

CHAPTER 261

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 96-098

BY SENATOR Schroeder;
also REPRESENTATIVES Chlouber and George.**AN ACT****CONCERNING THE CENTRAL INDEXING SYSTEM, AND MAKING AN APPROPRIATION.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. The introductory portion to 4-9.3-103 (1) (a) and 4-9.3-103 (3), Colorado Revised Statutes, 1992 Repl. Vol., as amended, are amended to read:

4-9.3-103. Central indexing system board. (1) (a) There is hereby established in the department of state BY A **TYPE 1 TRANSFER**, a central indexing system board which shall consist of the following eleven members:

(3) ~~The duties of the board are to~~ IN PERFORMING ITS DUTIES PURSUANT TO THIS ARTICLE THE BOARD HAS THE POWER TO:

(a) Create and implement the central indexing system, WHICH SHALL INCLUDE THE OPERATION AND IMPROVEMENT OF THE CENTRAL FILING SYSTEM;

(b) ~~Establish policies and a budget for the central indexing system~~ ADOPT, RESCIND, MODIFY, OR AMEND RULES, ORDERS, AND RESOLUTIONS FOR THE EXERCISE OF ITS POWERS AND DUTIES, SUBJECT TO ARTICLE 4 OF TITLE 24, C.R.S.;

(c) ~~Disburse funds in the central indexing system cash fund, created in section 4-9.3-105~~ ENTER INTO CONTRACTS DEEMED APPROPRIATE TO THE PURPOSE OF CARRYING OUT THE PURPOSES OF THE BOARD;

(d) Oversee the design, operation, and implementation of the central indexing system;

(e) Monitor program performance and accountability;

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

(f) Determine which filings to perfect security interests and notices of ~~other~~ agricultural liens AND OTHER LIENS created by law shall be indexed in the central indexing system;

(g) Establish fees to be charged for accessing information in the central indexing system, which fees shall be credited to the central indexing system cash fund, ~~and~~ based upon the following factors:

- (I) The fiscal integrity of the central indexing system;
- (II) The right to access public information at a reasonable cost;
- (III) The market value of central indexing system information;
- (IV) The proper balance between filing surcharge fees and access fees;
- (V) The availability of other funding sources.

(h) ~~Select public agencies or private firms to administer the central indexing system~~ CONTRACT WITH ANY PUBLIC OR PRIVATE PARTY CONCERNING THE DESIGN, IMPLEMENTATION, OPERATION, AND IMPROVEMENT OF THE CENTRAL INDEXING SYSTEM, INCLUDING ACCOUNTING, INFORMATION SYSTEMS, AND OTHER PROFESSIONAL SERVICES. THE BOARD SHALL ACQUIRE OR LEASE THE EQUIPMENT AND FACILITIES NECESSARY TO CARRY OUT THE PURPOSES OF THE BOARD.

(i) Work with various sales tax jurisdictions to resolve the current problem of automobile lien perfection and the collection of sales taxes;

(j) Establish fees for the filing of effective financing statements and continuation statements;

(k) Establish fees for the filing of notices of agricultural liens created by law and promulgate forms for such filings;

(l) Establish fees for distributing the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, or for providing such master list or portions thereof to other interested parties pursuant to article 9.5 of this title in photocopy, microfiche, or computer-readable form. Such fees shall not exceed the actual cost of providing the lists in the form requested.

(m) HIRE EMPLOYEES, PRESCRIBE THEIR DUTIES, FIX THEIR COMPENSATION, AND DELEGATE BOARD CONTRACT AND DISBURSEMENT RESPONSIBILITIES TO SUCH EMPLOYEES;

(n) BRING SUIT IN CONNECTION WITH THE EXERCISE OF ITS POWERS;

(o) ACCEPT GRANTS AND MONEYS FROM THE STATE OR ANY OTHER SOURCE;

(p) COOPERATE WITH ANY LOCAL, STATE, OR NATIONAL ORGANIZATIONS OR GOVERNMENTAL ENTITIES ENGAGED IN ACTIVITIES SIMILAR TO THOSE OF THE BOARD

AND CONTRACT WITH SUCH ORGANIZATIONS OR ENTITIES FOR THE PURPOSE OF CARRYING ON JOINT PROGRAMS;

(q) DISBURSE FUNDS IN THE CENTRAL INDEXING SYSTEM CASH FUND, CREATED IN SECTION 4-9.3-105;

(r) PERFORM SUCH OTHER ACTS AS MAY BE NECESSARY TO CARRY OUT ITS DUTIES AND POWERS.

