

FIRST REGULAR SESSION

SENATE BILL NO. 209

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLEMENS.

Read 1st time January 15, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0561S.011

AN ACT

To amend chapter 430, RSMo, by adding thereto eleven new sections relating to security interests in farm products.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 430, RSMo, is amended by adding thereto eleven new sections, to be known as sections 430.420, 430.425, 430.430, 430.435, 430.440, 430.445, 430.450, 430.455, 430.460, 430.465, and 430.470, to read as follows:

430.420. As used in sections 430.420 to 430.470, the following terms mean:

(1) "Buyer in the ordinary course of business", a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products;

(2) "Central filing system", the system for filing effective financing statements or notice of such financing statements established under section 430.425 and 7 U.S.C. Section 1631 of the Food Security Act of 1985, as amended;

(3) "Commission merchant", any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person;

(4) "Debtor", the person subjecting a farm product to a security interest;

(5) "Effective financing statement", a statement that:

(a) Is an original or reproduced copy thereof;

(b) Is filed by the secured party in the office of the secretary of state;

(c) Is signed, authorized, or otherwise authenticated by the

21 debtor, unless filed electronically, in which case the signature of the
22 debtor shall not be required;

23 (d) Contains:

24 a. The name and address of the secured party;

25 b. The name and address of the debtor;

26 c. The Social Security number or other approved unique
27 identifier of the debtor or, in the case of a debtor doing business other
28 than as an individual, the Internal Revenue Service taxpayer
29 identification number or other approved unique identifier of such
30 debtor;

31 d. A description of the farm products subject to the security
32 interest;

33 e. Each county in Missouri where the farm product is produced
34 or located;

35 f. Crop year unless every crop of the farm product in question,
36 for the duration of the effective financing statement, is to be subject to
37 the particular security interest;

38 g. Further details of the farm product subject to the security
39 interest if needed to distinguish it from other quantities of such
40 product owned by the same person or persons but not subject to the
41 particular security interest; and

42 h. Such other information that the secretary of state may require
43 to comply with 7 U.S.C. Section 1631 of the Food Security Act of 1985,
44 as amended, or to more efficiently carry out his or her duties under
45 sections 430.420 to 430.470;

46 (e) Shall be amended in writing, within three months, and
47 signed, authorized, or otherwise authenticated by the debtor and filed,
48 to reflect material changes. If the statement is filed electronically, the
49 signature of the debtor shall not be required;

50 (f) Remains effective for a period of five years from the date of
51 filing, subject to extensions for additional periods of five years each by
52 refileing or filing a continuation statement within six months before the
53 expiration of the five-year period;

54 (g) Lapses on either the expiration of the effective period of the
55 statement or the filing of a notice signed by the secured party that the
56 statement is terminated, whichever occurs first;

57 (h) Is accompanied by the requisite filing fee set by section

58 430.430; and

59 (i) Substantially complies with the requirements of this
60 subdivision even though the statement contains minor errors that are
61 not seriously misleading.

62 An effective financing statement may, for any given debtor or debtors,
63 cover more than one farm product located in more than one county;

64 (6) "Farm product", an agricultural commodity, a species of
65 livestock used or produced in farming operations, or a product of such
66 crop or livestock in its unmanufactured state, that is in the possession
67 of a person engaged in farming operations. Farm products shall
68 include, but are not limited to, apples, artichokes, asparagus, barley,
69 bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves,
70 chickens, corn, cucumbers, dry beans, eggs, embryos or genetic
71 products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew
72 melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich,
73 popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops,
74 sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries,
75 sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale,
76 turkeys, vetch, walnuts, watermelon, wheat, and wool. The secretary
77 of state may, by rule and regulation, add other farm products to the list
78 specified in this section if such products are covered by the general
79 definition provided by this section;

80 (7) "Person", any individual, partnership, limited liability
81 company, corporation, trust, or any other business entity;

82 (8) "Security interest", an interest in farm products that secures
83 payment or performance of an obligation;

84 (9) "Selling agent", any person, other than a commission
85 merchant, who is engaged in the business of negotiating the sale and
86 purchase of any farm product on behalf of a person engaged in farming
87 operations.

