

House Study Bill 142 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON RIZER)

A BILL FOR

1 An Act relating to security interests in farm products, by
2 establishing a central filing and notification system,
3 providing for fees and their expenditure, and including
4 contingent implementation provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 554.9102, subsection 4, Code 2017, is
2 amended to read as follows:

3 4. *Federal Food Security Act.*

4 a. For purposes of the Federal Food Security Act, 7 U.S.C.
5 §1631, written notice shall be considered to be received by the
6 person to whom it was delivered if the notice is delivered in
7 hand to the person, or mailed by certified or registered mail
8 with the proper postage and properly addressed to the person to
9 whom it was sent. The refusal of a person to whom a notice is
10 so mailed to accept delivery of the notice shall be considered
11 receipt.

12 b. This subsection is repealed on the date that this Act is
13 fully implemented as provided in section 554C.14.

14 Sec. 2. Section 554.9320, Code 2017, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 1A. A buyer of farm products takes subject
17 to a security interest in farm products created by the seller
18 as provided in chapter 554C.

19 Sec. 3. NEW SECTION. 554C.1 **Definitions.**

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "*Approved unique identifier*" means a number, combination
23 of numbers and letters, or other identifier selected by the
24 secretary as required in section 554C.3.

25 2. "*Buyer*" means a buyer in the ordinary course of business,
26 a commission merchant, or a selling agent.

27 3. "*Buyer in the ordinary course of business*" means a person
28 who, in the ordinary course of business, buys farm products
29 from a person engaged in farming operations who is in the
30 business of selling farm products.

31 4. "*Central filing system*" means a system for filing
32 effective financing statements, and statements amending,
33 continuing, or terminating effective financing statements as
34 provided in section 554C.4.

35 5. "*Commission merchant*" means a person engaged in the

1 business of receiving farm products for sale, on commission, or
2 for or on behalf of another person.

3 6. "*Effective financing statement*" means a financing
4 statement required to be filed as part of the central filing
5 system as provided in section 554C.6.

6 7. "*Knows*" means having actual knowledge. "*Knowledge*" means
7 actual knowledge.

8 8. "*Secretary*" means the secretary of state.

9 9. "*Security interest*" means an interest in farm products
10 that secures payment or performance of an obligation in the
11 same manner as provided in chapter 554.

12 10. "*Selling agent*" means a person, other than a commission
13 merchant, who is engaged in the business of negotiating the
14 sale and purchase of farm products on behalf of a person
15 engaged in farming operations.

16 Sec. 4. NEW SECTION. 554C.2 **Special definitions.**

17 To every extent consistent with the application of federal
18 law, unless the context otherwise requires:

19 1. "*Crop year*" means the calendar year in which a crop is or
20 will be harvested, animals are born or acquired, or poultry or
21 eggs are or will be sold.

22 2. "*Debtor*" means a person indebted to the secured party and
23 subjecting a farm product to a security interest.

24 3. "*Farm products*" means the same as defined in section
25 554.9102.

26 4. "*Farming operation*" means the same as defined in section
27 554.9102.

28 5. "*Registered buyer*" means a buyer who has registered
29 with the secretary pursuant to section 554C.5 to receive a
30 master list or portions of a master list as provided in section
31 554C.8.

32 6. "*Secured party*" means a secured party as defined in
33 section 554.9102 in whose favor a security interest in farm
34 products is created.

35 7. "*Signature*" means to sign, execute, or otherwise adopt a

1 symbol, or encrypt or similarly process a record in whole or in
2 part, with the present intent of authenticating for purposes of
3 identifying the person and adopting or accepting a record.

4 Sec. 5. NEW SECTION. 554C.3 Uniform commercial code —
5 federal law — signing documents.

6 1. This chapter shall be interpreted in conjunction with
7 chapter 554, and terms and phrases used in this chapter shall,
8 to every extent practicable, be interpreted consistently with
9 chapter 554, article 9.

10 2. The provisions of this chapter including the
11 establishment of a central filing system established in section
12 554C.4 must comply with applicable requirements set forth in
13 7 U.S.C. §1631 in order to be certified by the United States
14 secretary of agriculture as required in that federal statute.

15 3. The secretary shall provide for methods of signing
16 documents required to be filed with the secretary under this
17 chapter, including effective financing statements or statements
18 amending, continuing, or terminating effective financing
19 statements described in section 554C.6. The secretary shall
20 establish a selection system or method approved by the United
21 States secretary of agriculture to provide for approved unique
22 identifiers.