SECTION 2. 4-9.3-105, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9.3-105. Central indexing system cash fund - creation - repeal. (1) The surcharge on filings and recordings made pursuant to subsection (3) of this section shall fund the hardware, software, programming, maintenance, and other related costs needed to allow for the electronic filing and retrieval of lien index data under the central indexing system. EFFECTIVE JULY 1, 1996, MONEYS IN THE FUND SHALL BE APPROPRIATED BY THE GENERAL ASSEMBLY TO THE BOARD ONLY FOR PURPOSES RECOMMENDED BY THE BOARD TO THE JOINT BUDGET COMMITTEE. FOR PURPOSES OF THIS ARTICLE, "FILING OR RECORDING" MEANS THE PERFORMANCE OF ANY SERVICE BY A CLERK AND RECORDER WHETHER OR NOT A SPECIFIC STATUTE USES THE PHRASE, AND INCLUDES ANY SERVICE PERFORMED BY A CLERK AND RECORDER FOR A FEE WHEREBY A DOCUMENT BECOMES A PUBLIC RECORD. NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (1) TO THE CONTRARY, "FILING OR RECORDING" DOES NOT MEAN THE FILING OF A MARRIAGE LICENSE, THE RECORDING OF A VETERANS' DISCHARGE CERTIFICATE, OR THE RECORDING OF A DUPLICATE MOTOR VEHICLE TITLE. THE BOARD MAY EXEMPT OTHER FILINGS OR RECORDINGS FROM THE SURCHARGE, AS DEEMED APPROPRIATE.

(2) The surcharges collected by the board pursuant to subsection (3) of this section shall be transmitted to the state treasurer who shall credit the same to the central indexing system cash fund, which fund is hereby created. The moneys in such fund shall be subject to annual appropriation by the general assembly to the board for the purposes described in subsection (1) of this section.

(3) A one-dollar surcharge shall be imposed on any and all filings and recordings made with the division of commercial recordings in the office of the secretary of state or any office of a county clerk and recorder, regardless of the statute under which the filing or recording is made; except that such surcharge shall not be imposed on filings and recordings for which there is no charge.

(3.4) REVENUES COLLECTED BY THE BOARD FROM THE OPERATION OF THE CENTRAL INDEXING SYSTEM, WITH THE EXCEPTION OF REVENUES DERIVED FROM THE SURCHARGE DESCRIBED IN SUBSECTION (3) OF THIS SECTION, SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE CENTRAL INDEXING SYSTEM CASH FUND. SUCH REVENUES SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE BOARD FOR THE PURPOSES DESCRIBED IN SUBSECTION (1) OF THIS SECTION AND IN SECTION 4-9.3-103. THE BOARD MAY ALLOCATE A SHARE OF SUCH REVENUES TO THE GOVERNMENTAL AGENCIES THAT PROVIDE DATABASE INFORMATION TO THE CENTRAL INDEXING SYSTEM FOR PUBLIC ACCESS PURPOSES.

(3.5) (a) THERE IS HEREBY CREATED WITHIN THE CENTRAL INDEXING SYSTEM CASH FUND A COUNTY CLERK'S TECHNOLOGY FUND. THE SECRETARY OF STATE SHALL TRANSMIT THE FOLLOWING REVENUES TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO SUCH FUND:

(I) THREE DOLLARS FROM THE FILING OF EACH FINANCING STATEMENT AND EACH AMENDMENT, CONTINUATION, ASSIGNMENT, RELEASE, OR TERMINATION OF A FINANCING STATEMENT, COLLECTED PURSUANT TO SECTION 24-21-104 (3) (f) (II), C.R.S.

(II) ANY REVENUE IN THE CENTRAL INDEXING SYSTEM CASH FUND NOT USED FOR THE CONTINUING OPERATION OF THE BOARD OR THE CENTRAL INDEXING SYSTEM OR OTHERWISE ALLOCATED PURSUANT TO SUBSECTION (3.4) OF THIS SECTION.

(b) THE BOARD SHALL DETERMINE, AND MAY ESTABLISH SUBCOMMITTEES TO RECOMMEND, FORMULAE PURSUANT TO WHICH MONEYS IN THE COUNTY CLERK'S TECHNOLOGY FUND SHALL BE ALLOCATED AMONG THE COUNTY CLERKS. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT MONEYS IN THE FUND BE DISTRIBUTED DIRECTLY TO EACH COUNTY CLERK IN AN AMOUNT EQUAL TO THE ALLOCATION DETERMINED BY THE BOARD AND THAT SUCH DISTRIBUTION NOT BE CONSIDERED A TRANSFER TO A COUNTY'S GENERAL FUND OR SUBJECT TO APPROPRIATION BY A COUNTY COMMISSION.

(4) ~~This section is~~ SUBSECTIONS (1), (2), AND (3) OF THIS SECTION AND THIS SUBSECTION (4) ARE REPEALED, EFFECTIVE DECEMBER 31, 2000.

SECTION 3. 4-9.3-106, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

4-9.3-106. Duties of filing officer. (1.5) A FILING OFFICER SHALL NOT REJECT A DOCUMENT SUBMITTED FOR FILING UNDER THIS TITLE UNLESS:

(a) THE FILING PARTY HAS FAILED TO SUBMIT THE PROPER FEE; OR

(b) THE FILING OFFICER DETERMINES THAT THE DOCUMENT IS ILLEGIBLE AND CANNOT BE INDEXED BY THE DEBTOR'S NAME.

SECTION 4. Article 9.3 of title 4, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

4-9.3-107. Immunity. (1) EXCEPT IN CASES OF WILLFUL MISCONDUCT OR BAD FAITH, THE DEPARTMENT OF REVENUE AND CENTRAL INDEXING SYSTEM BOARD CONTRACTORS AND CONTRACTORS' EMPLOYEES SHALL BE EXEMPT FROM PERSONAL LIABILITY AS A RESULT OF AN ERROR OR OMISSION IN RECEIVING, ENTERING, STORING, OR PROVIDING INFORMATION OR PERFORMING THEIR DUTIES AS REQUIRED BY THIS TITLE.

