86R9499 TSR-F

By:  Hall S.B. No. 2033

A BILL TO BE ENTITLED

AN ACT

relating to the development of a central filing system by the secretary of state for the filing of financing statements for certain security interests; authorizing fees; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 9.302, Business & Commerce Code, is amended to read as follows:

Sec. 9.302.  LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. (a) Subject to Chapter 607, while [~~While~~] farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

(b)  Notwithstanding any law to the contrary, to the extent of any conflict between this chapter and Chapter 607, Chapter 607 controls.

SECTION 2.  Section 9.501, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  Except as otherwise provided in Subsection (b) or (c), if the local law of this state governs perfection of a security interest [~~or agricultural lien~~], the office in which to file a financing statement to perfect the security interest [~~or agricultural lien~~] is:

(1)  the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A)  the collateral is as-extracted collateral or timber to be cut; or

(B)  the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2)  the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(c)  Notwithstanding any other law to the contrary, the office in which to file a financing statement to perfect an agricultural lien is the office of the Secretary of State as provided by Chapter 607.

SECTION 3.  Title 12, Business & Commerce Code, is amended by adding Chapter 607 to read as follows:

CHAPTER 607. CENTRAL FILING SYSTEM AND NOTICE REQUIREMENTS FOR FARM PRODUCTS

Sec. 607.001.  DEFINITIONS. In this chapter:

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

(2)  "Central filing system" means a statewide system that is developed by the secretary of state and certified by the secretary of the United States Department of Agriculture to be used for the filing of an effective financing statement.

(3)  "Commission merchant" means a person engaged in the business of receiving a farm product for the purpose of selling the farm product on commission or on behalf of another person.

(4)  "Debtor" has the meaning assigned by Section 9.102.

(5)  "Effective financing statement" means a financing statement, as defined by Section 9.102, that covers a farm product and that is filed in compliance with this chapter.

(6)  "Farm products" has the meaning assigned by Section 9.102.

(7)  "Selling agent" means a person, other than a commission merchant, who is engaged in the business of negotiating the sale or purchase of a farm product on behalf of a person engaged in farming operations.

(8)  "Writing" or "written" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 607.002.  RULES. The secretary of state shall adopt rules as necessary to implement this chapter.

Sec. 607.003.  FORMS; NOTICE. (a) The secretary of state shall develop and maintain standard forms for an effective financing statement, a statement of continuation, a statement of partial release, a statement of amendment, a statement of assignment, and a statement of termination that are consistent with this chapter.

(b)  Except as otherwise provided by this chapter, receipt of a written notice required by this chapter is presumed if the notice is sent by first class mail, postage prepaid.

Sec. 607.004.  EFFECTIVE FINANCING STATEMENT. (a) An effective financing statement must:

(1)  be signed by the secured party and filed by the secured party with the office of the secretary of state in the central filing system under Section 607.007;

(2)  be signed by the debtor; and

(3)  provide the following information:

(A)  the name and address of the secured party;

(B)  the name and address of the debtor;

(C)  one of the following:

(i)  the social security number of the debtor;

(ii)  if the debtor is not an individual, the taxpayer identification number of the debtor; or

(iii)  another unique identifier established by rule of the secretary of state;

(D)  the farm product covered by the effective financing statement;

(E)  each county in this state where the farm product is produced or will be produced, or a blanket code established by the secretary of state that covers all counties in this state;

(F)  a description of the farm product that is subject to a security interest only if a description is needed to distinguish that farm product from other farm products owned by the same person but not subject to the security interest; and

(G)  the crop year, unless for the duration of the effective financing statement every crop of the farm product that is subject to the security interest is to be subject to the interest.

(b)  A secured party may use one effective financing statement to reflect multiple farm products or farm products in multiple counties.

(c)  An effective financing statement must be amended to reflect material changes. An amendment to an effective financing statement must be:

(1)  in writing;

(2)  signed by the secured party and the debtor; and

(3)  filed not later than the 90th day after the original filing date.

(d)  An effective financing statement remains in effect for a period of five years from the date of filing and may be extended for an additional five-year period by filing or refiling a statement of continuation at least 180 days before the expiration date of the initial effective period.

