

CHAPTER 267

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 94-132

BY SENATOR Schroeder;
also REPRESENTATIVES Chlouber, Eisenach, and Taylor.**AN ACT****CONCERNING THE FILING OF SECURITY INTERESTS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 4-9-401 (1) (a), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:**4-9-401. 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, ~~or~~ farm products ~~or~~ INCLUDING, BUT NOT LIMITED TO, CROPS GROWING OR TO BE GROWN, FARM PRODUCTS WHICH HAVE BECOME INVENTORY, accounts or general intangibles arising from or relating to the sale of farm products by a ~~farmer~~ PERSON ENGAGED IN FARMING, or consumer goods, then in the office of the county clerk and recorder 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 ANY county clerk and recorder. ~~in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown, in the office of the county clerk and recorder in the county where the land is located.~~ NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH (a) TO THE CONTRARY, NO SECURITY INTEREST FILED AFTER JULY 1, 1994, ON FARM PRODUCTS SHALL BE DEEMED TO BE PERFECTED UNLESS AN EFFECTIVE FINANCING STATEMENT FOR SUCH FARM PRODUCTS IS ALSO APPROPRIATELY FILED PURSUANT TO ARTICLE 9.5 OF THIS TITLE.

SECTION 2. Part 4 of article 9 of title 4, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

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

4-9-411. Committee to make recommendation concerning implementation of filing system - legislative declaration - repeal. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE CITIZENS OF THE STATE OF COLORADO WILL BENEFIT IF A COMPREHENSIVE AND EFFICIENT SYSTEM IS ESTABLISHED TO SIMPLIFY THE FILING OF ALL SECURITY INTERESTS AND THE RETRIEVAL OF INFORMATION CONCERNING SECURITY INTERESTS. SUCH A SYSTEM SHALL ALLOW A PARTY TO PERFECT ITS SECURITY INTEREST WITH A SINGLE FILING AT ONE LOCATION AND ELIMINATE ANY NEED FOR THE FILING OF SECURITY INTERESTS AT MULTIPLE LOCATIONS. SUCH A SYSTEM SHALL ALSO ALLOW FOR THE FILING OF EFFECTIVE FINANCING STATEMENTS IN CONJUNCTION WITH LIENS ON FARM PRODUCTS PURSUANT TO ARTICLE 9.5 OF THIS TITLE, AT THE SAME LOCATION. THE SYSTEM SHALL BE DESIGNED SO THAT EASE OF FILING AND RETRIEVAL OF INFORMATION BY USERS IS GIVEN PRIORITY.

(2) A COMMITTEE SHALL BE ESTABLISHED TO RECOMMEND HOW TO IMPLEMENT THE SYSTEM DESCRIBED IN SUBSECTION (1) OF THIS SECTION. THE COMMITTEE SHALL CONSIST OF THE FOLLOWING THIRTEEN MEMBERS:

(a) TWO MEMBERS, APPOINTED BY THE COLORADO ASSOCIATION OF CLERKS AND RECORDERS, SHALL BE COUNTY CLERKS AND RECORDERS, ONE FROM A CATEGORY I OR II COUNTY AND ONE FROM A CATEGORY III, IV, OR V COUNTY;

(b) ONE MEMBER, APPOINTED BY THE SECRETARY OF STATE, SHALL REPRESENT THE SECRETARY OF STATE;

(c) ONE MEMBER, APPOINTED BY THE COMMISSION ON INFORMATION MANAGEMENT IN THE DEPARTMENT OF ADMINISTRATION, SHALL REPRESENT THE COMMISSION;

(d) ONE MEMBER, APPOINTED BY THE STATE CENTRAL FILING SYSTEM BOARD, SHALL REPRESENT THE BOARD; AND

(e) EIGHT MEMBERS APPOINTED BY THE GOVERNOR. EACH MEMBER SHALL REPRESENT ONE OF THE FOLLOWING:

(I) TITLE INSURANCE COMPANIES;

(II) THE MOTOR VEHICLE DIVISION IN THE DEPARTMENT OF REVENUE;

(III) AUTOMOBILE DEALERS;

(IV) LENDERS, WHICH SHALL BE REPRESENTED BY TWO MEMBERS; AND

(V) AGRICULTURAL PRODUCERS, WHICH SHALL BE REPRESENTED BY THREE MEMBERS.

(3) MEMBERS SHALL SERVE WITHOUT COMPENSATION.

(4) VACANCIES ON THE COMMITTEE SHALL BE FILLED BY THE GOVERNOR OR OTHERWISE, AS IS APPROPRIATE.