(2) ANY ERROR OR OMISSION DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL CONSTITUTE A TORT AND NOT A BREACH OF ANY EXPRESS OR IMPLIED CONTRACT.

SECTION 5. 4-9.5-103 (1), Colorado Revised Statutes, 1992 Repl. Vol., as amended, as it will become effective July 1, 1996, is amended to read:

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

(1) "Board" means the state central ~~filing~~ INDEXING system board, created in section 4-9.3-103.

SECTION 6. 4-9.5-103 (7) (b) and (7) (c), 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:

(b) Is signed, UNLESS THE STATEMENT IS FILED BY ELECTRONIC TRANSMISSION, and filed with the office of the board or its designee by the secured party;

(c) Is signed by the debtor, UNLESS THE STATEMENT IS FILED BY ELECTRONIC TRANSMISSION;

SECTION 7. 4-9.5-105 (1), (2), (3), and (4), Colorado Revised Statutes, 1992 Repl. Vol., as amended, 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 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.~~ BOARD'S DESIGNEE BETWEEN THE HOURS OF 8:30 A.M. AND 5 P.M. ON BUSINESS DAYS.

(2) ~~The board or its designee shall provide a system that assigns an identifying number to each inquiry made pursuant to subsection (1) of this section. Such number shall be given to the inquiring party at the time of the oral response and shall be included in the written confirmation. The board or its designee shall maintain a record of inquiries made under this section identifying who made the inquiry, on whom the inquiry was made, and the date of the inquiry.~~

(3) ~~The board or its designee shall provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation system in subsection (1) of this section. When such a computerized system is implemented and used, it shall have the same effect as an inquiry and confirmation under subsection (1) of this section.~~

(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 8. 4-9.5-108 (1), Colorado Revised Statutes, 1992 Repl. Vol., as amended, as it will become effective July 1, 1996, is amended to read:

4-9.5-108. Filings generally. (1) 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~~ TITLE 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 or, pursuant to section 4-9.5-104 (1) (a), the county clerk and recorder or the secretary of state receives the statement in duplicate,~~ IN THE EVENT OF AN ELECTRONIC FILING MADE OTHER THAN DURING REGULAR BUSINESS HOURS, THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE SHALL RECORD THE DATE OF FILING AS FOLLOWS: IF AN ELECTRONIC FILING IS MADE OTHER THAN DURING THE REGULAR BUSINESS HOURS OF THE FILING OFFICE, THE DATE OF FILING SHALL BE THE DAY ON WHICH SUCH OFFICE NEXT COMMENCES BUSINESS, AND THE HOUR OF FILING SHALL BE THE COMMENCEMENT OF BUSINESS ON SUCH DAY. ALL FILINGS MADE PURSUANT TO THIS TITLE THAT ARE FILED AS PAPER DOCUMENTS AND NOT ELECTRONICALLY SHALL BE FILED IN DUPLICATE, AND 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 9. 4-9.5-110 (1), Colorado Revised Statutes, 1992 Repl. Vol., as it will become effective July 1, 1996, is repealed as follows:

~~**4-9.5-110. Fees - rules and regulations.** (1) Fees relative to matters in this article are prescribed and to be determined pursuant to article 9.3 of this title. Any moneys appropriated to the board to implement this central filing system shall be reimbursed from the fees collected and deposited to the board's central filing system fund. The fees shall be determined based on the initial cost and the on-going cost to operate the system, and reimbursement to the general fund shall be made on or before June 30, 1992, so that the implementation of the system will be allocated over a three-year period, which will lessen the impact on the parties. The initial cost and the on-going cost to operate the system shall be calculated on the basis of actual direct costs. The board shall design the system so that the initial costs and the on-going cost to operate shall be minimized consistent with the quality of the system contemplated by the general assembly in this article.~~

SECTION 10. 4-9-412, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

4-9-412. Refiling required. (1) A financing statement or continuation statement filed before July 1, 1996, which has not lapsed by December 31, 1997, shall lose its perfection ~~or~~ AND priority rights unless a new continuation statement is filed ON OR after July 1, 1996, but on or before December 31, 1997, which identifies the original statement by COUNTY, file number, AND DATE AND TIME OF FILING, AND LISTS THE COLLATERAL OF THE ORIGINAL FILING and includes a statement that the original FINANCING statement is still effective. The filing of a new continuation statement shall preserve the priority of the original filing and shall be effective for five years

from the EXPIRATION date of the ~~filing of the new~~ ORIGINAL FILING OR ANY continuation statement FILED BEFORE JULY 1, 1996.

(2) The effectiveness of a financing statement or continuation statement filed before July 1, 1996, that lapses after July 1, 1996, but before December 31, 1997, may be continued by the filing of a continuation statement ~~after July 1, 1996~~, in accordance with section 4-9-403 (3). IF THE EFFECTIVENESS OF A FINANCING STATEMENT OR CONTINUATION STATEMENT IS CONTINUED BY THE FILING OF A CONTINUATION STATEMENT BEFORE JULY 1, 1996, SUCH FINANCING STATEMENT OR CONTINUATION STATEMENT MUST BE CONTINUED BY THE TIMELY FILING OF A FURTHER CONTINUATION STATEMENT, AS REQUIRED BY SUBSECTION (1) OF THIS SECTION.