(e)  The secretary of state shall remove an effective financing statement from the central filing system when the statement expires or when a statement of termination is received from a secured party, whichever occurs first.

(f)  The secretary of state may collect a fee for each effective financing statement filed under this chapter. An effective financing statement is not filed until the fee authorized by this section is paid as provided by Section 607.007(l).

(g)  An effective financing statement is considered satisfactory if it substantially complies with the requirements of this section even if the statement contains minor errors that are not seriously misleading as determined by the secretary of state.

Sec. 607.005.  PROTECTION OF BUYERS, COMMISSION MERCHANTS, AND SELLING AGENTS. A buyer, a commission merchant, or a selling agent who, in the ordinary course of business, purchases a farm product from a person engaged in farming operations takes the farm product subject to a security interest in the farm product if:

(1)  either:

(A)  the buyer, commission merchant, or selling agent fails to register with the secretary of state as prescribed by rule before purchasing the farm product and the secured party has filed an effective financing statement in the central filing system that covers the farm product being purchased; or

(B)  the buyer, commission merchant, or selling agent:

(i)  receives from the secretary of state written notice under Section 607.007(e) or (i); and

(ii)  does not secure, by performing any payment obligation or other method, a waiver or release from the secured party of the security interest specified in an effective financing statement; or

(2)  the secured party or the seller of the farm product provides written notice of the security interest to the buyer, commission merchant, or selling agent.

Sec. 607.006.  IMMUNITY FROM LIABILITY. A buyer, commission merchant, or selling agent who, in the ordinary course of business, purchases farm products from or sells farm products for a person engaged in farming operations may not be liable for errors or inaccuracies generated by the central filing system if the buyer, commission merchant, or selling agent has otherwise complied with this chapter.

Sec. 607.007.  CENTRAL FILING SYSTEM. (a) The secretary of state shall develop and implement a central filing system, and shall obtain the necessary certification for the system from the United States Department of Agriculture.

(b)  The secretary of state may adopt rules for the implementation and operation of the central filing system.

(c)  The Department of Information Resources shall assist the secretary of state in developing and implementing the central filing system.

(d)  The secretary of state shall use the central filing system to:

(1)  record the date and hour of the filing of each effective financing statement;

(2)  compile all effective financing statements into a master list that:

(A)  is organized by farm product;

(B)  is arranged within each farm product:

(i)  as appropriate:

(a)  in alphabetical order by last name of the debtor or, if the debtor is not an individual, the first word in the name of the debtor;

(b)  in numerical order by social security number of the debtor or, if the debtor is not an individual, the tax identification number of the debtor; or

(c)  according to a unique identifier established by rule of the secretary of state;

(ii)  geographically by county in which the farm product was produced; and

(iii)  by crop year;

(C)  includes the information described by Section 607.004(a)(3);

(D)  is available in part in print or electronic format; and

(E)  can be organized by other additional sorting methods; and

(3)  maintain records of all buyers of farm products, commission merchants, selling agents, and others who register with the secretary of state, using a form that requires:

(A)  the name and address of each registrant;

(B)  information on the farm product or products that the registrant is requesting;

(C)  the name of each county in this state where the farm product is produced or will be produced, or a blanket code indicating the product is produced or will be produced in all counties of this state; and

(D)  an authorized signature.

(e)  On or before the last business day of each month, the secretary of state shall provide to a registrant a copy of those portions of the master list that include information requested by the registrant. The copy shall be presumed to have been received by the third business day of the following month.

(f)  A registrant is considered registered only for those portions of the master list for which the registrant registers.

(g)  A registrant is subject only to security interests shown on the portions of the master list that the registrant receives as a consequence of registration with the secretary of state. If a particular security interest is shown on the master list but was included after the last regular distribution of portions of the master list to registrants, a registrant may not be subject to that security interest.

(h)  The registration with the secretary of state of a buyer, commission merchant, selling agent, or other registrant expires one year after the effective date of the registration.