23 Sec. 6. NEW SECTION. 554C.4 Central filing system —
24 establishment.

25 1. The secretary shall establish and administer a central
26 filing system for the filing of effective financing statements
27 or statements amending, continuing, or terminating effective
28 financing statements as described in section 554C.6 on a
29 statewide basis. The central filing system shall provide for
30 the electronic filing and examining of the statements.

31 2. The central filing system shall be designed to allow
32 persons to file and examine effective filing statements or
33 other statements described in subsection 1 using the internet.
34 The secretary may provide for the filing and examining of the
35 statements in a paper format.

1 **Sec. 7. NEW SECTION. 554C.5 Registered buyers list.**

2 1. The secretary shall maintain a registered buyers list.

3 2. In order to be registered and be placed on the registered
4 buyers list, a buyer must submit a completed form to the
5 secretary as prescribed by the secretary. The form shall
6 include all of the following:

7 *a.* The name and address of the buyer.

8 *b.* The interest of the buyer in receiving the list.

9 *c.* The farm products in which the buyer has an interest.

10 *d.* Other information that the secretary requires to comply
11 with 7 U.S.C. §1631 and to administer this chapter.

12 **Sec. 8. NEW SECTION. 554C.6 Effective financing statements
13 and related statements — filing requirements.**

14 1. The secretary shall provide for filing of effective
15 financing statements, and statements amending, continuing, or
16 terminating effective financing statements. The presentation
17 of a statement by a secured party and the acceptance of the
18 statement by the secretary constitutes filing under this
19 section. A statement shall be valid if it substantially
20 complies with the requirements of this section and section
21 554C.7 even though it contains minor errors that are not
22 seriously misleading.

23 2. An effective financing statement must be an original or
24 reproduced copy which is signed by the secured party and the
25 debtor. If filed electronically, the debtor is not required to
26 sign the effective financing statement. The statement must be
27 filed with the secretary by the secured party. The secretary
28 shall record the date and hour of the filing of the effective
29 financing statement.

30 3. An effective financing statement must contain all of the
31 following:

32 *a.* The name and address of the secured party.

33 *b.* The name and address of the debtor.

34 *c.* The unique approved unique identifier of the debtor.

35 *d.* A description of the farm products subject to the

1 security interest, the county in Iowa where the farm products
2 are produced or will be produced, the crop year unless
3 every crop of the farm product in question for the duration
4 of the effective financing statement is to be subject to
5 the particular security interest, further details of the
6 farm product subject to the security interest if needed to
7 distinguish it from other quantities of the farm product owned
8 by the same person or persons but not subject to the particular
9 security interest, and other information that the secretary
10 requires to administer this section. The effective financing
11 statement may cover more than one farm product located in more
12 than one county.

13 e. Other information that the secretary requires to comply
14 with 7 U.S.C. §1631 and to administer this chapter.

15 **Sec. 9. NEW SECTION. 554C.7 Effective financing statements**
16 **and related statements — effectiveness.**

17 1. An effective financing statement shall remain effective
18 for a period of five years from the date of filing, subject to
19 extensions for additional periods of five years each by filing
20 or refiling a continuation statement within six months before
21 the expiration of the five-year period.

22 2. An effective financing statement shall be amended in
23 writing to reflect a material change within three months of the
24 material change. The amendment shall be signed and filed as
25 required for an original effective financing statement. If the
26 statement is filed electronically, the signature of the debtor
27 shall not be required.

28 3. A continuation statement shall be signed by the secured
29 party, identify the original effective financing statement by
30 file number, and state that the original financing statement
31 is still effective.

32 4. Upon timely filing of a continuation statement, the
33 effectiveness of the original financing statement shall be
34 continued for five years after the last date to which the prior
35 filing was effective, whereupon it shall lapse unless another

1 continuation statement is filed prior to the lapse. Succeeding
2 continuation statements may be filed in the same manner to
3 continue the effectiveness of the original effective financing
4 statement.

5 5. The effective financing statement lapses upon the
6 expiration of the effective period of the effective financing
7 statement or is terminated upon the filing of a statement
8 signed by the secured party that the effective financing
9 statement is terminated.

10 a. If the effective financing statement has not lapsed or is
11 not terminated and there are no outstanding secured obligation
12 and no commitment to make advances, incur obligations, or
13 otherwise give value, the debtor may notify the secured party
14 in writing to terminate the effective financing statement.

15 b. Until the debtor instructs the secured party in writing
16 to terminate the effective financing statement, the secured
17 party has no obligation to terminate the effective financing
18 statement.

