

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1661

BY: BEGLEY and THOMAS of the
HOUSE

and

TALIAFERRO of the SENATE

AN ACT RELATING TO THE COMMERCIAL CODE; AMENDING
SECTION 6, CHAPTER 69, O.S.L. 1987 (12A O.S. SUPP.
1990, SECTION 9-307.6), WHICH RELATES TO CENTRAL
FILING SYSTEM RELATING TO FARM PRODUCTS; INCREASING
TIME TO TERMINATE STATEMENT; INCREASING CERTAIN
LIABILITY; AND PROVIDING AN EFFECTIVE DATE.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"[CENTRAL FILING SYSTEM - AMENDING MULTIPLE SECTIONS IN
TITLE 12A - AMENDING SECTION IN TITLE 62 -
EFFECTIVE DATE]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 6, Chapter 69, O.S.L. 1987
(12A O.S. Supp. 1990, Section 9-307.6), is amended to read as
follows:

Section 9-307.6 Central Filing System Relating to Farm Products.

(1) The Secretary of State shall be responsible for developing and implementing the central filing system. This responsibility shall include obtaining the necessary certification for the system from the United States Department of Agriculture ("USDA"). The Secretary of State shall declare an effective date for the implementation of the central filing system, as soon as is practicable following certification by the USDA.

(2) The Secretary of State may adopt, in accordance with the applicable provisions of the Oklahoma Administrative Procedures Act, appropriate rules and regulations for the implementation and operation of the central filing system.

(3) The Office of State Finance shall assist the Secretary of State in developing and implementing the central filing system.

(4) The central filing system shall conform to the following requirements:

(a) The Secretary of State shall record the date and hour of the filing of each effective financing statement;

(b) The Secretary of State shall compile all effective financing statements into a master list:

(i) organized according to farm products;

(ii) arranged within each such product:

(A) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors;

(B) in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal

- Revenue Service taxpayer identification
number of such debtors;
- (C) geographically by county; and
- (D) by crop year; and
- (iii) containing the information provided for in
subparagraph (iv) of paragraph (d) of subsection
(1) of Section 2 of this act;
- (c) The Secretary of State shall maintain a list of all
buyers of farm products, commission merchants, and
selling agents who register with the Secretary of
State, on a form indicating:
- (i) the name and address of each buyer of farm
products, commission merchant and selling agent;
and
- (ii) what information each buyer of farm products,
commission merchant, and selling agent requests
from the master list;
- (d) (i) A copy of those portions of the master list
covering the information requested by a buyer of
farm products, commission merchant or selling
agent at the time of registration shall be
distributed to such registrants by the Secretary
of State on the last business day of each month
and shall be presumed to have been received three
(3) days thereafter.
- (ii) Registrants shall be deemed to be registered only
as to those portions of the master list for which
they register, and shall be deemed to have failed
to register and shall not be considered to be
registrants as to those portions for which they
do not register.

(iii) Registrants are subject only to security interests shown on the portions of the master list which they receive as a consequence of registration with the Secretary of State.

(iv) If a particular security interest is shown on the master list, but was included since the last regular distribution of portions of such master list to registrants, registrants shall not be subject to that security interest;

(e) Persons other than those specified in paragraph (c) of this subsection may register with the Secretary of State to receive portions of the master list. Such registration shall be on a form indicating:

(i) the name and address of each such person; and

(ii) what information each such person requests from the master list.

(f) (i) Within twenty-four (24) hours of any oral inquiry, including any telephone inquiry, for information, the Secretary of State shall provide oral confirmation of the existence of any effective financing statement on file in the office of the Secretary of State requested by persons who have not registered. Such oral confirmation shall be followed by written confirmation thereof by the close of the business day following the day on which the oral confirmation was given.

(ii) Oral confirmation shall be conditioned upon receipt by the Secretary of State, at the time of the inquiry, of the name, address, telephone number, and social security number or Internal Revenue Service taxpayer identification number of

the requestor and receipt of the following information:

- (A) the name of the debtor;
 - (B) the social security number of the debtor or, if the debtor is doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;
 - (C) type of farm product;
 - (D) the county; and
 - (E) the crop year, if applicable; and
- (g) The duration of the registration with the Secretary of State of a buyer of farm products, commission merchant or selling agent shall be one (1) year from the date of acceptance of such registration by the Secretary of State.

(5) Any person may submit a written request to the Secretary of State for written confirmation of the existence of an effective financing statement on file in the office of the Secretary of State. The written request shall be accompanied by the requisite fee provided for in Section 111 of Title 28 of the Oklahoma Statutes and shall contain:

- (a) the name and address of the debtor,
- (b) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor, and
- (c) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable; and a reasonable description of the property, including the

name of the county in which the property is located
and the crop year, if applicable.

(6) The filing in the office of the Secretary of State under this section shall be in addition to the filing requirements provided for in Section 9-401 of Title 12A of the Oklahoma Statutes.

(7) A financing or continuation statement covering farm products that has not lapsed and which was filed pursuant to Section 9-401 of Title 12A of the Oklahoma Statutes between December 23, 1986, and the effective date of this act, inclusive, and for which no written notice was furnished as provided in Section ~~7~~ 9-307.7 of this ~~act~~ title, shall become ineffective as to a buyer of farm products, commission merchant or selling agent, unless the secured party files an effective financing statement in the office of the Secretary of State.