(i)  On request, the secretary of state shall provide, not later than 24 hours after the time of the request, verbal confirmation of the existence or nonexistence of any effective financing statement on file. Not later than the close of the business day following the date on which the request was received, the secretary of state shall provide to a requestor written confirmation of the existence of an effective financing statement.

(j)  The state or a political subdivision of the state is not liable if a loss or claim results from a confirmation of the existence or nonexistence of an effective financing statement on file with the secretary of state made in good faith by an employee of the secretary of state under this section.

(k)  A filing with the secretary of state under this section is in addition to other filing requirements under this chapter.

(l)  An effective financing statement is not considered filed under this section until all authorized fees are paid to the secretary of state.

(m)  The secured party shall file a termination statement not later than the 20th day after the date there are no outstanding secured obligations or commitments to make advances, incur obligations, or otherwise give value. The secured party may not be required to file a termination statement if the debtor makes a written request addressed to the secured party that a termination not be filed. The request must be signed by the debtor or an authorized representative of the debtor and may be made at any time before the expiration date of the effective financing statement. If the affected secured party does not file a termination statement as required by this subsection, the secured party is liable to this state for a civil penalty of $500 and to the debtor for any loss caused to the debtor by the secured party's failure to terminate the effective financing statement.

(n)  The attorney general may enforce Subsection (m) on behalf of the secretary of state and may take appropriate actions to collect any penalties owed under Subsection (m).

Sec. 607.008.  WRITTEN NOTICE AFFECTING FARM PRODUCTS; DISCLOSURE REQUIREMENTS; PENALTY. (a) A secured party or a seller of farm products may provide to a buyer, a commission merchant, or a selling agent, not earlier than one year before the sale of the farm products, a written notice of a security interest organized according to farm products that:

(1)  is an original or reproduced copy thereof;

(2)  includes:

(A)  the name and address of the secured party;

(B)  the name and address of the debtor;

(C)  one of the following:

(i)  the social security number of the debtor;

(ii)  if the debtor is not an individual, the taxpayer identification number of the debtor; or

(iii)  another unique identifier established by rule of the secretary of state; and

(D)  a description of the farm product that is subject to the security interest created by the debtor, including the amount of the product where applicable, crop year, county, and a reasonable description of the property; and

(3)  states any payment obligations imposed on the buyer, commission merchant, or selling agent by the secured party as conditions for waiver or release of the security interest.

(b)  A written notice under Subsection (a) must be amended to reflect material changes. An amendment to a written notice must be:

(1)  in writing;

(2)  signed; and

(3)  provided not later than the 10th day after the original notice date.

(c)  A written notice remains in effect until the earlier of the expiration period of the effective filing statement or the date of a transmission of notice signed by the secured party that the effective filing statement has lapsed.

(d)  For purposes of this section, "receipt" of a written notice to a buyer, a commission merchant, or a selling agent occurs within a reasonable time after the secured party or the seller of the farm product sends the notice if the notice is sent in a manner consistent with Section 1.201(b)(36). If a written notice is transmitted electronically, the notice is presumed to be received immediately on transmission. If the written notice is deposited in the mail, the notice is presumed to be received on the third business day after the date on which the notice was deposited.

(e)  A secured party who intends to provide written notice of the existence of a security interest in a farm product as provided by this section shall require the person engaged in farming operations to execute a security agreement that includes a provision requiring the person to provide to the secured party a list of the buyers, commission merchants, and selling agents to or through whom the person may sell the farm product. 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 is subject to Subsection (f), unless the person:

(1)  has notified the secured party in writing of the identity of the buyer, commission merchant, or selling agent at least seven days before the date of the sale; or

(2)  has accounted to the secured party for the proceeds of the sale not later than the 20th day after the date of the sale.

(f)  A person who violates this section is liable to this state for a civil penalty in an amount that is the greater of:

(1)  $5,000; or

(2)  15 percent of the value or benefit received for the farm product described in the security agreement.

SECTION 4.  As soon as practicable after the effective date of this Act, the office of the secretary of state shall adopt rules and forms necessary to implement Chapter 607, Business & Commerce Code, as added by this Act.

SECTION 5.  This Act takes effect September 1, 2019.