(3) FOR PURPOSES OF THE REFILEING PROVISIONS OF THIS SECTION ONLY, A CONTINUATION STATEMENT DOES NOT HAVE TO BE FILED DURING THE PERIOD BEGINNING JULY 1, 1996, TO DECEMBER 31, 1997, WHEN THE ONLY COLLATERAL ON A FINANCING STATEMENT IS TIMBER TO BE CUT; MINERALS OR OTHER SUBSTANCES OF VALUE WHICH MAY BE EXTRACTED FROM THE EARTH; FIXTURES; A MORTGAGE OR DEED OF TRUST EFFECTIVE AS A FIXTURE FILING; COLLATERAL, INCLUDING FIXTURES, OF A TRANSMITTING UTILITY; OR ACCOUNTS SUBJECT TO SECTION 4-9-103 (5).

SECTION 11. Article 20 of title 38, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 2
AGISTOR'S LIEN ACT

38-20-201. Short title. THIS PART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "AGISTOR'S LIEN ACT".

38-20-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ABANDONED" MEANS HAVING FORSAKEN ENTIRELY OR NEGLECTED OR REFUSED TO PAY FOR FEEDING, HERDING, PASTURING, KEEPING, RANCHING, BOARDING, OR MEDICAL CARE FOR ANY LIVESTOCK HELD BY AN AGISTOR, ITS OWNER, OR AN OWNER'S AGENT.

(2) "AGENT" MEANS ANY PERSON WHO CONTRACTS FOR THE FEEDING, HERDING, PASTURING, KEEPING, RANCHING, OR BOARDING OF LIVESTOCK OR THE PROVISION OF MEDICAL CARE FOR LIVESTOCK.

(3) "AGISTOR" MEANS ANY RANCHER, FARMER, FEEDER, HERDER OF CATTLE, LIVERY STABLE KEEPER, VETERINARIAN, OR OTHER PERSON TO WHOM LIVESTOCK ARE ENTRUSTED BY THE OWNER FOR FEEDING, HERDING, PASTURING, KEEPING, RANCHING, OR BOARDING, OR PROVIDING MEDICAL CARE.

(4) "BOARD" MEANS THE STATE BOARD OF STOCK INSPECTION COMMISSIONERS, CREATED IN SECTION 35-41-101, C.R.S.

(5) "CONTINUING PAYMENT" MEANS CHARGES THAT ARE DUE AND OWING TO AN AGISTOR AND DO NOT HAVE A DEFINITE TERMINATION DATE.

(6) "LIVESTOCK" MEANS HORSES, MULES, ASSES, CATTLE, SHEEP, HOGS, AND ALTERNATIVE LIVESTOCK, AS DEFINED IN SECTION 35-41.5-102 (1), C.R.S.

(7) "PUBLIC LIVESTOCK MARKET" MEANS A PUBLIC LIVESTOCK MARKET LICENSED PURSUANT TO ARTICLE 55 OF TITLE 35, C.R.S.

38-20-203. Agistor's lien. (1) AN AGISTOR SHALL HAVE A LIEN UPON THE LIVESTOCK ENTRUSTED TO ITS CARE FOR ANY AMOUNT THAT MAY BE DUE FOR FEEDING, HERDING, PASTURING, KEEPING, RANCHING, OR BOARDING SUCH LIVESTOCK, FOR MEDICAL CARE PROVIDED TO SUCH LIVESTOCK, AND FOR ALL COSTS INCURRED IN ENFORCING SUCH LIEN, INCLUDING ATTORNEY FEES. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO STOLEN LIVESTOCK.

(2) AN AGISTOR'S LIEN SHALL BE EFFECTIVE FOR THE ENTIRE PERIOD DURING WHICH THE LIVESTOCK ARE HELD BY THE AGISTOR, AND IF THE LIVESTOCK REFERENCED IN SUBSECTION (1) OF THIS SECTION ARE SOLD, EXCHANGED, OR OTHERWISE DISPOSED OF FROM THE PREMISES OF THE LIENOR BY ANYONE OTHER THAN THE LIENOR ACTING ON HIS OR HER OWN BEHALF OR THE LIENOR'S AGENT, THE LIEN CREATED BY THIS SECTION SHALL CONTINUE AND SHALL ATTACH TO THE PROCEEDS RECEIVED OR RECEIVABLE FROM SUCH DISPOSITION. TO THE EXTENT AN AGISTOR'S LIEN REMAINS EFFECTIVE, SUCH LIEN SHALL BE SUPERIOR TO ALL OTHER LIENS.

38-20-204. Agistor's lien - filing requirement. AN AGISTOR'S LIEN CREATED PURSUANT TO THIS PART 2 SHALL BE FILED WITH THE SECRETARY OF STATE OR THE COUNTY CLERK WHERE THE LIVESTOCK ARE LOCATED. THE FILING OF AN AGISTOR'S LIEN SHALL CONSTITUTE NOTICE OF THE CONTENTS AND LEGAL EFFECT OF THE LIEN.