430.425. 1. The secretary of state shall design and implement a
2 central filing system for effective financing statements. The secretary
3 of state shall be the system operator. The system shall provide a means
4 for filing effective financing statements or notices of such financing
5 statements on a statewide basis. The system shall include
6 requirements:

7 (1) That an effective financing statement or notice of such

8 financing statement shall be filed in the office of the secretary of state.
9 A debtor's residence shall be presumed to be the residence shown on
10 the filing. The showing of an improper residence shall not affect the
11 validity of the filing. The filing officer shall mark the statement or
12 notice with a consecutive file number and with the date and hour of
13 filing and shall hold the statement or notice or a microfilm or other
14 photographic copy thereof for public inspection. In addition, the filing
15 officer shall index the statements and notices according to the name of
16 the debtor and shall note in the index the file number and the address
17 of the debtor given in the statement;

18 (2) That the secretary of state compile information from all
19 effective financing statements or notices filed with the secretary of
20 state into a master list that is:

21 (a) Organized according to farm product;

22 (b) Arranged within each such product:

23 a. In alphabetical order according to the last name of the
24 individual debtors, or in the case of debtors doing business other than
25 as individuals, the first word in the name of such debtors;

26 b. In numerical order according to the Social Security number
27 or other approved unique identifier of the individual debtors or, in the
28 case of debtors doing business other than as individuals, the Internal
29 Revenue Service taxpayer identification number or other approved
30 unique identifier of such debtors;

31 c. Geographically by county; and

32 d. By crop year; and

33 (c) Containing the information referred to in subdivision (5) of
34 section 430.420;

35 (3) That the secretary of state cause the information on the
36 master list to be published in lists by farm product arranged
37 alphabetically by debtor and by farm product arranged numerically by
38 the debtor's Social Security number or other approved unique
39 identifier for individual debtors or, in the case of debtors doing
40 business other than as individuals, the Internal Revenue Service
41 taxpayer identification number or other approved unique identifier of
42 such debtors. If a registered buyer so requests, the list or lists for such
43 buyer may be limited to any county or group of counties where the
44 farm product is produced or located or to any crop year or years or a

45 combination of such identifiers;

46 (4) That all buyers of farm products, commission merchants,
47 selling agents, and other persons may register with the secretary of
48 state to receive lists described in subdivision (3) of this
49 subsection. Any buyer of farm products, commission merchant, selling
50 agent, or other person conducting business from multiple locations
51 shall be considered as one entity. Such registration shall be on an
52 annual basis. The secretary of state shall provide the form for
53 registration which shall include the name and address of the registrant
54 and the list or lists described in subdivision (3) of this subsection which
55 such registrant desires to receive. A registration shall not be
56 completed until the form provided is properly completed and received
57 by the secretary of state accompanied by the proper registration
58 fee. The fee for annual registration shall be thirty dollars. A registrant
59 shall pay an additional annual fee to receive quarterly lists described
60 in subdivision (3) of this subsection. For each farm product list
61 provided on microfiche, the annual fee shall be twenty-five dollars. For
62 each farm product list provided on paper, the annual fee shall be two
63 hundred dollars. The annual fee for a special list, which is a list
64 limited to fewer than all counties or less than all crop years, shall be
65 one hundred fifty dollars for each farm product. The secretary of state
66 shall maintain a record of the registrants and the lists and contents of
67 the lists received by the registrants for a period of five years;

68 (5) That the lists as identified under subdivision (4) of this
69 subsection be distributed by the secretary of state on a quarterly basis
70 and be in written or printed form. A registrant may choose in lieu of
71 receiving a written or printed form to receive statewide lists on
72 microfiche. The secretary of state may provide for the distribution of
73 the lists on any other medium and establish reasonable charges
74 therefor. The distribution shall be made by either certified or
75 registered mail, return receipt requested. The secretary of state shall,
76 by rule and regulation, establish the dates upon which the quarterly
77 distributions will be made, the dates after which a filing of an effective
78 financing statement shall not be reflected on the next quarterly
79 distribution of lists, and the dates by which a registrant shall complete
80 a registration to receive the next quarterly list; and

81 (6) That the secretary of state remove lapsed and terminated

82 effective financing statements or notices of such financing statements
83 from the master list prior to preparation of the lists required to be
84 distributed by subdivision (5) of this subsection. Effective financing
85 statements or any amendments or continuations of effective financing
86 statements originally filed in the office of the county clerk that have
87 been indexed and entered on the secretary of state's central filing
88 system need not be retained by the county filing office and may be
89 disposed of or destroyed.

90 2. The secretary of state shall apply to the Secretary of the
91 United States Department of Agriculture for certification of the central
92 filing system and approval of the system or method of selecting an
93 approved unique identifier.

