (including oil and gas) or accounts will be

1                   financed at the wellhead or minehead of the well or  
2                   mine located on .....

3           3.   (If products of collateral are claimed)  
4           Products of the collateral are also covered .....

5           (use	.....
6           whichever	Signature of Debtor (or Assignor)
7           is	.....
8           applicable)	Signature of Secured Party (or Assignee)

9           (4) A financing statement may be amended by filing a writing signed  
10 by both the debtor and the secured party: PROVIDED, That a secured  
11 party may amend a financing statement without the signature of the  
12 debtor when the amendment is to change the address or name of the  
13 secured party. An amendment does not extend the period of  
14 effectiveness of a financing statement. If any amendment adds  
15 collateral, it is effective as to the added collateral only from the  
16 filing date of the amendment. In this Article, unless the context  
17 otherwise requires, the term "financing statement" means the original  
18 financing statement and any amendments. The fee for filing an  
19 amendment shall be the same as the fee for filing a financing  
20 statement.

21           (5) A financing statement covering timber to be cut or covering  
22 minerals or the like (including oil and gas) or accounts subject to  
23 subsection (5) of RCW 62A.9-103, or a financing statement filed as a  
24 fixture filing (RCW 62A.9-313) where the debtor is not a transmitting  
25 utility, must show that it covers this type of collateral, must recite  
26 that it is to be filed for record in the real estate records, and the  
27 financing statement must contain a description of the real estate  
28 sufficient if it were contained in a mortgage of the real estate to  
29 give constructive notice of the mortgage under the law of this state.

1 If the debtor does not have an interest of record in the real estate,  
2 the financing statement must show the name of a record owner.

3 (6) A mortgage is effective as a financing statement filed as a  
4 fixture filing from the date of its recording if (a) the goods are  
5 described in the mortgage by item or type, (b) the goods are or are to  
6 become fixtures related to the real estate described in the mortgage,  
7 (c) the mortgage complies with the requirements for a financing  
8 statement in this section other than a recital that it is to be filed  
9 in the real estate records, and (d) the mortgage is duly recorded. No  
10 fee with reference to the financing statement is required other than  
11 the regular recording and satisfaction fees with respect to the  
12 mortgage.

13 (7) A financing statement sufficiently shows the name of the debtor  
14 if it gives the individual, partnership or corporate name of the  
15 debtor, whether or not it adds other trade names or the names of  
16 partners. Where the debtor so changes his name or in the case of an  
17 organization its name, identity or corporate structure that a filed  
18 financing statement becomes seriously misleading, the filing is not  
19 effective to perfect a security interest in collateral acquired by the  
20 debtor more than four months after the change, unless a new appropriate  
21 financing statement or an amendment is filed before the expiration of  
22 that time. A filed financing statement remains effective with respect  
23 to collateral transferred by the debtor even though the secured party  
24 knows of or consents to the transfer.

25 (8) A financing statement substantially complying with the  
26 requirements of this section is effective even though it contains minor  
27 errors which are not seriously misleading.

28 (9) Written notice of a security interest in farm products is  
29 sufficient for purposes of being filed in the system described in RCW  
30 62A.9-407 (3) through (8) and shall, for purposes of such sections, be

1 called an "effective farm products notice statement" if it contains the  
2 following information:

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

4 (b) The debtor's signature;

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

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

9 (e) A description by category (as prescribed by rule pursuant to  
10 RCW 62A.9-407(3)) 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 (10) An effective farm products notice statement described in  
17 subsection (9) of this section must be amended in writing within three  
18 months, and similarly signed and filed, to reflect any material  
19 changes.

20 (11) If a secured party fails to file a termination statement  
21 within ten days after proper demand for the statement, the secured  
22 party is liable to the debtor for one hundred dollars and in addition  
23 for any loss caused to the debtor by the failure.

24 **Sec. 4.** RCW 62A.9-407 and 1987 c 189 s 5 are each amended to read  
25 as follows:

26 (1) If the person filing any financing statement, termination  
27 statement, statement of assignment, or statement of release, furnishes  
28 the filing officer a copy thereof, the filing officer shall upon



1 request note upon the copy the file number and date and hour of the  
2 filing of the original and deliver or send the copy to such person.

3 (2) Upon request of any person following payment of the required  
4 fees, the department of licensing shall issue its certificate showing  
5 whether there is on file with the department of licensing on the date  
6 and hour stated therein, any presently effective financing statement  
7 naming a particular debtor and any statement of assignment thereof and  
8 if there is, giving the date and hour of filing of each such statement  
9 and the names and addresses of each secured party therein. Upon  
10 request and following payment of the required fees, the department of  
11 licensing shall issue its certificate and shall furnish a copy of any  
12 filed financing statements or statements of assignment.