19 c. Within thirty days after receipt by the secured party
20 of the statement from the debtor to terminate the effective
21 financing statement, the secured party shall file with the
22 secretary a termination statement with respect to the effective
23 financing statement.

24 Sec. 10. NEW SECTION. 554C.8 Master list — organization
25 and contents.

26 1. The secretary shall compile the effective financing
27 statements into a master list.

28 2. The master list shall be organized according to farm
29 products. The master list shall contain information required
30 to be contained in effective financing statements filed with
31 the secretary. The secretary shall arrange the master list for
32 each farm product as follows:

33 a. In alphabetical order according to the last name of the
34 individual debtors or, in the case of debtors doing business
35 other than as individuals, the first word in the name of such

1 debtors.

2 *b.* In numerical order according to the approved unique
3 identifier of the debtors.

4 *c.* Geographically by county.

5 *d.* By crop year.

6 3. The master list shall include information regarding
7 buyers who register with the secretary under section 554C.5.

8 4. The master list may include other information that
9 the secretary requires to comply with 7 U.S.C. §1631 and to
10 administer this chapter.

11 **Sec. 11. NEW SECTION. 554C.9 Master list — distribution to**
12 **registered buyers.**

13 1. The secretary shall distribute to each registered buyer
14 a copy in written, printed, or electronic form the master list
15 or those portions of the master list relating to farm products
16 in which the buyer has registered an interest. The secretary
17 may provide for the distribution of the master list or portions
18 of the list on any other medium requested by a registered
19 buyer. If a registered buyer so requests, the information
20 provided to the registered buyer may be limited to a county or
21 group of counties where the farm product is produced or to a
22 crop year or crop years or to a combination of that requested
23 information.

24 2. The secretary shall provide for the distribution of the
25 master list or portions of the master list according to the
26 following requirements:

27 *a.* The distributions shall be by first class mail or
28 electronic mail.

29 *b.* The distributions shall be made on a quarterly basis.
30 The secretary shall adopt rules establishing the dates when
31 quarterly distributions will be made, the dates after which
32 a filing of an effective financing statement will not be
33 reflected on the next quarterly distribution, and the date by
34 which a buyer must submit a completed registration form to
35 receive the next quarterly master list or portion of the master

1 list.

2 3. The secretary shall remove information from the master
3 list pertaining to a lapsed or terminated effective financing
4 statement from the master list prior to preparation of the
5 master list or portions of the master lists for distribution.

6 4. Upon written notice to the secretary by a registered
7 buyer requesting termination of a distribution of the master
8 list or a portion of the master list to that registered buyer,
9 the secretary shall terminate distribution of the master list
10 or a portion of the master list to that registered buyer. The
11 secretary may unregister the buyer.

12 5. In order to verify the existence or nonexistence of a
13 security interest, a buyer may request a seller to disclose the
14 seller's approved unique identifier.

15 Sec. 12. NEW SECTION. 554C.10 **Inquiries and responses -**
16 **confirmations.**

17 1. *a.* Oral or written inquiries regarding information
18 pertaining to the master list or portions of the master list by
19 an unregistered buyer may be made to the secretary during hours
20 determined by the secretary.

21 *b.* The secretary shall provide for responses to inquiries
22 by unregistered buyers, including a written confirmation
23 of the information to such buyers. An oral confirmation
24 must be made within twenty-four hours after the inquiry. A
25 written confirmation must be delivered by first class mail
26 or electronic mail to the unregistered buyer, at an address
27 provided by the unregistered buyer, not later than the second
28 regular business day following the day on which the secretary
29 received the inquiry.

30 2. The secretary may establish a computerized system for
31 receiving and responding to inquiries and the transmission of
32 written confirmations.

33 Sec. 13. NEW SECTION. 554C.11 **Perfection — creation of**
34 **superior interests.**

35 1. If a buyer registers with the secretary prior to the

1 purchase of farm products under section 554C.5, the registered
2 buyer takes subject to a security interest in the farm products
3 only if all of the following apply:

4 *a.* The secured party has filed an effective financing
5 statement under section 554C.7 that covers the farm products
6 being sold.

7 *b.* The registered buyer does not secure a waiver or
8 release of the security interest as specified in the effective
9 financing statement filed by the secured party. If a buyer in
10 the ordinary course of business buying farm products identified
11 in the master list as provided in section 554C.9 tenders to
12 the seller the total purchase price payable to such seller and
13 each secured party filing an effective financing statement
14 covering the same farm product, an authorization or endorsement
15 by the seller and each secured party together with the payment
16 shall constitute a waiver or release of the security interest
17 specified in the effective financing statement to the extent of
18 the amount of the payment. A waiver or release of the security
19 interest shall not establish or alter security interest or lien
20 priorities under chapter 554 or other Iowa law.