38-20-205. Foreclosure. (1) (a) IF ANY CHARGES FOR WHICH A LIEN HAS BEEN FILED PURSUANT TO SECTION 38-20-204 ARE NOT PAID NOT MORE THAN THIRTY DAYS AFTER THE DATE SUCH CHARGES ARE DUE, THE LIENOR OR THE LIENOR'S ASSIGNEE MAY FILE A FORECLOSURE ACTION IN THE COUNTY OR DISTRICT COURT OF THE COUNTY OR CITY AND COUNTY IN WHICH:

(I) THE CONTRACT BETWEEN THE LIENOR AND THE OWNER OF THE LIVESTOCK WAS ENTERED INTO;

(II) THE OWNER RESIDED AT THE TIME THE FORECLOSURE ACTION COMMENCED; OR

(III) THE COUNTY IN WHICH THE LIVESTOCK ARE LOCATED.

(b) FOR PURPOSES OF THIS SUBSECTION (1), IF THE CONTRACT BETWEEN THE OWNER AND THE LIENOR PROVIDES FOR CONTINUING PAYMENTS, SUCH PAYMENTS MAY BE DEEMED TO BE DUE AFTER THE DEFAULT OF ANY INSTALLMENT OR PAYMENT, AT THE OPTION OF THE LIENOR.

(2) IF A LIENOR SELLS OR OTHERWISE DISPOSES OF AN OWNER'S LIVESTOCK WITHOUT SUBSTANTIALLY COMPLYING WITH THIS ARTICLE, SUCH OWNER MAY RECOVER FROM THE LIENOR THE VALUE OF THE LIVESTOCK LESS THE LIENOR'S COST OF CARING FOR SUCH LIVESTOCK, BUT IN NO EVENT LESS THAN ONE HUNDRED DOLLARS.

(3) NOTHING IN THIS ARTICLE SHALL REQUIRE A LIENOR TO COMMENCE A JUDICIAL ACTION TO FORECLOSE ON AN AGISTOR'S LIEN IF THE LIVESTOCK IS ABANDONED, AS DEFINED IN SECTION 38-20-207.

(4) WITH RESPECT TO ANY FORECLOSURE ACTION BROUGHT UNDER THIS ARTICLE, A COPY OF THE COMPLAINT SHALL BE PROVIDED TO THE BOARD BEFORE IT MAY BE FILED WITH A COURT. THE FAILURE TO PROVIDE SUCH COPY IS NOT JURISDICTIONAL BUT SHALL BE REQUIRED BY A COURT. THE COMPLAINT SHALL SHOW:

(a) THAT THE LIENOR PERFORMED A SERVICE FOR THE LIVESTOCK OWNER, ENTITLING THE LIENOR TO A LIEN ON THE OWNER'S LIVESTOCK PURSUANT TO SECTION 38-20-203;

(b) THAT THE SERVICE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (4) WAS PERFORMED AT THE WRITTEN OR VERBAL REQUEST OF THE OWNER OR OWNER'S AGENT;

(c) A DESCRIPTION OF THE LIVESTOCK, INCLUDING THE AGE, COLOR, SEX, MARKINGS, SCARS, BRANDS, EARMARKS, A STATEMENT OF THE LIEN'S ACTUAL VALUE AND, IF KNOWN, THE REGISTRATION NUMBER UPON WHICH THE LIEN IS CLAIMED. A LIVESTOCK GROUP OF TWENTY OR MORE MAY BE IDENTIFIED BY COMMON AND ACCEPTED INDUSTRY PRACTICE.

(d) THAT A NOTICE OF DEMAND HAS BEEN PROVIDED TO THE OWNER OR THE OWNER'S AGENT BY CERTIFIED MAIL AT THEIR LAST-KNOWN ADDRESS, OR IF NOT KNOWN, THAT PERSONAL NOTICE WAS PROVIDED PURSUANT TO SECTION 38-20-206 (1) (a).

(e) AN ITEMIZED LIST OF THE FAIR MARKET VALUE OF THE CHARGES THAT ARE DUE AND UNPAID UNDER THE LIEN; AND

(f) THAT A COPY OF THE COMPLAINT HAS BEEN PROVIDED TO THE BOARD.

(5) (a) A COURT SHALL EXAMINE ANY COMPLAINT FILED PURSUANT TO THIS ARTICLE WITHOUT DELAY. IF SATISFACTORY, THE COURT SHALL ORDER THE OWNER TO SHOW CAUSE WHY THE LIVESTOCK SHOULD NOT BE SOLD PURSUANT TO THE PROCEDURES IN THIS ARTICLE, WHICH ORDER SHALL INCLUDE THE DATE AND TIME FOR A HEARING. SUCH HEARING SHALL BE HELD NOT MORE THAN TEN WORKING DAYS AFTER THE DATE OF THE ISSUANCE OF THE ORDER.

(b) THE COURT ORDER SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL BE SERVED ON THE OWNER AT LEAST FIVE DAYS BEFORE THE HEARING DATE AND SHALL INFORM SUCH OWNER OF:

(I) HIS OR HER RIGHT TO APPEAR AND PRESENT TESTIMONY AT THE HEARING;

(II) THE FACT THAT HIS OR HER FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE ENTRY OF A JUDGMENT BY DEFAULT FOR THE LIEN CHARGES DESCRIBED IN THE COMPLAINT, THE COSTS PROVIDED IN THIS PART 2, ATTORNEY'S FEES, AND ANY OTHER RELIEF TO WHICH THE PLAINTIFF IS ENTITLED.