13 (3) The department of licensing shall develop and implement a  
14 central filing system containing the information filed with it pursuant  
15 to RCW 62A.9-402(9). Under this system, the department shall record  
16 the date and time of filing and compile the information into a master  
17 list organized according to categories of farm products. The list  
18 shall be organized within each farm product category in alphabetical  
19 order according to the last name of the debtor (or, in the case of  
20 debtors doing business other than as individuals, the first word in the  
21 name of such debtor). The list shall be further organized according to  
22 and contain information required by federal law and regulation. The  
23 department shall, by rule adopted pursuant to chapter 34.05 RCW,  
24 designate the categories of farm products to be used in compiling the  
25 master list. The department may establish and maintain, by rule, a  
26 separate system for filing farm products notice statements and search,  
27 retrieval, and dissemination of information relating to effective farm  
28 products notice statements, and may require separate search requests  
29 for such information pursuant to a fee schedule to be established by  
30 rule.

1       (4) The department of licensing shall maintain a list of all buyers  
2 of farm products, commission merchants, selling agents, and other  
3 persons who register with the department indicating an interest in  
4 receiving the lists described in subsection (5) of this section.

5       (5) The department of licensing shall distribute complete master  
6 lists for each farm product category at least quarterly to each buyer,  
7 commission merchant, selling agent, and other person registered under  
8 subsection (4) of this section and distribute either complete lists or  
9 cumulative supplements, which supplements shall be issued not less  
10 frequently than twice monthly, of effective farm products notice  
11 statements filed subsequent to the last date of filing for effective  
12 farm products notice statements on the last preceding quarterly master  
13 list, which the buyer, commission merchant, or selling agent has  
14 requested. The buyer, commission merchant, or selling agent shall be  
15 deemed to have received the lists and supplements no later than the  
16 third calendar day following the date of mailing by the department or  
17 in the event the mail is not delivered on that day, the first day  
18 thereafter on which mail is delivered.

19       (6) Upon the request of any person not registered pursuant to RCW  
20 62A.9-407(4), the department of licensing shall provide, within twenty-  
21 four hours, an oral confirmation of the filing of the notice described  
22 in RCW 62A.9-402(9) followed by a written confirmation.

23       (7) Upon request of any person and payment of such fees as may be  
24 established by the department by rule, the department shall furnish  
25 copies of particular filed effective farm products notice statements or  
26 statements of assignment if the requestor provides the department with  
27 the file numbers of the statement to be copied.

28       (8) Information provided under subsections (3) through (7) of this  
29 section shall be made available to the public through electronic data  
30 transmission. In addition, information provided under subsections (3)

1 through (7) of this section shall be made available by another means,  
2 such as by facsimile, microfiche, photographic copy, telephone call  
3 followed by written confirmation, or by any other means the department  
4 determines to be efficient and cost-effective.

5 (9) The department of licensing shall establish a toll-free  
6 telephone line that can be used by any interested person to obtain the  
7 information provided under subsections (3) through (7) of this section.

8 (10) The department of licensing shall establish a fee schedule by  
9 rule for registration and listing of buyers of farm products,  
10 commission merchants, and selling agents of farm products and for  
11 distribution of master lists and supplements of master lists and  
12 information and oral confirmation of filing as required by RCW 62A.9-  
13 407. The annual registration fee for buyers of farm products shall not  
14 exceed fifty dollars.

15 NEW SECTION. Sec. 5. All rules adopted under the provisions  
16 of this chapter are subject to the provisions of chapter 34.05 RCW  
17 concerning the adoption of rules. The department of licensing shall  
18 issue regulations requiring the master lists distributed to registrants  
19 to include a listing of statutory crop liens filed with the department.

20 NEW SECTION. Sec. 6. The central filing system program fund  
21 is created in the custody of the state treasurer. All receipts from  
22 the fees collected by the director under this chapter and RCW 62A.9-  
23 409(1) shall be deposited into the fund. Expenditures from the fund  
24 may be used only for the purposes of this act. Only the director of  
25 licensing or the director's designee may authorize expenditures from  
26 the fund. The fund is subject to allotment procedures under chapter  
27 43.88 RCW, but no appropriation is required for expenditures.

1        NEW SECTION.    **Sec. 7.**        Sections 5 and 6 of this act are each  
2 added to chapter 62A.9 RCW.

3        NEW SECTION.    **Sec. 8.**        The sum of one hundred six thousand  
4 dollars, or as much thereof as may be necessary, is appropriated for  
5 the biennium ending June 30, 1993, from the general fund to the  
6 department of licensing for the purposes of this act. The amount spent  
7 shall be repaid to the general fund before the end of the biennium  
8 ending June 30, 1995, from the fees imposed pursuant to section 4(9) of  
9 this act.

10       NEW SECTION.    **Sec. 9.**        The department of licensing shall assist  
11 buyers, commission merchants, selling agents, and other persons  
12 registered pursuant to RCW 62A.9-407(4) by initially providing field  
13 training sessions or written instruction on the utilization of the  
14 central filing system created by this act. The department of licensing  
15 shall report to the legislature in December of 1992 and December of  
16 1994 as to the implementation and operation of the central filing  
17 system. The report shall be directed to the house of representatives  
18 and senate agriculture committees.

19       NEW SECTION.    **Sec. 10.**       This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and shall take  
22 effect July 1, 1991. The director of licensing may immediately take  
23 such steps as are necessary to ensure that this act is implemented on  
24 its effective date.

25       NEW SECTION.    **Sec. 11.**       This act may be cited as the Washington  
26 farm products central filing system act.

1        NEW SECTION.    **Sec. 12.**        If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.