

CHAPTER 143

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 97-155

BY SENATORS Schroeder, Chlouber, and Wham;
also REPRESENTATIVE Tucker.

AN ACT

CONCERNING THE CENTRAL INDEXING SYSTEM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 4-9-402 (1), (3), (4), and (6), Colorado Revised Statutes, 1992 Repl. Vol., as amended, are amended to read:

4-9-402. Requirements of financing statement - amendments - mortgage as financing statement. (1) (a) A financing statement is sufficient if it contains the names of the debtor and the secured party, an address of the secured party from which information concerning the security interest may be obtained, a mailing address of the debtor, and a statement indicating the types, or describing the items of collateral. A financing statement must contain the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the federal internal revenue service taxpayer identification number of such debtor. **SUBJECT TO SECTION 4-9-413 (1), 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.**

(b) When the financing statement covers timber to be cut or covers minerals or other substances of value which may be extracted from the earth, or accounts subject to subsection (5) of section 4-9-103, or when the financing statement is filed as a fixture filing (section 4-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5) of this section. A copy of the security agreement is sufficient as a financing statement if it contains the information required by paragraph (a) of this subsection (1). ~~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~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~filed in this state:~~

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

Name of debtor (or assignor)
Address

SOCIAL SECURITY NUMBER OR FEDERAL TAX IDENTIFICATION
NUMBER OF DEBTOR

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* (*Where appropriate substitute either "The above timber is standing on" or "The above minerals or other substances of value which may be extracted from the earth, 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 in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is ____.

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

(4) A financing statement may be amended by the filing of an amendment. AN AMENDMENT THAT DELETES COLLATERAL COVERED BY A FINANCING STATEMENT SHALL BE SIGNED BY THE SECURED PARTY AND IF SUCH AMENDMENT IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2). 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.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

~~(a)~~ (I) The goods are described in the mortgage by item or type;

~~(b)~~ (II) The goods are or are to become fixtures related to the real estate described in the mortgage;

~~(e)~~ (III) The mortgage complies with the requirements for a financing statement AS SET FORTH in this section; ~~other than~~ EXCEPT THAT SAID MORTGAGE IS NOT REQUIRED TO INCLUDE THE SOCIAL SECURITY NUMBER OR FEDERAL TAXPAYER IDENTIFICATION NUMBER OF THE DEBTOR OR a recital that ~~it~~ SAID MORTGAGE is to be filed in the real estate records; and

~~(d)~~ (IV) The mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

SECTION 2. 4-9-403 (3), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9-403. What constitutes filing - duration of filing - effect of lapsed filing - duties of filing officer. (3) (a) SUBJECT TO SECTION 4-9-412 AND PARAGRAPH (b) OF THIS SUBSECTION (3), a continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2) of this section. Any such continuation statement must identify the original statement by FILING OFFICE, file number, ~~and state that the original statement is still effective~~ AND DATE OF FILING. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five 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 and except as provided in subsection (6) of this section, the filing officer may remove a lapsed statement from the files and destroy it or a microfilm or other photographic record thereof after one 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 or she physically destroys the financing statements of a period more than five 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.

(b) ANY CONTINUATION STATEMENT FILED ON OR AFTER JULY 1, 1996, INCLUDING ONE THAT WAS PERFECTED BY FILING WITH BOTH THE OFFICES OF THE SECRETARY OF STATE AND A COUNTY CLERK AND RECORDER, CONTINUES THE PERFECTION IN ALL OF THE COLLATERAL LISTED ON THE FILING. THE FILING OF A SINGLE CONTINUATION STATEMENT SHALL MAINTAIN THE EFFECTIVENESS OF FINANCING STATEMENTS THAT NAME IDENTICAL COLLATERAL BUT HAVE BEEN FILED IN MULTIPLE LOCATIONS.

SECTION 3. 4-9-404 (1), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9-404. Termination statement. (1) If a financing statement covering consumer goods is filed on or after January 1, 1978, within one month or within ten 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 the secured party 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 the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. If the affected secured party fails to file such a termination statement as required by this subsection (1) or to send such a termination statement within ten days after proper demand therefor, the secured party shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure. A TERMINATION STATEMENT SHALL BE SIGNED BY THE SECURED PARTY, AND IF SUCH STATEMENT IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2).

SECTION 4. 4-9-405 (2), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9-405. Assignment of security interest - duties of filing officer. (2) A secured party may assign of record all or a part of the secured party's 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 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. SUCH SEPARATE STATEMENT OF ASSIGNMENT SHALL BE SIGNED BY THE SECURED PARTY, AND IF SUCH STATEMENT IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2). 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 and 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, minerals or other substances of value which may be extracted from the earth, or accounts subject to subsection (5) of section 4-9-103, the filing officer shall index the assignment under the name of the assignor as grantor, and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the filing officer shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection (2), an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of section 4-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this code.