(6) IF EITHER PARTY REQUESTS THAT THE HEARING DATE BE DELAYED MORE THAN FIVE DAYS, THE COURT, IN ITS DISCRETION AND UPON GOOD CAUSE SHOWN, MAY REQUIRE THE REQUESTING PARTY TO POST BOND. THE BOND AMOUNT SHALL BE SUFFICIENT TO PAY THE OPPOSING PARTY SUCH AMOUNT AS HE OR SHE MAY BE ENTITLED BECAUSE OF THE DELAY. THE BOND SHALL BE SECURED BY TWO OR MORE SURETIES, ONE CORPORATE SURETY AUTHORIZED TO DO BUSINESS IN THIS STATE, OR A CASH OR PROPERTY BOND, WHICHEVER THE COURT MAY APPROVE.

38-20-206. Sale of livestock - procedure. (1) A LIENOR WHO RECEIVES A JUDGMENT ON AN AGISTOR'S LIEN MAY PROCEED TO SELL SUCH LIVESTOCK NECESSARY TO SATISFY THE LIEN. THE SALE SHALL TAKE PLACE NOT MORE THAN FORTY-FIVE DAYS AFTER ENTRY OF JUDGMENT AT THE NEAREST PUBLIC LIVESTOCK MARKET IN THIS STATE. IN ADDITION:

(a) THE LIENOR SHALL PROVIDE NOTICE TO THE OWNER AT LEAST FIFTEEN DAYS BEFORE ANY SALE. THE NOTICE SHALL INCLUDE THE TIME AND PLACE OF THE SALE AND A DESCRIPTION OF THE LIVESTOCK TO BE SOLD. SUCH NOTICE SHALL BE SERVED BY:

(I) PUBLICATION IN ONE NEWSPAPER PUBLISHED IN THE COUNTY OF THE LIENOR'S RESIDENCE; OR

(II) POSTING IN THREE PUBLIC PLACES WITHIN THE COUNTY OF THE LIENOR'S RESIDENCE AND DELIVERING A COPY TO THE OWNER OR THE OWNER'S AGENT. IF A COPY IS TO BE DELIVERED TO THE OWNER'S AGENT AND SUCH AGENT DOES NOT RESIDE IN THE COUNTY OF THE LIENOR'S RESIDENCE, A COPY OF THE NOTICE SHALL BE PUBLISHED IN A NEWSPAPER PUBLISHED IN THE COUNTY OF THE AGENT'S RESIDENCE, OR, IF NO NEWSPAPER IS PUBLISHED IN SUCH COUNTY, A COPY SHALL BE MAILED TO SUCH AGENT'S PLACE OF RESIDENCE.

(b) THE PURCHASER SHALL RECEIVE A TRANSFER OF THE REGISTRATION PAPERS FOR THE PURCHASED LIVESTOCK BY THE PUBLIC LIVESTOCK MARKET AND THE PERTINENT ORGANIZATION OR REGISTRY.

(c) THE PUBLIC LIVESTOCK MARKET SHALL:

(I) PAY TO THE AGISTOR FROM THE SALE PROCEEDS THE REASONABLE COST OF THE FORECLOSURE, NOTICE, SALE, AND THE REASONABLE AND NECESSARY CHARGES INCURRED BY THE AGISTOR FOR PRESERVING, MAINTAINING, FEEDING, BOARDING, PASTURING, CARING, AND KEEPING THE LIVESTOCK UP TO THE DATE OF THE SALE. THE REASONABLE COST OF KEEPING THE LIVESTOCK UP TO THE DATE OF THE SALE SHALL NOT EXCEED FIVE DOLLARS PER HEAD PER DAY.

(II) FORWARD THE REMAINDER OF THE SALE PROCEEDS AND RENDER ANY UNSOLD LIVESTOCK TO THE COURT FOR DISTRIBUTION TO THE OWNER OR THE OWNER'S AGENT. IF THE OWNER AND THE OWNER'S AGENT ARE NOT KNOWN AND THERE ARE SALE PROCEEDS TO BE FORWARDED, SUCH PROCEEDS SHALL BE RETURNED TO THE BOARD. THE BOARD SHALL DEPOSIT SUCH PROCEEDS IN ITS ESTRAY FUND AND MAKE A RECORD OF SUCH DEPOSIT, IDENTIFYING THE LIVESTOCK AND STATING THE AMOUNT REALIZED FROM THE SALE. THE BOARD SHALL PAY PROCEEDS FROM THE ESTRAY FUND TO ANY SECURED PARTY THAT HAS FILED A LIEN AGAINST THE LIVESTOCK SOLD AND HAS

SUBMITTED A CLAIM FOR PAYMENT TO THE BOARD. SUCH PAYMENTS SHALL BE MADE ONLY TO THE EXTENT OF THE AMOUNT OWED TO THE SECURED PARTY. SUCH RECORD SHALL BE OPEN TO PUBLIC INSPECTION.