94 3. All fees collected under subdivision (4) of subsection 1 of this
95 section shall be deposited in the state treasury and credited to the
96 secretary of state's technology trust fund account.

430.430. 1. Presentation for filing of an effective financing
2 statement and the acceptance of the statement by the secretary of state
3 constitutes filing under sections 430.420 to 430.470.

4 2. The fee for filing and indexing and for stamping a copy
5 furnished by the secured party to show the date and place of filing of
6 an effective financing statement, an amendment, or a continuation
7 statement shall be ten dollars. There shall be no fee for the filing of a
8 termination statement.

9 3. The fee for attachments to all instruments submitted for filing
10 shall be fifty cents per page.

11 4. All fees collected under this section shall be deposited in the
12 state treasury and credited to the secretary of state's technology trust
13 fund account.

430.435. The record of effective financing statements maintained
2 by the secretary of state may be made available electronically. For
3 batch requests, there shall be a fee of two dollars per requested
4 effective financing statement record accessed electronically, except
5 that the fee for a batch request for one thousand or more effective
6 financing statements shall be two thousand dollars. Effective financing
7 statement data accessed electronically shall be for informational
8 purposes only and shall not provide the protection afforded a buyer
9 registered under section 430.425. All fees collected under this section

10 shall be deposited in the state treasury and credited to the secretary
11 of state's technology trust fund account.

430.440. 1. A continuation statement may be filed by the secured
2 party within six months prior to the expiration of the five-year period
3 specified in paragraph (f) of subdivision (5) of section 430.420. Any
4 such continuation statement shall be signed, authorized, or otherwise
5 authenticated by the secured party, identify the original statement by
6 file number, and state that the original statement is still
7 effective. Upon timely filing of the continuation statement, the
8 effectiveness of the original statement shall be continued for five years
9 after the last date to which the filing was effective whereupon it shall
10 lapse unless another continuation statement is filed prior to such lapse.
11 If an effective financing statement exists at the time insolvency
12 proceedings are commenced by or against the debtor, the effective
13 financing statement shall remain effective until termination of the
14 insolvency proceedings and thereafter for a period of sixty days or
15 until the expiration of the five-year period, whichever occurs
16 later. Succeeding continuation statements may be filed in the same
17 manner to continue the effectiveness of the original statement.

18 2. Any continuation statement that is filed electronically shall
19 include an electronic or an access code or any other identifying word
20 or number assigned by the secretary of state that is unique to a
21 particular filer.

430.445. 1. Whenever there is no outstanding secured obligation
2 and no commitment to make advances, incur obligations, or otherwise
3 give value, the secured party shall notify the debtor in writing of his or
4 her right to have a notice of lapse of his or her effective financing
5 statement filed which shall lead to the removal of his or her name from
6 the files and lists compiled by the secretary of state. In lieu of such
7 notice, the secured party may acquire a waiver of the debtor of such
8 right and a request by the debtor that his or her effective financing
9 statement be retained on file. Such notice may be given or waiver
10 acquired by the secured party at any time prior to the time specified
11 in this subsection for giving the notice.

12 2. If the secured party does not furnish the notice or obtain the
13 waiver specified in subsection 1 of this section, the secured party shall,
14 within ten days of final payment of all secured obligations, provide the

15 debtor with a written notification of the debtor's right to have a notice
16 of lapse filed. The secured party shall on written demand by the debtor
17 send the debtor a notice of lapse to the effect that he or she no longer
18 claims a security interest under the effective financing statement,
19 which shall be identified by file number. The notice of lapse need only
20 be signed, authorized, or otherwise authenticated by the secured party.

21 3. If the affected secured party fails to send a notice of lapse
22 within ten days after proper demand, under subsection 2 of this
23 section, he or she shall be liable to the debtor for any loss caused to the
24 debtor by such failure.

25 4. On presentation to the secretary of state of a notice of lapse,
26 he or she shall treat it as a termination statement and note it in the
27 index. If he or she has received the notice of lapse in duplicate, he or
28 she shall return one copy of the notice of lapse to the filing party
29 stamped to show the time of receipt thereof.

30 5. There shall be no fee for filing a notice of lapse or termination
31 statement.

