

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1047

By: Campbell

AS INTRODUCEDAn Act relating to the Commercial Code; amending 12A O.S. 1991, Sections 9-401, 9-401A, 9-402, 9-403, 9-404, 9-405, 9-406 and 9-407, which relate to secured transactions; modifying places of filing for perfecting a security interest; modifying statutory provisions relating to certain statements pertaining to real estate; modifying requirements of financing statements to include certain additional information; modifying duties of filing officers relating to receipt of certain statements; modifying certain fees; providing for establishment of certain master index; and providing an effective date.

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

SECTION 1. AMENDATORY 12A O.S. 1991, Section 9-401, is amended to read as follows:

Section 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

- (a) when the collateral is ~~equipment used in farming operations, livestock, farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or~~

~~consumer goods, then in the office of the county clerk in the county of the debtor's residence, or if the debtor is not a resident of this state, then in the office of the county clerk in the county where the goods are kept, and in addition, when the collateral is crops, in the office of the county clerk in the county where the land on which the crops are growing or to be grown is located a motor vehicle subject to the provisions of Section 1110 of Title 47, then with the Oklahoma Tax Commission or a motor license agent;~~

- (b) ~~when the collateral is timber to be cut or is minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 9-103.1 of this title, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;~~
- ~~(c)~~ in all other cases, in the office of the county clerk of ~~Oklahoma County~~ any county in this state.

(2) Notwithstanding the provisions of subsection (1) of this section, a secured party asserting a security interest in farm products shall not have a protected interest against a buyer of farm products, commission merchant or selling agent absent compliance with the provisions of Section ~~6 or 7 of this act~~ 9-307.6 or Section 9-307.7 of this title.

(3) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against

any person who has knowledge of the contents of such financing statement.

~~(4) A filing which is made in the proper county continues effective for four (4) months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.~~

(5) The rules stated in Section 9-103.1 of this title determine whether filing is necessary in this state.

(6) Notwithstanding the preceding subsections of this section, and subject to subsection (3) of Section 9-302 of this title, the proper place and manner to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State according to the provisions of Sections 17 and 18 of Title 46 of the Oklahoma Statutes. This filing constitutes a fixture filing (Section 9-313 of this title) as to the collateral described therein which is or is to become fixtures.

~~(7) For the purposes of this section, the residence of an organization is its place of business if it has one, or its chief executive office if it has more than one place of business.~~

SECTION 2. AMENDATORY 12A O.S. 1991, Section 9-401A, is amended to read as follows:

Section 9-401A. Statements Pertaining to Real Estate; Legal Description; Recording and Indexing; Fees.

(1) ~~No~~ When the collateral is timber to be cut or is minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 9-103.1 of this title, or when the financing statement is filed as a fixture filing (Section 9-313 of this title) and the collateral is goods which are or are to become fixtures, no filing of a financing statement, continuation statement, termination statement, or assignment or release of a financing statement under the provisions of subsection (1) ~~(b)~~ of Section 9-401 of this ~~article~~ title shall constitute record notice of the contents thereof against any subsequent purchaser or encumbrancer of real estate or any interest therein unless the same contains a legal description of the real estate adequate for the purposes of indexing in the tract indexes of the county wherein the real estate is situated.

(2) It shall be the duty of the county clerk to cause all such financing statements, continuation statements, termination statements, or assignments or releases of financing statements containing an adequate legal description to be recorded and indexed in the records of said office in the same place and manner as a mortgage on real estate or assignment or release thereof.

(3) The fees for filing, recording and indexing a financing statement, continuation statement, termination statement, assignment or release on the types of collateral provided for in subsection (1) of this section and filed under the provisions of subsection (1) ~~(b)~~ of Section 9-401 of this ~~article~~ title, or procuring certified copies thereof, shall be the same as the fees chargeable by the county clerk in respect to recording real estate mortgages, assignments or releases, or certifying copies thereof.

(4) The provisions of subsection (2) of Section 9-407 of this ~~article~~ title in respect to fees for certified copies shall not be applicable to filings under subsection (1) (b) of Section 9-401 of this ~~article~~ title on the types of collateral provided for in subsection (1) of this section.

(5) To effectuate the provisions of subsections (1) (b), (4) and (9) of Section ~~39~~ 2A-309 of this ~~act~~ title, a lessor of goods that are or are to become fixtures may file a fixture filing complying with subsection (1) (b) of Section ~~39~~ 2A-309 of this ~~act~~ title, and filings related to that fixture filing, using the terms "lessor", "lessee", or the like instead of the terms specified in this Part. The provisions of this article relating to a fixture filing or a filing related to it shall apply as appropriate in conjunction with the provisions of the ~~article~~ title on Leases with respect to such filings.