(2) (a) WHEN LIVESTOCK ARE IN DANGER OF SERIOUS AND IMMEDIATE DECAY OR WASTE, OR ARE LIKELY TO RAPIDLY DEPRECIATE IN VALUE PENDING FORECLOSURE PROCEEDINGS, OR WHERE THE KEEPING OF SUCH LIVESTOCK WILL BE ATTENDED WITH GREAT EXPENSE, THE LIENOR MAY, UPON PROVIDING SUCH NOTICE AS THE COURT MAY REQUIRE, APPLY TO THE COURT FOR AN IMMEDIATE SALE. THE COURT, IN ITS DISCRETION, MAY ORDER THAT THE LIVESTOCK BE SOLD AND THAT THE SALE PROCEEDS BE DEPOSITED WITH THE CLERK OF THE COURT PENDING FURTHER ORDER OF SUCH COURT.

(b) UPON RECEIVING AN APPLICATION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), A COURT MAY, UPON GOOD CAUSE SHOWN, REQUIRE THE LIENOR TO POST BOND FOR SUCH AMOUNT AS THE DEFENDANT MAY BE ENTITLED FOR DAMAGES SUSTAINED IN THE EVENT OF WRONGFUL FORECLOSURE. SUCH BOND SHALL BE SECURED BY TWO OR MORE SURETIES, ONE CORPORATE SURETY AUTHORIZED TO DO BUSINESS IN THIS STATE, OR A CASH BOND, WHICHEVER IS APPROVED BY THE COURT.

(3) THE LIENOR MAY PURCHASE THE LIVESTOCK AND MAY BID ALL OR ANY PORTION OF THE FAIR MARKET VALUE OF THE LIEN.

(4) WHEN THE LIVESTOCK CANNOT BE SOLD IN ONE DAY THE SALE MAY BE CONTINUED ON A DAY-TO-DAY BASIS. UPON COMPLETION OF THE SALE, THE PUBLIC LIVESTOCK MARKET SHALL FILE A BILL OF SALE WITH THE COURT THAT ENTERED JUDGMENT OF FORECLOSURE. SUCH BILL OF SALE SHALL INCLUDE THE AMOUNT FOR WHICH EACH ANIMAL WAS SOLD AND THE NAME OF EACH PURCHASER. THE COURT SHALL RECORD SUCH BILL OF SALE IN ITS DOCKET AND SHALL PRESERVE THE ORIGINAL.

38-20-207. Abandoned livestock - notice - disposition. (1) LIVESTOCK SHALL BE PRESUMED ABANDONED IF:

(a) THE OWNER OR OWNER'S AGENT HAS FAILED TO CONTACT THE LIENOR WITHIN TEN DAYS AFTER SERVICE OF NOTICE UNDER SECTION 38-20-206;

(b) THE LIENOR, IN GOOD FAITH, HAS NO REASONABLE GROUNDS TO BELIEVE THAT THE OWNER DOES NOT INTEND TO ABANDON THE LIVESTOCK; AND

(c) THE AGISTOR HAS SENT WRITTEN NOTICE OF ABANDONMENT PURSUANT TO THE PUBLICATION PROCEDURES IN THIS ARTICLE.

(2) THE BOARD SHALL CARE FOR AND DISPOSE OF ANY ABANDONED LIVESTOCK PURSUANT TO SECTION 35-44-112, C.R.S.

(3) AFTER PAYING ALL EXPENSES INCURRED, THE BOARD SHALL PAY THE AGISTOR FOR THE COST OF HERDING OR CARING FOR SUCH LIVESTOCK, NOT TO EXCEED THE FAIR MARKET VALUE OF THE ACTUAL COST OF SUCH HERDING OR CARING OR FIVE HUNDRED DOLLARS PER HEAD, WHICHEVER IS LESS.

(4) (a) ANY SURPLUS FUNDS FORWARDED TO THE STATE BOARD OF STOCK INSPECTION COMMISSIONERS SHALL BE DEPOSITED IN THE ESTRAY FUND OF SAID BOARD IN THE MANNER DESCRIBED IN SECTION 38-20-206.

(b) IF THE OWNER OF LIVESTOCK PRESUMED TO BE ABANDONED IS FOUND WITHIN THREE YEARS AFTER THE DATE OF THE SALE OF SUCH LIVESTOCK, THE NET AMOUNT RECEIVED FROM THE SALE SHALL BE PAID TO THE OWNER, LESS THE FOLLOWING AMOUNTS, UPON SAID OWNER PROVING OWNERSHIP TO THE SATISFACTION OF THE BOARD:

(I) A SUM DETERMINED BY THE BOARD, NOT TO EXCEED TEN DOLLARS FOR EACH ABANDONED ANIMAL, TO BE RETAINED BY THE STATE BOARD OF STOCK INSPECTION COMMISSIONERS;

(II) THE AMOUNT OF ANY JUDGMENT AWARDED THE LIENOR; AND

(III) ANY AMOUNTS OWED TO A SECURED PARTY THAT HAS FILED A LIEN AGAINST THE LIVESTOCK PRESUMED TO BE ABANDONED AND SUBMITTED A CLAIM TO THE BOARD.

(c) A CURRENT LIVESTOCK INSPECTION CERTIFICATE SHALL BE PRIMA FACIE EVIDENCE OF OWNERSHIP.

