

CHAPTER 251

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 03-041

BY SENATOR(S) Reeves;
also REPRESENTATIVE(S) Smith.**AN ACT****CONCERNING THE CENTRAL INFORMATION SYSTEM, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1. Repeal.** Article 9.3 of title 4 and 4-9.5-112, Colorado Revised Statutes, are repealed.**SECTION 2.** 4-9.5-103 (1), (3), (7) (d) (IV), (7) (d) (VI), (8), and (12), Colorado Revised Statutes, are amended to read:**4-9.5-103. Definitions.** As used in this article, unless the context otherwise requires:(1) ~~"Board" means the state central information system board, created in section 4-9.3-103.~~(3) "Central filing system" means a system for filing effective financing statements ~~or notice of such financing statements~~ on a statewide basis and which has been certified by the secretary of the United States department of agriculture pursuant to section 1324 of the "Food Security Act of 1985". It is the intent of the general assembly that, effective January 1, 2000, the filing system established by section 4-9-501 shall constitute the central filing system.

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

(d) Contains:

(IV) A description of the farm products by categories included in subsection (8)

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

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~~ CENTRAL FILING OFFICER; where the farm product is produced or stored or to be produced or to be stored; and the crop year, unless every crop year for the duration of the effective financing statement is subject to the particular security interest;

(VI) Such other additional information as the ~~board~~ CENTRAL FILING OFFICER may require to comply with section 1324 of the federal "Food Security Act of 1985", or to more effectively carry out the purposes of this article.

(8) "Farm product" shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. "Farm product" shall include, but is not limited to, apples, artichokes, asparagus, barley, cantaloupe, carrots, cattle and calves, chickens, corn, cotton, cucumbers, dry beans, eggs, fish, flax seed, fur-bearing animals, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, muskmelon, oats, onions, pecans, popcorn, potatoes, pumpkins, raspberries, rye, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The ~~board~~ CENTRAL FILING OFFICER may add other farm products in addition to those lists specified in this subsection (8) if such products are covered by the general definition contained in this subsection (8).

(12) "Registrant" or "registered buyer" means any buyer of farm products, commission merchant or selling agent, who has registered with the ~~board~~ CENTRAL FILING OFFICER pursuant to section 4-9.5-104 (4).

SECTION 3. The introductory portions to 4-9.5-104 (1), (2), and (3) (a) and 4-9.5-104 (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 4-9.5-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

4-9.5-104. Central filing system. (1) The ~~board~~ CENTRAL FILING OFFICER 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~~ with the central filing officer. The system shall include requirements:

(2) The ~~board or its designee~~ CENTRAL FILING OFFICER shall compile all such statements or notices into a master list:

(3) (a) The ~~board or its designee~~ CENTRAL FILING OFFICER shall cause the information on the master list to be published in lists:

(4) All buyers of farm products, commission merchants, selling agents, and other persons may register with the ~~board or its designee~~ CENTRAL FILING OFFICER to receive lists described in subsection (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from

multiple locations may be considered as one entity, at its option. Such registration shall be on an annual basis. The ~~board or its designee~~ CENTRAL FILING OFFICER shall provide the form for registration that shall include the name and address of the registrant and the list or lists described in subsection (3) of this section that such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the ~~board or its designee~~ CENTRAL FILING OFFICER accompanied by the proper fee for the desired list or lists.

(5) (a) The lists as identified pursuant to subsection (3) of this section shall be distributed by the central filing officer 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 and shall also be stored in ~~microfiche and~~ computer-readable ~~forms~~ FORM. The ~~board~~ CENTRAL FILING OFFICER shall determine the frequency with which the lists identified pursuant to subsection (3) of this section shall be distributed. Such lists may be distributed on an annual basis with three quarterly cumulative supplements OR MORE FREQUENT SUPPLEMENTS AS DETERMINED BY THE CENTRAL FILING OFFICER 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~~ CENTRAL FILING OFFICER shall also provide for the distribution ~~by the central filing officer~~ of the lists in direct computer access form and establish reasonable ~~charges~~ FEES therefor pursuant to ~~article 9.3 of this title~~ SUBSECTION (8) OF THIS SECTION. The ~~board~~ CENTRAL FILING OFFICER may also develop other forms in which to distribute lists and establish ~~charges~~ FEES therefor pursuant to ~~article 9.3 of this title~~ SUBSECTION (8) OF THIS SECTION. The ~~distribution~~ LISTS shall be ~~made~~ DISTRIBUTED by first-class mail, postage prepaid. A registrant is deemed to be registered only as to those products, counties, and crop years for which 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 sections 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 the seller's identity, so long as the reliance is in good faith.

(b) The ~~board~~ CENTRAL FILING OFFICER shall establish the dates upon which the ~~quarterly distributions~~ LISTS will be ~~made~~ DISTRIBUTED, the dates after which a filing of an effective financing statement will not be reflected on the next ~~quarterly~~ distribution of lists, and the dates by which a registrant must complete a registration to receive the next ~~quarterly~~ list.

(6) The ~~board or its designee~~ CENTRAL FILING OFFICER shall remove ~~lapsed and~~ terminated effective financing statements ~~or notices of such financing statements~~ from the master list prior to preparation of the lists required to be distributed by subsection (5) of this section.

(8) THE CENTRAL FILING OFFICER SHALL ESTABLISH FEES FOR DISTRIBUTING THE MASTER LIST OR PORTIONS THEREOF TO BUYERS OF FARM PRODUCTS, COMMISSION MERCHANTS, SELLING AGENTS, OR OTHER INTERESTED PARTIES PURSUANT TO THIS ARTICLE IN WRITTEN, PRINTED, OR COMPUTER-READABLE FORM. SUCH FEES SHALL BE ESTABLISHED AND COLLECTED IN ACCORDANCE WITH SECTION 24-21-104, C.R.S.

