

By: Hall

S.B. No. 2033

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the development of a central filing system by the
3 secretary of state for the filing of financing statements for
4 certain security interests; authorizing fees; providing civil
5 penalties.

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

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

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

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

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

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

1 ~~agricultural lien]~~ is:

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

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

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

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

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

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

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

21 Sec. 607.001. DEFINITIONS. In this chapter:

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

26 (2) "Central filing system" means a statewide system
27 that is developed by the secretary of state and certified by the

1 secretary of the United States Department of Agriculture to be used
2 for the filing of an effective financing statement.

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

6 (4) "Debtor" has the meaning assigned by Section
7 9.102.

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

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

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

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

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

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

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

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

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

9 (2) be signed by the debtor; and

10 (3) provide the following information:

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

12 (B) the name and address of the debtor;

13 (C) one of the following:

14 (i) the social security number of the
15 debtor;

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

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

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

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

26 (F) a description of the farm product that is
27 subject to a security interest only if a description is needed to

1 distinguish that farm product from other farm products owned by the
2 same person but not subject to the security interest; and

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

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

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

- 13 (1) in writing;
14 (2) signed by the secured party and the debtor; and
15 (3) filed not later than the 90th day after the
16 original filing date.

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

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

26 (f) The secretary of state may collect a fee for each
27 effective financing statement filed under this chapter. An

1 effective financing statement is not filed until the fee authorized
2 by this section is paid as provided by Section 607.007(1).

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

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

12 (1) either:

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

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

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

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

26 (2) the secured party or the seller of the farm product
27 provides written notice of the security interest to the buyer,

1 commission merchant, or selling agent.

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

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

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

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

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

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

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

24 (A) is organized by farm product;

25 (B) is arranged within each farm product:

26 (i) as appropriate:

27 (a) in alphabetical order by last name

1 of the debtor or, if the debtor is not an individual, the first word
2 in the name of the debtor;

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

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

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

10 (iii) by crop year;

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

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

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

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

20 (A) the name and address of each registrant;

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

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

27 (D) an authorized signature.

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

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

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

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

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

25 (j) The state or a political subdivision of the state is not
26 liable if a loss or claim results from a confirmation of the
27 existence or nonexistence of an effective financing statement on

1 file with the secretary of state made in good faith by an employee
2 of the secretary of state under this section.

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

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

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

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

25 Sec. 607.008. WRITTEN NOTICE AFFECTING FARM PRODUCTS;
26 DISCLOSURE REQUIREMENTS; PENALTY. (a) A secured party or a seller
27 of farm products may provide to a buyer, a commission merchant, or a

1 selling agent, not earlier than one year before the sale of the farm
2 products, a written notice of a security interest organized
3 according to farm products that:

4 (1) is an original or reproduced copy thereof;

5 (2) includes:

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

7 (B) the name and address of the debtor;

8 (C) one of the following:

9 (i) the social security number of the
10 debtor;

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

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

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

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

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

24 (1) in writing;

25 (2) signed; and

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

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

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

14 (e) A secured party who intends to provide written notice of
15 the existence of a security interest in a farm product as provided
16 by this section shall require the person engaged in farming
17 operations to execute a security agreement that includes a
18 provision requiring the person to provide to the secured party a
19 list of the buyers, commission merchants, and selling agents to or
20 through whom the person may sell the farm product. If the person
21 engaged in farming operations sells the farm product collateral to
22 a buyer or through a commission merchant or selling agent not
23 included on the list, the person engaged in farming operations is
24 subject to Subsection (f), unless the person:

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

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

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

6 (1) \$5,000; or

7 (2) 15 percent of the value or benefit received for the
8 farm product described in the security agreement.

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

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