(5) THE COMMITTEE SHALL CHOOSE A CHAIRPERSON AND VICE-CHAIRPERSON FROM

AMONG ITS MEMBERS AND MAY ESTABLISH SUCH ORGANIZATIONAL AND PROCEDURAL RULES AS ARE NECESSARY.

(6) THE COMMITTEE MAY CREATE SUBCOMMITTEES WHICH MAY CONSIST, IN PART, OF PERSONS WHO ARE NOT MEMBERS OF THE COMMITTEE. SUCH PERSONS MAY HAVE A VOTE ON SUCH SUBCOMMITTEE BUT SHALL NOT HAVE ANY VOTE AT A MEETING OF THE WHOLE COMMITTEE.

(7) THE COMMITTEE SHALL REPORT TO THE GENERAL ASSEMBLY NO LATER THAN JANUARY 1, 1995, WITH RECOMMENDATIONS AND FINDINGS BASED ON THE STUDY CONDUCTED PURSUANT TO THIS SECTION.

(8) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1995.

SECTION 3. 4-9.5-103 (7) (a) and (7) (f), 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:

(a) Is an original or reproduced copy thereof, A FAX COPY, OR, IF PERMITTED BY FEDERAL LAW, REGULATION, RULE, OR INTERPRETATION, AN ELECTRONICALLY TRANSMITTED FILING;

(f) Remains effective for a period of five years from the date of filing PROVIDED THE ANNUAL MAINTENANCE FEE ESTABLISHED PURSUANT TO SECTION 35-15-105 (2) (i), C.R.S., IS PAID EACH YEAR, subject to extensions for additional periods of five years each by filing a continuation statement within six months before the expiration of the current five-year period as provided in section 4-9.5-106;

SECTION 4. 4-9.5-104 (1) and (5) (a), Colorado Revised Statutes, 1992 Repl. Vol., are amended to read:

4-9.5-104. Central filing system. (1) The board shall be responsible for the design, implementation, and operation of a central filing system for effective financing statements. The system shall provide a means for filing effective financing statements or notices of such effective financing statements. The system shall include requirements:

(a) That an effective financing statement be filed in the office of the board or its designee. IN THE CASE OF A SECURED PARTY FILING A NOTICE OF EFFECTIVE FINANCING STATEMENT BY COMPUTER MODEM ACCESS WITH THE OFFICE OF THE BOARD OR ITS DESIGNEE, THE EFFECTIVE FINANCING STATEMENT MAY BE FILED WITH THE SAME OFFICE OF THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE WHERE THE SECURITY INTEREST IS FILED, PURSUANT TO SECTION 4-9-401.

(b) That the board or its designee OR, PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE record the date and hour of the filing of effective financing statements; and

(c) That the board or its designee OR, PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE shall assign a file number to each effective financing statement.

(5) (a) The lists as identified pursuant to subsection (3) of this section shall be distributed by the board or its designee ~~on a quarterly basis reflecting~~ AND SHALL REFLECT all then effective filings, calling attention to new filings, changes and terminations since the last list, and shall be in writing or printed, microfiche and computer-readable forms. The board or its designees SHALL DETERMINE THE FREQUENCY WITH WHICH THE LISTS IDENTIFIED PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE DISTRIBUTED. SUCH LISTS ~~may also distribute lists~~ BE DISTRIBUTED on an annual basis with three quarterly cumulative supplements reflecting all new filings, changes, and terminations since the last list, if it is cost-effective, requested by registered buyers, and permitted by applicable federal law. The board shall also provide for the distribution by the board or its designee of the lists in direct computer access form and establish reasonable charges therefor pursuant to section 35-15-105, C.R.S. The board may also develop other forms in which to distribute lists and establish charges therefor pursuant to section 35-15-105, C.R.S. The distribution shall be made by first-class mail, postage prepaid. A registrant is deemed to be registered only as to those products, counties, and crop years for which ~~he~~ THE REGISTRANT requests a list. If the name of the seller of a farm product is not on a list requested and received by a registrant, the registrant shall have no liability under this article except as to those farm products for which the registrant has received direct notification of the existence of security interests pursuant to section 1324 (e) (1) and (g) (2) (A) of the federal "Food Security Act of 1985". The registrant may rely on the representation of the seller as to ~~his~~ THE SELLER'S identity, so long as the reliance is in good faith.