SECTION 4. 4-9.5-105 (5), Colorado Revised Statutes, is amended to read:

4-9.5-105. Confirmations. (5) A buyer of farm products, whether or not registered, may rely conclusively on an oral or written confirmation received pursuant to this section, regardless of any errors or omissions committed by the ~~board or its designee~~ CENTRAL FILING OFFICER in the preparation or issuance of the confirmation. If the ~~board or its designee~~ CENTRAL FILING OFFICER confirms orally or in writing to such buyer that the name of the seller is not on the list for a specified product, such buyer shall have no liability under this article and the buyer may rely on the representation of the seller as to the seller's identity, so long as the reliance is in good faith.

SECTION 5. 4-9.5-108 (1), Colorado Revised Statutes, is amended to read:

4-9.5-108. Filings generally. (1) The central filing officer shall accept for filing all filings pursuant to this title during regular business hours. The central filing officer shall record the date and hour of the filing of such statements. In the event of an electronic filing made other than during regular business hours, the central filing officer 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 of the filing. All filings shall be submitted for filing on forms prescribed by the ~~board~~ CENTRAL FILING OFFICER. Nothing in this section shall be construed to require the central filing officer to accept for filing any item the rejection of which is required or permitted under section 4-9-520.

SECTION 6. 4-9.5-110 (2), (3), and (4), Colorado Revised Statutes, are amended, and the said 4-9.5-110 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

4-9.5-110. Fees - rules - federal certification - repeal. (2) The ~~board~~ CENTRAL FILING OFFICER is hereby authorized to adopt such rules and regulations as are necessary to carry out the provisions of this article, and to conform the central filing system to the requirements of the federal "Food Security Act of 1985".

(3) The ~~board~~ CENTRAL FILING OFFICER may contract with one or more public or private parties to perform some or all of its duties under this article; except that the ~~board~~ CENTRAL FILING OFFICER may not delegate the power to make rules or regulations, conduct public hearings, prescribe forms, and establish services and fees therefor.

(4) ~~If required by the federal "Food Security Act of 1985", the board shall apply, no later than July 31, 1999, to the secretary of the United States department of agriculture for certification that the central filing officer and the central filing system, as modified by legislative enactments effective January 1, 2000, continue to comply with the requirements of such federal law.~~

(5) REVENUES COLLECTED BY THE CENTRAL FILING OFFICER PURSUANT TO THIS

ARTICLE SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DEPARTMENT OF STATE CASH FUND CREATED IN SECTION 24-21-104(3), C.R.S.

(6) (a) ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE CENTRAL INFORMATION SYSTEM CASH FUND CREATED IN SECTION 4-9.3-105 ON JULY 1, 2003, SHALL BE TRANSFERRED TO THE DEPARTMENT OF STATE CASH FUND CREATED IN SECTION 24-21-104 (3), C.R.S.

(b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2004.

SECTION 7. 4-9.5-111, Colorado Revised Statutes, 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 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 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~~ TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE DEPARTMENT OF STATE CASH FUND CREATED IN SECTION 24-21-104 (3), C.R.S.

SECTION 8. Article 9.5 of title 4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

4-9.5-112.5. Immunity. (1) EXCEPT IN CASES OF WILLFUL MISCONDUCT OR BAD FAITH, THE CONTRACTORS RETAINED BY THE CENTRAL FILING OFFICER, AS WELL AS THE EMPLOYEES OF SUCH CONTRACTORS, 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 9. 16-18.5-104 (5) (b), Colorado Revised Statutes, is amended to read:

16-18.5-104. Initial collections investigation - payment schedule.

(5) Following the investigation required by subsection (3) of this section, the collections investigator may also:

(b) (I) File a transcript of the order for restitution with the ~~central indexing system board established pursuant to section 4-9.3-103, C.R.S., by means of electronic data transmission~~ SECRETARY OF STATE. From the time of the filing of the transcript, there

shall be a lien that is an encumbrance in favor of the state or the victim, or an assignee of the state or the victim, and shall encumber any interest of the defendant in any personal property.

(II) The lien created by this paragraph (b), shall remain in effect without the necessity of renewal for twelve years or until all amounts of restitution, including interest, costs, time payment fees, and late fees are paid. Within twenty days after the payment of all such amounts of restitution, the collections investigator or the victim, or the assignee of the state or the victim, shall file a satisfaction of judgment with the ~~central indexing system board~~ SECRETARY OF STATE. The satisfaction of judgment shall be conclusive evidence that the lien was extinguished.

(III) The collections investigator and the victim shall be exempt from the payment of filing fees charged by the ~~central indexing system board~~ SECRETARY OF STATE.

SECTION 10. 16-18.5-107 (3), Colorado Revised Statutes, is amended to read:

16-18.5-107. Collection of restitution by the victim. (3) If the victim chooses to record a copy of the transcript with a clerk and recorder or with the ~~central indexing system board~~ SECRETARY OF STATE, the victim may do so without charge.

SECTION 11. Appropriation - adjustments in long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2003, shall be adjusted as follows: The appropriation to the department of state, from the central information system cash fund created in section 4-9.3-105, Colorado Revised Statutes, upon transfer of the unexpended and unencumbered balance of the central information system cash fund, pursuant to section 4-9.5-110 (6), Colorado Revised Statutes, is hereby reduced by the unexpended and unencumbered amount of such appropriation, and such sum is hereby appropriated to the department, out of any moneys in the department of state cash fund not otherwise appropriated, for the fiscal year beginning July 1, 2003, for the implementation of the annual general appropriation act for the fiscal year beginning July 1, 2003.

SECTION 12. Effective date. This act shall take effect July 1, 2003.

SECTION 13. 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 14, 2003