(8) An effective financing statement shall not be deemed filed in accordance with the provisions of this section until all fees authorized by Section 111 of Title 28 of the Oklahoma Statutes relating to the filing of such a statement are tendered to the Secretary of State.

(9) The secured party shall file a termination statement within ~~ten~~ ~~(10)~~ twenty (20) days after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value and after receiving a written request from the debtor. If the affected secured party fails to file such a termination statement as required by this subsection, he shall be liable to the ~~debtor~~ Secretary of State for ~~One Hundred Dollars~~ ~~(\$100.00)~~ One Thousand Dollars (\$1,000.00) and in addition he shall be liable to the debtor for any loss caused to the debtor by such failure.

(10) The Attorney General shall be responsible for enforcing the provisions of subsection (9) of this section on behalf of the Secretary of State and is authorized to take appropriate actions to

collect any penalties owed to the Secretary of State pursuant to subsection (9) of this section. When the Attorney General collects any such penalty, he shall cause the penalty to be deposited into the Central Filing System Revolving Fund created pursuant to Section 276.3 of Title 62 of the Oklahoma Statutes.

SECTION 2. AMENDATORY Section 7, Chapter 69, O.S.L. 1987 (12A O.S. Supp. 1990, Section 9-307.7), is amended to read as follows:

Section 9-307.7 Written Notification Affecting Farm Products; Disclosure Requirements; Penalty.

(1) A secured party or a seller of farm products may furnish to the buyer of such farm products, commission merchant, or selling agent, within one (1) year before the sale of the farm products, a written notice of such security interest, organized according to farm products, that:

- (a) is an original or reproduced copy thereof;
- (b) contains:
 - (i) the name and address of the secured party;
 - (ii) the name and address of the person indebted to the secured party;
 - (iii) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor; and
 - (iv) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, county, and a reasonable description of the property;
- (c) must be amended in writing, within ten (10) days, similarly signed and transmitted, to reflect material

changes. Any such amendment shall also be filed with the Secretary of State as provided in Section ~~6~~ 9-307.6 of this ~~act~~ title;

- (d) will lapse on the expiration period of the statement, the transmission of a notice signed by the secured party that the statement has lapsed, or distribution as provided in Section 6 of this act of the next ensuing master list on which the security interest is reflected, whichever occurs first; and
- (e) states any payment obligations imposed on the buyer of farm products, commission merchant, or selling agent by the secured party as conditions for waiver or release of the security interest.

(2) A secured party may furnish written notice as provided in this section:

- (a) only during the interval between the date on which the debtor signed the effective financing statement as provided in Section 6 of this act and distribution of the next ensuing master list on which the security interest of the secured party in the farm products of such debtor is reflected; and
- (b) only after filing an effective financing statement with the Secretary of State as provided in Section ~~6~~ 9-307.6 of this ~~act~~ title.

(3) For purposes of this section, receipt of notice shall be presumed if notice is sent by certified mail.

- (4) (a) A secured party who intends to furnish written notification of the existence of a security interest in farm products as provided in this section, shall require the person engaged in farming operations to execute a security agreement containing a provision requiring such person to furnish to the secured party

a list of the buyers, commission merchants, and selling agents to or through whom such person may sell the farm products. If the person engaged in farming operations sells the farm product collateral to a buyer or through a commission merchant or selling agent not included on the list, the person engaged in farming operations shall be subject to the penalty provisions of paragraph (b) of this subsection, unless such person:

(i) has notified the secured party in writing of the identity of the buyer, commission merchant, or selling agent at least seven (7) days prior to such sale; or

(ii) has accounted to the secured party for the proceeds of such sale not later than ~~ten (10)~~ twenty (20) days after such sale.

(b) A person violating the provisions of paragraph (a) of this subsection shall be fined Five Thousand Dollars (\$5,000.00) or fifteen percent (15%) of the value or benefit received for such farm product described in the security agreement, whichever is greater.

SECTION 3. AMENDATORY Section 10, Chapter 206, O.S.L. 1988, as amended by Section 11, Chapter 309, O.S.L. 1988 (62 O.S. Supp. 1990, Section 276.3), is amended to read as follows:

Section 276.3 There is hereby created in the State Treasury a revolving fund for the Office of the Secretary of State to be designated the "Central Filing System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all fees generated by paragraphs 4 through 9 of subsection A of Section 111 of Title 28 of the Oklahoma Statutes and all penalties collected pursuant to subsections (9) and (10) of Section 9-307.6 of Title 12A of the Oklahoma Statutes. All monies

accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of the Secretary of State for expenses related to the central filing system created pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes; provided, that for the fiscal year ending June 30, 1989, the Office of the Secretary of State shall transfer to the General Revenue Fund of the State Treasury any amount above the first Thirty Thousand Dollars (\$30,000.00) deposited to the said fund. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 4. This act shall become effective September 1, 1991."

Passed the Senate the 2d day of April, 1991.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1991.

Speaker of the House of Representatives