430.450. 1. Oral and written inquiries regarding information
2 provided by the filing of effective financing statements may be made at
3 any county clerk's office or the office of the secretary of state during
4 regular business hours. The fee for furnishing file information shall be
5 four dollars and fifty cents for each debtor name searched by the
6 county clerk or secretary of state. Written confirmation of an oral or
7 written inquiry shall be mailed no later than the end of the next
8 business day after the inquiry is received.

9 2. The secretary of state shall provide a system that assigns an
10 identifying number to each inquiry made under subsection 1 of this
11 section. Such number shall be given to the inquiring party at the time
12 of the oral response and shall be included in the written
13 confirmation. The secretary of state and the county clerks shall
14 maintain a record of inquiries made under this section identifying who
15 made the inquiry, on whom the inquiry was made, and the date of the
16 inquiry.

17 3. The secretary of state may provide for a computerized system
18 for inquiry and confirmation which may be used in lieu of the inquiry
19 and confirmation under subsection 1 of this section. When such a
20 system is implemented and used it shall have the same effect as an

21 inquiry and confirmation under subsection 1 of this section.

22 4. There shall be no fee charged for actual inspection of records
23 of effective financing statements kept by the county clerk or the
24 secretary of state for the inspection of ten names or less per day by a
25 single person. There shall be a uniform fee, in addition to any other
26 charge for services payable to the county clerk or the secretary of
27 state, of one dollar per name for each inspection in excess of ten names
28 per day by a single person.

29 5. The county clerk and secretary of state and their employees
30 or agents shall be exempt from all personal liability as a result of any
31 error or omission in providing information as required by this section
32 except in cases of willful misconduct or gross negligence.

33 6. Fees received under this section by county clerks shall be
34 deposited in the county general fund. The fees received under this
35 section by the secretary of state for furnishing file information by
36 electronic or other means shall be deposited in the state treasury and
37 credited to the secretary of state's technology trust fund account.

430.455. In order to verify the existence or nonexistence of a
2 security interest, a buyer, commission merchant, or selling agent may
3 request a seller to disclose such seller's Social Security number or
4 approved unique identifier or, in the case of a seller doing business
5 other than as an individual, the Internal Revenue Service taxpayer
6 identification number or approved unique identifier of such seller.

430.460. For purposes of 7 U.S.C. Section 1631 of the Food
2 Security Act of 1985, as amended, receipt of written notice shall mean
3 the date the notice is actually received by a buyer in the ordinary
4 course of business or the first date upon which delivery is attempted
5 by a carrier. A buyer in the ordinary course of business shall act in
6 good faith. In all cases a buyer in the ordinary course of business shall
7 be presumed to have received the notice ten days after it was mailed.

430.465. 1. A buyer in the ordinary course of business buying
2 farm products covered by the central filing system shall take subject to
3 the security interest identified under such system, except that a
4 registrant or a buyer in the ordinary course of business making an
5 inquiry under section 430.450 shall not take subject to the security
6 interest if the central filing system does not correctly identify the
7 debtor.

8 2. A buyer in the ordinary course of business buying farm
9 products covered by an effective financing statement takes free of any
10 security interest on such products if such buyer secures a waiver or
11 release of the security interest specified in such effective financing
12 statement from the secured party. If a buyer in the ordinary course of
13 business buying farm products covered by the central filing system
14 tenders to the seller the total purchase price by means of a check or
15 other instrument payable to such seller and each security interest
16 holder of the seller identified in the central filing system for such
17 products and if such security interest holder authorizes the negotiation
18 of such check or other instrument, such authorization or endorsement
19 and payment thereof shall constitute a waiver or release of the security
20 interest specified to the extent of the amount of the instrument. Such
21 waiver or release of the security interest shall not serve to establish or
22 alter in any way security interest or lien priorities under Missouri law.

430.470. 1. The secretary of state shall promulgate rules to
2 implement the provisions of sections 430.420 to 430.470. Any rule or
3 portion of a rule, as that term is defined in section 536.010, RSMo, that
4 is created under the authority delegated in this section shall become
5 effective only if it complies with and is subject to all of the provisions
6 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
7 section and chapter 536, RSMo, are nonseverable and if any of the
8 powers vested with the general assembly under chapter 536, RSMo, to
9 review, to delay the effective date, or to disapprove and annul a rule
10 are subsequently held unconstitutional, then the grant of rulemaking
11 authority and any rule proposed or adopted after August 28, 2009, shall
12 be invalid and void.

13 2. The secretary of state shall prescribe all forms to be used for
14 filing effective financing statements and subsequent actions.

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