21 2. If the buyer fails to register with the secretary prior
22 to the purchase of farm products, the buyer takes subject
23 to a security interest in the farm products only if the
24 secured party has filed an effective financing statement that
25 covers the farm products being sold, and the buyer could have
26 discovered the existence of the effective financing statement
27 prior to the purchase by conducting an inquiry of and receiving
28 a confirmation by the secretary under section 554C.10.

29 Sec. 14. NEW SECTION. **554C.12 Fees.**

30 1. The secretary shall establish fees for registering as a
31 buyer as provided in section 554C.5 and for initially filing
32 effective financing statements, or for filing a statement
33 amending, continuing, or terminating an effective financing
34 statement as provided in sections 554C.6 and 554C.7. The fees
35 shall not be more than provided for filing financing statements

1 as provided in section 554.9525. However, the secretary shall
2 not charge a fee for allowing a person to examine or print
3 a buyer's registration, an effective financing statement, or
4 a statement amending continuing, or terminating an effective
5 financing statement which is accessible via the internet or
6 electronic transmission.

7 2. Notwithstanding section 22.3, the secretary may charge
8 a person a fee to receive a master list distributed pursuant
9 to section 554C.9 or for responding to verbal inquiries and
10 delivering confirmations pursuant to section 554C.10. However,
11 the secretary shall not charge a person a fee to receive a
12 master list which is accessible via the internet by electronic
13 transmission. The secretary shall not charge a person a fee to
14 respond to an inquiry or deliver a confirmation by electronic
15 transmission.

16 3. All moneys received by the secretary under this section
17 shall be handled in the same manner as repayment receipts as
18 defined in section 8.2, and shall be used by the secretary
19 exclusively for the administration of this chapter.

20 Sec. 15. NEW SECTION. 554C.13 Rules and forms.

21 The secretary shall adopt all rules and prepare and publish
22 all forms required to administer this section and comply with 7
23 U.S.C. §1631. The secretary may require the mandatory use of a
24 form and refuse to file a document that is not prepared using
25 a mandatory form.

26 Sec. 16. NEW SECTION. 554C.14 Full implementation.

27 1. The secretary shall fully implement this Act only
28 upon adequate moneys being appropriated to the secretary
29 as determined by the secretary or as otherwise provided in
30 statute.

31 2. If the condition set forth in subsection 1 is satisfied,
32 this Act shall be fully implemented on a date certified by
33 the secretary which shall not occur until the certification
34 is to be published in three consecutive Iowa administrative
35 bulletins. The secretary shall deliver each certification for

1 publication to the Iowa administrative code editor and the Iowa
2 code editor.

3 3. This section is repealed three years after the date that
4 the certification described in subsection 2 is last published
5 in the Iowa administrative bulletin.

6 Sec. 17. DIRECTIONS TO THE SECRETARY OF STATE.

7 1. Notwithstanding the date that all provisions of this
8 Act become fully implemented as provided in section 554C.14
9 as enacted in this Act, the secretary of state shall adopt
10 rules necessary to administer this Act under section 554C.13 as
11 enacted in this Act as if it were being fully implemented under
12 section 554C.14 as enacted in this Act. The rules shall take
13 effect as provided in section 17A.5 on the date that the Act is
14 fully implemented as provided in section 554C.14.

15 2. If necessary to obtain federal certification required
16 to implement this Act, the secretary of state may adopt by
17 rule additional or alternative requirements than otherwise
18 provided in this Act so long as the requirements are made in
19 conformity with 7 U.S.C. §1631 and the United States department
20 of agriculture. The secretary of state shall describe the
21 purpose for the requirements in the preamble to each rule it
22 adopts under section 17A.4. The secretary shall also propose
23 legislation for consideration by the general assembly meeting
24 during the following legislation session. The legislation
25 shall be limited to amendments required to comply with
26 requirements of 7 U.S.C. §1631 or the United States department
27 of agriculture or provisions to improve the administration of
28 the Code chapter 554C as enacted in this Act.

29

EXPLANATION

30 The inclusion of this explanation does not constitute agreement with
31 the explanation's substance by the members of the general assembly.