SECTION 3. AMENDATORY 12A O.S. 1991, Section 9-402, is amended to read as follows:

Section 9-402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement.

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and sets forth the social security number or employer identification number, as applicable, of the debtor and contains a statement indicating the types, or describing the items, of collateral. The filing officer may reject any financing statement which does not set forth the social security number or employer identification number, as applicable, of each debtor, unless the debtor is not required to have such number. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 9-103.1 of this title, or when the financing statement is

filed as a fixture filing (Section 9-313 of this title) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5) of this section, as applicable, and Section 9-401A of this title. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

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

- (a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or
- (b) proceeds under Section 9-306 of this title if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
- (c) collateral as to which the filing has lapsed; or
- (d) collateral acquired after a change of name, identity ~~or~~, corporate structure or the social security number or employer identification number, as applicable, of the debtor (subsection (7) of this section).

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

Name of debtor (or assignor).....

Address.....

Social security number/employer
identification number.....

Name of secured party (or assignee).....

Address.....

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

(Describe).....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate).....

3. (If applicable) The above (goods are to become fixtures on) (timber is standing on) (minerals or the like

(including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on):

(Describe Real Estate).....

and this financing statement is to be filed against the tract index in the real estate records.

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

.....

Signature of Debtor (or Assignor).....

.....

Signature of Secured Party (or Assignee).....

(Use whichever signature is applicable)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing

statement" means the original financing statement and any amendments.

(5) When a writing constituting a mortgage upon lands, or interests in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands sufficient to comply with Sections 287, 291 and 298 of Title 19 of the Oklahoma Statutes, as amended, has been validly executed, acknowledged and recorded in the office of the county clerk for the county in which such lands are located, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interests in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the lands or interests in lands described therein shall be otherwise effectively terminated. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103.1 of this title, or a financing statement filed as a fixture filing (Section 9-313 of this title) where the debtor is not a transmitting utility, that is not a mortgage as set out in the first sentence of this subsection, must show that it covers this type of collateral, must recite that it is to be filed against the tract index in the real estate records and must comply with Section 9-401A of this title, but may be recorded and shall be effective as a financing statement even though it does not comply with the execution and acknowledgement requirements of Sections 15, 26, 93, 94, or 95 of Title 16 of the Oklahoma Statutes, as amended, or other statutes, if any, of like

import that would impose requirements beyond those of the kind encompassed in this title.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if it complies with subsection (5) of this section or if:

- (a) the goods are described in the mortgage by item or type;
- (b) the goods are or are to become fixtures related to the real estate described in the mortgage;
- (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed against the tract index; and
- (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor and sets forth the debtor's social security number or employer identification number, as applicable, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name, or in the case of an organization, its name, identity or corporate structure or where the debtor so changes his or its social security number or employer identification number, as applicable, that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral

transferred by the debtor even though the secured party knows of or consents to the transfer.

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

(9) A financing statement which otherwise complies with subsection (1) of this section is sufficient although it does not include the debtor's social security number or employer identification number, as applicable, if it is filed to perfect a security interest in collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

SECTION 4. AMENDATORY 12A O.S. 1991, Section 9-403, is amended to read as follows:

Section 9-403. Acts Constituting Filing - Term of Filing - Effect - Continuation Statement - Duty of Filing Officer - Fees.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) and the first two sentences of subsection (7) of this section, a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of

the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five-year period specified in subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405 of this title, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five (5) years past, those which have been continued by a continuation

statement or which are still effective under subsection (6) of this section shall be retained.

(4) Except as provided in subsection (7) of this section a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. ~~In addition the~~ The filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. In addition, the filing officer shall transmit the information contained in the statement together with the date and time of filing and the file number thereof, no later than the close of the second business day following the date of filing, to the office of the county clerk of Oklahoma County for inclusion in the master index.

(5) The uniform fee for the county clerk for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be ~~as provided in Section 32 of Title 28 of the Oklahoma Statutes, which~~ Fifteen Dollars (\$15.00). Ten Dollars (\$10.00) of such fee shall remain with the county in which the financing statement or continuation statement was filed and the remaining Five Dollars (\$5.00) of such fee shall be forwarded to the office of the county clerk of Oklahoma County. Such fee shall include the cost of filing a termination statement and a statement of release. The fees for the office of the Secretary of State for filing and processing an effective financing statement, and documents relating thereto, as provided for in Section ~~6~~ 9-307.6 of this ~~act~~ title, shall be as provided in Section 111 of Title 28 of the Oklahoma Statutes.