SECTION 5. 4-9-406, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9-406. Release of collateral - duties of filing officer. A secured party of record may release all or a 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. THE STATEMENT OF RELEASE

SHALL BE SIGNED BY THE SECURED PARTY, AND IF SUCH STATEMENT IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2). Upon presentation of such a statement of release to the filing officer, the filing officer 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.

SECTION 6. Part 4 of article 9 of title 4, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

4-9-413. Authorization to file financing statement - liability for unauthorized filing - electronic signatures. (1) (a) NO PERSON SHALL FILE A FINANCING STATEMENT OR AMENDMENT THAT ADDS COLLATERAL COVERED BY A FINANCING STATEMENT UNLESS THE DEBTOR AUTHORIZES SUCH FILING IN A SIGNED WRITING. ANY SUCH STATEMENT OR AMENDMENT THAT IS FILED ELECTRONICALLY SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SUBSECTION (2) OF THIS SECTION. UPON SIGNING A WRITTEN SECURITY AGREEMENT A DEBTOR AUTHORIZES THE SECURED PARTY TO FILE A FINANCING STATEMENT AND AMENDMENTS COVERING THE COLLATERAL DESCRIBED IN THE SECURITY AGREEMENT AND ANY PROCEEDS OF SAID COLLATERAL.

(b) ANY PERSON WHO FILES A FINANCING STATEMENT OR AMENDMENT IN VIOLATION OF PARAGRAPH (a) OF THIS SUBSECTION (1) IS LIABLE TO THE DEBTOR FOR FIVE HUNDRED DOLLARS AND ANY LOSS SUSTAINED BY THE DEBTOR AS A RESULT OF SUCH UNAUTHORIZED FILING.

(2) ANY AMENDMENT THAT DELETES COLLATERAL COVERED BY A FINANCING STATEMENT, TERMINATION STATEMENT, SEPARATE STATEMENT OF ASSIGNMENT, OR STATEMENT OF RELEASE OF COLLATERAL AND IS FILED ELECTRONICALLY, SHALL INCLUDE AN ELECTRONIC SIGNATURE OF THE SECURED PARTY THAT COMPLIES WITH PROCEDURES ADOPTED BY THE FILING OFFICER WITH WHOM SUCH FILING IS MADE. SUCH PROCEDURES SHALL REQUIRE, AT A MINIMUM, THAT THE NAME AND ADDRESS OF THE SECURED PARTY APPEAR ON SUCH FILING WHEN IT IS RETRIEVED ELECTRONICALLY OR IN PRINTED FORM. AN ELECTRONIC SIGNATURE MAY CONSIST OF AN ACCESS CODE OR ANY OTHER IDENTIFYING WORD OR NUMBER ASSIGNED BY A FILING OFFICER THAT IS UNIQUE TO A PARTICULAR FILER.

SECTION 7. 4-9.3-103 (3), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4-9.3-103. Central indexing system board. (3) In performing its duties pursuant to this article the board has the power to:

(d.5) EXPLORE WAYS AND MEANS OF EXPANDING THE AMOUNT AND KIND OF PUBLIC INFORMATION PROVIDED AND THE FORM IN WHICH IT IS PROVIDED, EXPANDING THE BASE OF USER ASSOCIATIONS THAT ACCESS SUCH PUBLIC INFORMATION AND, WHERE APPROPRIATE, IMPLEMENTING SUCH EXPANSION OR INCREASE;

SECTION 8. 4-9.5-103 (7) (d) (IV) and (7) (e), Colorado Revised Statutes, 1992 Repl. Vol., are amended to read:

4-9.5-103. Definitions. As used in this article, unless the context otherwise

requires:

(7) "Effective financing statement" means a statement that:

(d) Contains:

(IV) A description of the farm products by categories included in subsection (8) of this section subject to the security interest created by the debtor including: The amount of such products, unless all of a particular farm product is subject to the particular security interest; IDENTIFICATION OF EACH COUNTY, UTILIZING THE COUNTY CODE OR OTHER NUMERIC METHOD OF IDENTIFICATION USED TO IDENTIFY THE COUNTY ESTABLISHED BY THE BOARD; ~~a reasonable description of the property, including the name of each county in Colorado~~ where the farm product is produced or stored or to be produced or to be stored; ~~unless farm products of the debtor now or hereafter located in all counties of the state of Colorado are subject to the particular security interest~~; and the crop year, unless every crop year for the duration of the effective financing statement is subject to the particular security interest;

(e) Shall be amended in writing within three months after any material change, similarly signed, and filed to reflect material changes. SUCH AMENDMENT AND MATERIAL CHANGE SHALL BE SIGNED BY THE SECURED PARTY, AND IF SUCH AMENDMENT IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2). However, if the security interest is terminated as to one or more of the farm products shown on the filed effective financing statement and the effective financing statement is to remain effective as to one or more other farm products, an amendment shall be filed showing such partial termination within thirty days after termination of such security interest, and if the affected secured party fails to file an amendment showing such partial termination within the thirty-day period, he shall be liable to the debtor for one hundred dollars, and, in addition, for any loss caused to the debtor by such failure.