32 ESTABLISHMENT OF CENTRALIZED SYSTEM. This bill creates a
33 centralized, statewide filing system for security interests in
34 farm products to notify buyers of farm products that a security
35 interest has attached to the product. A farm product includes

1 a good other than standing timber that is produced as part of a
2 farming operation and includes crops, aquatic goods, livestock,
3 supplies used or produced on the farming operation or products
4 of crops or livestock in an unmanufactured form (Code section
5 554.9102). The system must be certified by the United States
6 department of agriculture.

7 SECURITY INTEREST ATTACHED TO FARM PRODUCTS — FILING
8 REQUIREMENTS. The bill allows a person who has a secured
9 interest attached to farm products to complete and file a
10 document referred to as an effective financing statement or a
11 statement amending, continuing, or terminating the effective
12 financing statement, with the secretary of state.

13 BUYER NOTIFICATION — MASTER LIST. The secretary must
14 compile information contained in the effective financing
15 statements into a master list organized according to farm
16 products which the secretary must regularly distribute to
17 buyers of farm products registered with the secretary. A
18 registered buyer who receives the master list or a portion of
19 the master list is placed on actual or constructive notice
20 and therefore takes subject to the security interest. The
21 secretary may also respond to verbal or written inquiries by
22 buyers including unregistered buyers and deliver a written
23 confirmation to inquiring buyers regarding whether a farm
24 product is subject to a security interest.

25 BUYERS WHO TAKE SUBJECT TO THE SECURITY INTEREST. If a
26 buyer registers with the secretary prior to the purchase of
27 farm products, the registered buyer takes subject to the
28 security interest only if the secured party has filed an
29 effective financing statement that covers the farm products
30 being sold, unless the registered buyer secures a release of
31 the security interest. If a buyer fails to register with the
32 secretary, the buyer takes subject to the security interest
33 only if the secured party has filed an effective financing
34 statement that covers the farm products, and the buyer could
35 have discovered the existence of the effective financing

1 statement by conducting an inquiry and receiving a response and
2 confirmation.

3 FEES. The bill authorizes the secretary to establish fees
4 for secured parties filing effective financing statements
5 and buyers registering with the secretary. The secretary
6 may also establish fees for distributing the master list to
7 registered buyers and responding to inquiries and delivering
8 confirmations. The secretary is prohibited from establishing
9 fees for electronic transactions. Moneys received by the
10 secretary are considered repayment receipts and must be used to
11 administer the provisions of the bill.

12 RULES AND FORMS. The secretary is authorized to adopt
13 rules and prepare and publish forms and may adopt additional
14 or alternative requirements than provided in the bill in order
15 to meet requirements for certification by the United States
16 department of agriculture.

17 CONTINGENT IMPLEMENTATION. The secretary is required to
18 fully implement the bill upon meeting two conditions: (1)
19 adequate moneys being appropriated to the secretary and (2)
20 certification of the system by the United States department
21 of agriculture. The date of full implementation occurs on a
22 date selected by the secretary but cannot commence until the
23 date of implementation is published three times in the Iowa
24 administrative bulletin.

25 BACKGROUND — GENERAL. The provisions of the bill are
26 closely connected with provisions in Code chapter 554, article
27 9, Iowa's version of the uniform commercial code governing
28 secured transactions. A secured party ordinarily perfects a
29 security interest in collateral (personal property) including
30 farm products by filing a financing statement (UCC-1) with the
31 secretary of state and thereby creating a priority status when
32 compared to other secured parties (article 9, part 3). Article
33 9 provides an exception for buyers in the ordinary course of
34 business who generally take free of a security interest created
35 by the seller even in cases in which the security interest has

1 been perfected and the buyer is aware of its existence (Code
2 section 554.9320). However, notwithstanding this exception,
3 a buyer who purchases a farm product from a person engaged in
4 farming operations may not take free of a security interest.
5 The Federal Food Security Act (1985) preempts state's article
6 9 requirements by providing that a buyer in the ordinary
7 course of business, a commission merchant, or a selling agent
8 (all classified under the term "buyer") may buy farm products
9 without being subject to a security interest created by the
10 seller. However, the federal law allows a secured party
11 to take action to prevent a buyer from taking clear of the
12 security interest by following certain steps designed to notify
13 buyers.

14 BACKGROUND — NOTIFICATION SYSTEMS. The federal law allows
15 states to elect between two notification options: (1) Iowa's
16 current system requiring the secured party to deliver direct
17 notice to potential buyers of a secured party's interest in the
18 farm products within one year prior to sale or (2) the system
19 contemplated in the bill which would establish the central
20 notification system. In either case, the federal law does not
21 supersede article 9 requirements that govern the filing of a
22 filing statement to perfect creditor rights in collateral or
23 that establishes priorities among creditors.