

## HB 594 -- Security Interests in Farm Products

Sponsor: Loehner

This bill requires the Secretary of State to design, implement, and operate a central filing system for effective financial statements that is certified by the United States Department of Agriculture as meeting the requirements of 7 U.S.C. Section 1631 of the Food Security Act of 1985 as amended. The system is to provide buyers of farm products a practical method for discovering the existence of security interests in farm products. In its main provisions, the bill:

(1) Specifies that no buyer is allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest;

(2) Requires the Secretary of State to maintain a list of all registered buyers of farm products, commission merchants, and selling agents. Registration is annual, must be accompanied by a \$30 fee, and must include certain information to be remitted to the Secretary of State. Fees for certain informational lists and informational list formats are specified in the bill. All fees collected regarding the central filing system must be deposited into the Secretary of State's Technology Trust Fund Account;

(3) Defines "effective financing statement" as an original or reproduced copy or an electronically reproduced copy of the statement containing the name and address of the secured party, the name and address of the person indebted to the secured party, the Social Security number or other approved unique identifier of the debtor, a description of the farm products subject to the security interest, the county where the farm product is produced or located, and crop year;

(4) Specifies that an effective financing statement must be amended in writing within three months by the debtor to reflect any material change, remains effective for five years from the date of filing, is subject to extensions of five years by filing a continuation statement within six months prior to the expiration date of the effective period, and lapses on either the expiration date of the effective period of the statement or the filing of a notice signed by the secured party that the effective financing statement is terminated;

(5) Requires a fee of \$10 for the filing, amending, or continuation of an effective financing statement and \$.50 per page for attachments;

(6) Specifies that there is no fee for a termination statement;

(7) Requires the Secretary of State to remove lapsed or terminated effective financial statements from the master list prior to its distribution;

(8) Requires the Secretary of State to compile information from all effective financial statements or notices filed with his or her office. Certain indexing and informational requirements regarding the master list are specified in the bill;

(9) Requires the Secretary of State to furnish an oral confirmation within 24 hours followed by a written confirmation to an unregistered buyer, commission merchant, or selling agent requesting information regarding any effective financing statement;

(10) Requires the Secretary of State to apply to the Secretary of the United States Department of Agriculture for certification of the central filing system and for the approval of the system or method of selecting an approved unique identifier;

(11) Requires a secured party, whenever there is no outstanding secured obligation, to notify the debtor of his or her right to have a notice of lapse of his or her effective financial statement filed. Certain notice requirements, if not honored by the secured party, result in the secured party being liable for any resulting loss incurred by the debtor;

(12) Specifies that oral or written inquiries regarding information provided by the filing of an effective financing statement may be made at the Office of the Secretary of State during regular business hours and must be accompanied by a \$4.50 fee for each debtor name being investigated;

(13) Requires the Secretary of State to provide a system that assigns an identifying number to each inquiry and to maintain a record of who inquired, on whom the inquiry was made, and the date of the inquiry;

(14) Specifies that an individual's inspection of the records of effective financing statements of 10 or fewer names in one day will not be charged a fee; however, \$1 will be charged for each additional inspection;

(15) Specifies that for the purposes of 7 U.S.C. Section 1631 of the Food Security Act of 1985, as amended, receipt of notice means the date the notice is received by a buyer, commission agent, or selling agent or the first date the delivery is attempted by a carrier. In all cases, a buyer, commission merchant, or selling agent is presumed to have received a receipt of notice 10 days after it is mailed or sent electronically;

(16) Specifies that a buyer, commission agent, or selling agent who buys a farm product covered by the central filing system will take subject to the security interest under the system, except that a registrant or buyer, commission merchant, or selling agent making an inquiry under Section 430.450, RSMo, will not take subject to the security interest if the filing system does not correctly identify the debtor;

(17) Specifies that a buyer, commission merchant, or selling agent, buying farm products covered by an effective financial statement takes free of any security interest on the products if the buyer secures a waiver or release of the security interest specified in the effective financial statement from the secured party;

(18) Specifies that if a buyer, selling agent, or commission merchant tenders the total purchase price by means of a check or other instrument payable to the seller and each security interest holder of the seller identified in the central filing system for the products and if each security interest holder authorizes the negotiation of the check or other instrument, the authorization and payment thereof constitutes a waiver or release of the security interest to the extent of the amount of the instrument. However, the waiver of the security interest does not establish or alter in any way security interest or lien priorities under Missouri law;

(19) Specifies that for verification of the existence or nonexistence of a security interest a buyer, commission merchant, or selling agent can request a seller to disclose his or her Social Security number, unique identifier, or taxpayer identification number;

(20) Specifies that any payee, endorser, or endorsee of a check or instrument issued to pay for property subject to a lien or any farm products subject to a security interest, who wrongfully refuses to endorse the check or instrument to any other payee, endorser, or endorsee of the check or instrument who is a superior lienholder, superior secured party, or person legally entitled to the check or instrument is liable to any payee, endorser, or endorsee entitled to the endorsement of the check or instrument for damages; and

(21) Specifies the court's responsibilities for the assessment of attorney fees and costs regarding the wrongful refusal of a payee, endorser, or endorsee to endorse a check or instrument in payment for property subject to a lien or any farm products subject to a security interest or if an attorney brought an action that was found to be frivolous or interposed solely for a delay or harassment. If the court finds that an attorney

unnecessarily expanded the proceedings by improper conduct, the court will assess attorney fees and costs.

The bill becomes effective January 1, 2012.