SECTION 9. 4-9.5-106, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

4-9.5-106. Continuation statements. (1) A continuation statement may be filed within six months prior to the expiration of the five-year period of an effective financing statement. Any such continuation statement shall identify the current effective financing statement by file number. ~~and shall state that the statement is still effective~~. Upon timely filing of the continuation statement, the effectiveness of the statement shall be continued for five years after the last date to which the filing was effective, whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) AN EFFECTIVE FINANCING STATEMENT FILED BEFORE JULY 1, 1996, THAT HAS NOT LAPSED BY DECEMBER 31, 1997, SHALL LOSE ITS PERFECTION AND PRIORITY RIGHTS UNLESS A NEW CONTINUATION STATEMENT IS FILED ON OR AFTER JULY 1,

1996, BUT ON OR BEFORE DECEMBER 31, 1997. ANY SUCH CONTINUATION STATEMENT SHALL IDENTIFY THE ORIGINAL STATEMENT BY FILING OFFICE, FILE NUMBER, AND DATE OF FILING. THE FILING OF SUCH CONTINUATION STATEMENT SHALL PRESERVE THE PRIORITY OF THE ORIGINAL FILING AND SHALL BE EFFECTIVE FOR THE LATER OF FIVE YEARS AFTER THE EXPIRATION OF THE ORIGINAL FILING OR THE EXPIRATION OF ANY CONTINUATION STATEMENT FILED BEFORE JULY 1, 1996.

(3) THE EFFECTIVENESS OF AN EFFECTIVE FINANCING STATEMENT FILED BEFORE JULY 1, 1996, THAT LAPSES AFTER JULY 1, 1996, BUT BEFORE DECEMBER 31, 1997, MAY BE CONTINUED BY FILING A CONTINUATION STATEMENT IN ACCORDANCE WITH THIS SECTION. IF SUCH CONTINUATION STATEMENT IS FILED BEFORE JULY 1, 1996, SUCH EFFECTIVE FINANCING STATEMENT OR CONTINUATION STATEMENT SHALL BE CONTINUED BY THE TIMELY FILING OF A FURTHER CONTINUATION STATEMENT, PURSUANT TO SUBSECTION (2) OF THIS SECTION.

SECTION 10. 4-9.5-107 (2), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

4-9.5-107. Notice of termination. (2) (a) The notice of termination of an effective financing statement shall:

(I) Be signed by the secured party, ~~shall~~ AND IF SUCH NOTICE IS FILED ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2);

(II) Identify the effective financing statement to be terminated by file number; and ~~shall~~

(III) State that the effective financing statement is to be removed from the master list.

(b) Termination shall be effective as of the date and hour of filing the notice with the board or its designee.

SECTION 11. 4-9.5-108, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

4-9.5-108. Filings generally. (3) ANY TERMINATION, AMENDMENT, ASSIGNMENT, OR RELEASE OF COLLATERAL FILING MADE PURSUANT TO THIS ARTICLE SHALL INCLUDE THE SIGNATURE OF THE SECURED PARTY, AND IF SUCH FILING IS MADE ELECTRONICALLY IT SHALL BE SIGNED ELECTRONICALLY, PURSUANT TO SECTION 4-9-413 (2).

SECTION 12. 4-9.5-111, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

4-9.5-111. Penalties. Any debtor OR THIRD PARTY who provides any false or misleading information concerning the name of the owner of any farm products or ~~concerning~~ the existence of any security interest affecting farm products with the intent to deprive the secured party of any of his OR HER security under the security interest or to defraud or mislead the buyer of any farm product as to the existence of

the security interest or fails to pay to the secured party any moneys realized out of the sale of collateral in violation of any security agreement and with the intent to deprive the secured party of his SUCH PARTY'S rights thereto, OR MAKES A FILING THAT DOES NOT INCLUDE THE AUTHORIZED SIGNATURE OF THE SECURED PARTY AS REQUIRED BY SECTION 4-9.5-108 (3), shall be deemed to have violated section 18-5-206, C.R.S., and shall be subject to the penalties described in said section. Any penalty so collected shall be deposited into the central filing system fund for administering the central filing system pursuant to this article.

SECTION 13. 4-11-102, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

4-11-102. Fees for filing, indexing, and furnishing data. (3) WHEN A DOCUMENT IS NOT SUBMITTED ON A STANDARD FORM ESTABLISHED BY THE CENTRAL INDEXING SYSTEM BOARD FOR SUCH PURPOSE, THE FILING OFFICER SHALL CHARGE A FIVE-DOLLAR FEE IN ADDITION TO ANY OTHER FEE IMPOSED PURSUANT TO THIS SECTION FOR FILING, INDEXING, AND FURNISHING DATA PURSUANT TO SUBSECTIONS (1) (a), (1) (a.5) (II), (1) (b), (1) (c), (1) (d), (1) (e), AND (1) (f) OF THIS SECTION.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 24, 1997