(6) If the debtor is a transmitting utility, subsection ~~(5)~~ (6) of Section 9-401 of this title, and a filed financing statement so states, it is effective until a termination statement is filed. A

real estate mortgage which is effective as a fixture filing under subsection (6) of Section 9-402 of this title remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a writing constituting a mortgage upon lands, or interests in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands sufficient to comply with Sections 287, 291 and 298 of Title 19 of the Oklahoma Statutes has been validly executed, acknowledged and recorded in the office of the county clerk for the county in which such lands are located, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interests in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the lands or interests in lands described therein shall be otherwise effectively terminated. When a financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 9-103.1 of this title, or is filed as a fixture filing, and is not a mortgage as set out in the first sentence of this subsection, it shall be filed as provided in subsection (2) of Section 9-401A of this title even though it does not comply with the execution and acknowledgement requirements of Sections 15, 26, 93, 94, or 95 of Title 16 of the Oklahoma Statutes, as amended, or other statutes, if any, of like import that would impose requirements beyond those of the kind encompassed in this title.

(8) The county clerk of Oklahoma County shall maintain a master index of information contained in all financing statements, continuation statements, assignments, releases, termination statements and other similar statements filed with filing officers of each county and transmitted to the county clerk of Oklahoma County and shall be entitled to such fees as provided herein. The master index shall list all such statements according to the name and social security number or employer identification number, as applicable, of the debtor and shall include all of the information transmitted to the county clerk of Oklahoma County by all filing officers. The county clerk of Oklahoma County shall, within two business days following receipt of such information, include it in the master index and send written notice confirming such receipt and reflecting all information received and included in the master index, to the secured party of record and such other requesting person as designated on the financing statement.

SECTION 5. AMENDATORY 12A O.S. 1991, Section 9-404, is amended to read as follows:

Section 9-404. Termination Statement.

(1) If a financing statement covering consumer goods is filed on or after October 1, 1981, then within thirty (30) days or within ten (10) days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a

termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of Section 9-405 of this title, including payment of the required fee. If the affected secured party fails to file or send such a termination statement as required by this subsection, he shall be liable to the debtor for One Hundred Dollars (\$100.00) and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. In addition, the filing officer shall transmit such information contained in the statement, together with the date and time of filing and the file number thereof, no later than the close of the second business day following the date of filing to the office of the county clerk of Oklahoma County for inclusion in the master index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

SECTION 6. AMENDATORY 12A O.S. 1991, Section 9-405, is amended to read as follows:

Section 9-405. Assignment of Security Interest; Fees; Duty of Filing Officer.

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement, the filing officer shall mark the same as provided in subsection (4) of Section 9-403 of this title. The filing officer shall transmit the information contained in the statement, together with the date and time of filing and the file number thereof, no later than the close of the second business day following the date of filing to the office of the county clerk of Oklahoma County for inclusion in the master index. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be Five Dollars (\$5.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 9-103.1 of this title, he shall record and index the assignment as provided in subsection (2) of Section 9-401A of this title. The filing officer shall transmit the information

contained in the statement, together with the date and time of filing and the file number thereof, no later than the close of the second business day following the date of filing to the office of the county clerk of Oklahoma County for inclusion in the master index. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be Five Dollars (\$5.00).

Notwithstanding the provisions of this subsection, an assignment of record of a security interest contained in a mortgage as provided in subsection (5) or (6) of Section 9-402 of this title may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this act.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

SECTION 7. AMENDATORY 12A O.S. 1991, Section 9-406, is amended to read as follows:

Section 9-406. Release of Collateral - Duties of Filing Officer - Fees.

A secured party of record may by his signed statement release all or part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405 of this title, including payment of the required fee. Upon presentation of such a statement of release to the filing officer, he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. In addition, the filing officer

shall transmit the information contained in the statement, together with the date and time of filing and the file number thereof, no later than the close of the second business day following the date of filing, to the office of the county clerk of Oklahoma County for inclusion in the master index. There shall be no fee, or any other associated costs, for filing, noting, sending or delivering such a statement of release.

SECTION 8. AMENDATORY 12A O.S. 1991, Section 9-407, is amended to read as follows:

Section 9-407. Information From Filing Officer.

(1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall, upon request, note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is ~~on file~~ in the master index of the office of the county clerk of Oklahoma County, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be ~~Five Dollars (\$5.00)~~ Seven Dollars (\$7.00). Five Dollars (\$5.00) of such fee shall remain with the county in which the request was made and the remaining Two Dollars (\$2.00) of such fee shall be forwarded to the office of the county clerk of Oklahoma County. Upon request the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment for a uniform fee of One Dollar (\$1.00) per page.

SECTION 9. This act shall become effective January 1, 1994.

44-1-5192

KSM