

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 714

By: Henry

AS INTRODUCED

An Act relating to commercial code; amending 12A O.S. 1991, Sections 9-307.3, as amended by Section 43, Chapter 371, O.S.L. 2000, and as renumbered by Section 183, Chapter 371, O.S.L. 2000, and 9-307.6, as amended by Section 46, Chapter 371, O.S.L. 2000, and as renumbered by Section 183, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Sections 1-9-320.3 and 1-9-320.6), which relate to the Secretary of State; modifying who shall maintain certain form; clarifying language; modifying permissive language; providing certain sorting methods be used; clarifying certain deadline; clarifying document to be filed; modifying situation for imposing certain liability; amending 28 O.S. 1991, Section 111, as last amended by Section 15, Chapter 385, O.S.L. 2000 (28 O.S. Supp. 2000, Section 111), which relates to fees; modifying party to pay certain fee; clarifying subject of certain fee; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 12A O.S. 1991, Section 9-307.3, as amended by Section 43, Chapter 371, O.S.L. 2000, and as renumbered by Section 183, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-320.3), is amended to read as follows:

Section 1-9-320.3

FORMS; DUTY OF STATE AUDITOR AND INSPECTOR

The ~~State Auditor and Inspector~~ Secretary of State shall develop and maintain a standard form for an effective financing statement and for a statement of continuation, partial release, amendment, or assignment thereof, which shall be consistent with the provisions of Sections 1-9-320.1 through 1-9-320.7 of this title.

SECTION 2. AMENDATORY 12A O.S. 1991, Section 9-307.6, as amended by Section 46, Chapter 371, O.S.L. 2000, and as renumbered by Section 183, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-320.6), is amended to read as follows:

Section 1-9-320.6

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 effective date for the implementation of the central filing system was October 24, 1988.

(2) The Secretary of State may promulgate, in accordance with the applicable provisions of the ~~Oklahoma~~ Administrative Procedures Act, appropriate rules 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 the 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 the debtors;
 - (C) geographically by county produced; and
 - (D) by crop year; and
- (iii) containing the information provided for in subparagraph (iv) of paragraph (d) ~~of subsection (1)~~ of Section 1-9-320.2 of this title;
 - (iv) portions of the master list ~~may~~ will be available in hard copy or electronic formats, and may be organized by other sorting methods in addition to the methods listed above.
- (c) The Secretary of State shall maintain records of all buyers of farm products, commission merchants, selling agents and others who register with the Secretary of State, on a form containing:
 - (i) the name and address of each registrant;
 - (ii) the information on the farm product or products that the registrant is requesting;
 - (iii) the name of each county where the product is produced or to be produced, or a blanket code covering all seventy-seven (77) counties of this state; and
 - (iv) an authorized signature.
 - (d) (i) A copy of those portions of the master list covering the information requested by a registrant shall be distributed to such registrants by the Secretary of State on or before the last business day of each month and

shall be presumed to have been received by the third ~~working~~ business day of the following month.

- (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 the master list to registrants, registrants shall not be subject to that security interest;
- (e) The duration of the registration with the Secretary of State of a buyer of farm products, commission merchant, selling agent or other registrant shall be one (1) year from the effective date of the registration with the Secretary of State.
- (f) (i) Upon request, within twenty-four (24) hours of any inquiry, for information, the Secretary of State shall provide verbal confirmation of the existence or nonexistence of any effective financing statement on file. By the close of the business day following the day on which the request was received, written confirmation of the existence of an effective financing statement will be provided to buyers of farm products,

commission merchants, and selling agents who have not registered, and others who request it.

(ii) The state or political subdivision shall not be liable if a loss or claim results from any confirmation of the existence or nonexistence of any effective financing statement on file in the Office of the Secretary of State made in good faith by an employee of the Office of the Secretary of State as required by the provisions of Section 1-9-320.6 of this title.

(5) The filing in the office of the Secretary of State under this section shall be in addition to the filing requirements provided for in this article.

(6) 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 October 24, 1988, inclusive, and for which no written notice was furnished as provided in Section ~~9-307.7~~ 1-9-320.7 of this 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.

(7) 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 the statement are tendered to the Secretary of State.

(8) The secured party shall file a termination statement within twenty (20) days after there is no outstanding secured obligation or commitment to make advances, incur obligations or otherwise give value. The secured party shall not be required to file a termination statement if the debtor, in writing, addressed to the

secured party, requests that a ~~statement~~ termination not be filed. The request shall be signed by the debtor or an authorized representative and the request may be made at any time prior to the expiration date of an effective financing statement set forth herein. If the affected secured party fails to file a termination statement as required by this subsection, the party shall be liable to the Secretary of State for Five Hundred Dollars (\$500.00). In addition the affected secured party shall be liable to the debtor for any loss caused to the debtor by the failure to terminate the effective financing statement.