SECTION 5. 4-9.5-105 (1) and (4), Colorado Revised Statutes, 1992 Repl. Vol., are amended to read:

4-9.5-105. Confirmations. (1) Oral and written inquiries regarding information provided by the filing of effective financing statements may be made at the office of the board or its designee ~~between 8:30 a.m. and 5 p.m. on business days and between 8:30 a.m. and 5 p.m. on nonbusiness days, except Thanksgiving, Christmas, and New Year's days~~ DURING THE DAYS AND TIMES ESTABLISHED BY THE BOARD. Written confirmation of an oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

(4) The state of Colorado, the board, the members of the board, THE COUNTY CLERKS AND RECORDERS, THE SECRETARY OF STATE, and their employees, designees, or agents shall be exempt from all personal liability as a result of any error or omission in receiving, storing, or providing information or performing duties as required by this article, except in cases of willful misconduct or bad faith. No such error or omission shall constitute an express or implied breach of contract but shall be limited to tort.

SECTION 6. 4-9.5-108, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

4-9.5-108. Filings generally. The board or its designee OR, PURSUANT TO SECTION

4-9.5-104 (1) (a), THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE shall accept for filing all filings pursuant to this article during regular business hours. The board or its designee OR, PURSUANT TO SECTION 4-9.5-104 (1) (a), THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE shall record the date and hour of the filing of such statements and THE BOARD OR ITS DESIGNEE shall update the master list to reflect such statements. If the board or its designee ~~receives~~ OR, PURSUANT TO SECTION 4-9.5-104 (1) (a), THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE RECEIVE the statement in duplicate, one copy of the statement shall be returned to the filing party stamped to show the time of receipt thereof. All filings shall be submitted for filing on forms prescribed by the board.

SECTION 7. Article 9.5 of title 4, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

4-9.5-113. Repeal of article. THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 1996.

SECTION 8. 35-15-103 (2) (i), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-15-103. Duties of board. (2) In performing its duties pursuant to this article, the board has the power to:

(i) Contract in its discretion with any public or private party or parties for any or all aspects of the design, implementation of the design of, operation, and improvement of the central filing system, including accounting, computer consulting, legal and other professional services, and insurance; except that any contract entered into pursuant to this paragraph (i) shall be for a period of at least three years. ~~The board shall submit a recommendation to the general assembly of any contract with any public or private party selected pursuant to this paragraph (i), and any such contract shall not be effective until approved by the general assembly acting by joint resolution confirming such award.~~

SECTION 9. 35-15-105 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

35-15-105. Fees for filing documents relating to effective financing statements pursuant to article 9.5 of title 4. (2) The board shall establish pursuant to subsection (1) of this section fees and charges for the following services not to exceed the amounts indicated:

(i) FOR THE ANNUAL MAINTENANCE OF AN EFFECTIVE FINANCING STATEMENT FILED PURSUANT TO ARTICLE 9.5 OF TITLE 4, C.R.S., TEN DOLLARS PER YEAR PER FILING.

SECTION 10. Article 15 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

35-15-110. Repeal of article. THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 1996.

SECTION 11. 38-27-102, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

38-27-102. Notice of lien. Such lien shall take effect if, prior to any such judgment, settlement, or compromise, a written notice of lien containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person alleged to be liable to the injured person for the injuries received is filed by the hospital in the office of the ~~division of insurance, which shall maintain and index appropriate records for hospital liens~~ SECRETARY OF STATE. HOSPITAL LIENS PROPERLY RECORDED WITH THE DIVISION OF INSURANCE PRIOR TO JULY 1, 1994, SHALL BE VALID AND ENFORCEABLE WITHOUT FILING WITH THE OFFICE OF THE SECRETARY OF STATE. Within ten days after such filing, the hospital shall mail by certified mail, return receipt requested, a copy of said notice to such injured person AT THE LAST ADDRESS PROVIDED TO THE HOSPITAL BY SUCH PERSON, to his OR HER attorney, if known, to the ~~person~~ PERSONS alleged to be liable to such injured person for the injuries sustained, IF KNOWN, and to the insurance ~~carrier~~ CARRIERS, if known, which ~~has~~ HAVE insured such ~~person~~ PERSONS alleged to be liable against such liability. If an action for damages on account of such injuries or death is pending, the requirements of notice contained in this section shall be satisfied by the filing of the said notice of lien in the pending action, with copies thereof to the attorneys of record for the parties thereto.

SECTION 12. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the central filing system cash fund not otherwise appropriated, to the department of agriculture, for allocation to the state central filing system board, for the fiscal year beginning July 1, 1994, the sum of thirty thousand five hundred eighty-four dollars (\$30,584), or so much thereof as may be necessary, for the implementation of this act.

SECTION 13. Effective date. This act shall take effect July 1, 1994.

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: May 31, 1994