38-20-208. Lien no bar. NOTHING IN THIS ARTICLE SHALL PROHIBIT A LIENOR, AFTER THE SALE OF LIVESTOCK PURSUANT TO THIS ARTICLE, FROM PURSUING FURTHER ACTION TO FULLY SATISFY A JUDGMENT ON AN AGISTOR'S LIEN.

38-20-209. Lien as security interest. A LIEN CREATED PURSUANT TO THIS ARTICLE SHALL BE CONSIDERED A SECURITY INTEREST FOR PURPOSES OF SECTION 18-5-206, C.R.S.

38-20-210. Recording fees. ANY CLERK OF A COUNTY OR DISTRICT COURT MAY, PURSUANT TO SECTION 13-32-104, C.R.S., CHARGE A FEE FOR RECORDING BILLS OF SALE UNDER THIS ARTICLE.

SECTION 12. 39-11-114 (2), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-11-114. Record of sales of tax liens on real estate and mobile homes.

(2) The treasurer shall also note in the tax list, opposite the description of the property for which a tax lien is sold, the fact and date of such sale. ~~and, immediately after such sale and completion of such record, shall make and certify a true copy thereof in a well-bound book or other permanent record to be provided for that purpose, which shall be deposited with the county clerk and recorder. Such books so certified shall be known as the record of tax sales of the county and shall be in all respects a part of the records of the county clerk and recorder's office as fully as if they had been made by the county clerk and recorder. For the service required by this subsection (2), the treasurer shall receive such reasonable compensation as may be allowed by the board of county commissioners to be paid out of the county treasury.~~

SECTION 13. 39-11-117, Colorado Revised Statutes, 1994 Repl. Vol., is

amended to read:

39-11-117. Certificate of purchase. The treasurer shall ~~make out~~ PREPARE, sign, and RETAIN FOR SAFEKEEPING OR deliver to the purchaser of a tax lien on any real property sold for the payment of delinquent taxes a certificate of purchase describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the record of sales, and also stating the rate of interest and the total amount of all taxes, delinquent interest, and costs on each tract or lot for which the tax lien was sold, as described in the record of sales, and that payment thereof has been made, with columns for subsequent taxes. For each certificate so delivered, the purchaser shall pay a fee to the treasurer as provided in section 30-1-102, C.R.S.

SECTION 14. 39-11-119, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-11-119. Subsequent payment by holder. Any person desiring to pay any subsequent taxes on any lands or town lots for which such person holds the tax certificates shall produce such certificates to the treasurer, ~~who shall endorse thereon the amount of such subsequent taxes and the date of payment thereof in the book or other permanent record of tax sales opposite such lands and town lots, and the treasurer shall be entitled to receive a fee as provided in section 30-1-102, C.R.S.~~ The person desiring to pay subsequent taxes shall also present such certificate to the county clerk and recorder, who shall enter the amount of such tax in the proper column in the record of tax sales in the county clerk and recorder's office, and the county clerk and recorder shall be entitled to receive a fee therefor as provided in ~~section 30-1-103 (2) (g), C.R.S.~~ OR IF CERTIFICATES ARE RETAINED BY THE TREASURER, THE PERSON SHALL BE NOTIFIED BY THE TREASURER OF THE AMOUNT DUE. UPON RECEIPT OF PAYMENT, THE TREASURER SHALL RECORD THE AMOUNT OF THE SUBSEQUENT TAX AND THE DATE OF PAYMENT ON THE PERMANENT RECORD. THE TREASURER MAY RECEIVE A FEE FOR SUCH SERVICES, AS PROVIDED IN SECTION 30-1-102 (1) (j), C.R.S.

SECTION 15. 39-12-105 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-12-105. Certificate of redemption. (1) Upon application of any party to redeem any real property for which a tax lien was sold or a tax deed was issued under the provisions of article 11 of this title, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, the treasurer shall issue to such party a certificate of redemption, describing the tract redeemed as in the certificate of sale and giving the date of redemption, the amount paid, and by whom redeemed and shall make the proper entries in the book of sales in ~~his~~ THE TREASURER'S office.

SECTION 16. 39-12-106, Colorado Revised Statutes, 1994 Repl. Vol., is repealed as follows:

39-12-106. Entry by county clerk and recorder of redemption certificate. ~~The person so redeeming any tract of land shall present his certificate of redemption to the county clerk and recorder, who shall enter the redemption in the proper columns in the record of land for which a tax lien was sold for delinquent taxes and shall endorse~~

~~the date of such entry on the certificate; and such certificate and the record thereof shall be prima facie evidence of the redemption of the lands therein described.~~

SECTION 17. 39-12-107, Colorado Revised Statutes, 1994 Repl. Vol., is repealed as follows:

~~**39-12-107. Fee for entering certificate.** The county clerk and recorder is entitled to a fee as provided in section 30-1-103 (2) (h), C.R.S., for each certificate of redemption entered upon his records, as provided in section 39-12-106, to be paid by the person making such redemption.~~

SECTION 18. Appropriation. There is hereby appropriated to the department of state 2.0 FTE for allocation to the central indexing system filing board for the purpose of providing administrative, technical, and clerical support, for the implementation of this act.

SECTION 19. Effective date. This act shall take effect July 1, 1996.

SECTION 20. 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: June 1, 1996