(9) The Attorney General shall be responsible for enforcing the provisions of subsection (8) 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 (8) of this section. When collected, the Attorney General 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 3. AMENDATORY 28 O.S. 1991, Section 111, as last amended by Section 15, Chapter 385, O.S.L. 2000 (28 O.S. Supp. 2000, Section 111), is amended to read as follows:

Section 111. A. In addition to other fees provided for by law, the Secretary of State shall collect the following fees:

1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, Ten Dollars (\$10.00);

2. For copying any paper or document, One Dollar (\$1.00) per page, provided the minimum charge shall not be less than Two Dollars (\$2.00);

3. For filing an effective financing statement in the office of the Secretary of State pursuant to Section ~~9-307.6~~ 1-9-320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00);

4. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section ~~9-307.6~~ 1-9-320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00);

5. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section ~~9-307.6~~ 1-9-320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00);

6. For registering a buyer of farm products, commission merchant ~~or~~, selling agent or other interested party as provided for in Section ~~9-307.6~~ 1-9-320.6 of Title 12A of the Oklahoma Statutes, Fifty Dollars (\$50.00) per year;

7. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section ~~9-307.6~~ 1-9-320.6 of Title 12A of the Oklahoma Statutes, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semi-annually:

a. For information requested for five or less counties:

	Number of Farm Products	Photostatic <u>Paper</u> Reproduction	Microfiche
(1)	1 to 5 products	\$150 per year ...	\$25 per year
(2)	6 to 10 products	\$200 per year ...	\$50 per year
(3)	11 to 20 products	\$250 per year ...	\$75 per year
(4)	over 20 products	\$300 per year ..	\$100 per year

b. For information requested for six to twenty-five counties:

	Number of Farm Products	Photostatic <u>Paper</u> Reproduction	Microfiche
(1)	1 to 10 products	\$200 per year ...	\$50 per year

- (2) 11 to 20 products \$250 per year ...\$75 per year
- (3) over 20 products \$300 per year ..\$100 per year

c. For information requested for twenty-six ~~(26)~~ to fifty counties:

Number of Farm	Photostatic <u>Paper</u>	Microfiche
Products	Reproduction	

- (1) 1 to 10 products \$250 per year ... \$75 per year
- (2) 11 to 20 products \$300 per year ...\$100 per year
- (3) over 20 products \$350 per year ...\$125 per year

d. For information requested for over fifty counties:

Number of Farm	Photostatic <u>Paper</u>	Microfiche
Products	Reproduction	

- (1) 1 to 10 products\$300 per year ...\$100 per year
- (2) 11 to 20 products\$350 per year ...\$125 per year
- (3) over 20 products\$400 per year ...\$150 per year;

- 8. a. The Secretary of State is authorized to provide for the distribution of the master list or portions thereof to those persons specified in paragraph 7 of this subsection through electronic data or machine readable equipment or other communication media in such form and manner as is specified by the Secretary of State.
- b. The Secretary of State is authorized to establish a fee system for such transfer of information pursuant to this paragraph. Such fee shall not exceed the amount necessary to cover the costs of the Secretary of State in providing such transfer of information.
- c. In providing for the transfer of the information specified by this paragraph, the Secretary of State shall ensure the integrity of confidential information within the office of the Secretary of State through

data security measures, internal controls and appropriate data base management;

9. For issuing a written confirmation of the existence or nonexistence of any active effective financing statements on file for a debtor in the office of the Secretary of State, Six Dollars (\$6.00);

10. The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) for every apostille issued. For the purposes of this paragraph, an apostille is a special certificate attached to a public record, as required by the 1961 Hague Convention, Fed. R. Civ. P. 44 (28 U.S.C.A.), to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears; provided, however, a fee of Ten Dollars (\$10.00) shall be collected for any apostille requested for an international adoption; and

11. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

B. All fees shall be properly accounted for and shall be paid into the State Treasury monthly. The fees generated by paragraphs 1, 2, 10 and 11 of subsection A of this section shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes. The fees generated by paragraphs 3 through 9 of subsection A of this section and other fees collected by the Central Filing System shall be deposited to the credit of the Central Filing System Revolving Fund created pursuant to Section 276.3 of Title 62 of the Oklahoma Statutes.

SECTION 4. This act shall become effective July 1, 2001.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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