

**House Study Bill 604 - Introduced**

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED SECRETARY OF  
STATE BILL)

**A BILL FOR**

1 An Act relating to the regulation of persons who file certain  
2 documents with the secretary of state, including the duties  
3 and obligations of business entities, restrictions regarding  
4 the acquisition of agricultural land, the liability of  
5 corporate directors, and commercial transactions involving  
6 creditors, providing for fees, and providing penalties.  
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

NONPROFIT CORPORATIONS ACQUIRING AGRICULTURAL LAND

Section 1. Section 9H.1, subsection 20, Code 2018, is amended to read as follows:

20. *“Nonprofit corporation”* means any of the following:

a. ~~Corporations organized under the provisions of chapter 504, Code 1989, or current chapter 504;~~ or A corporation as defined in section 504.141 that is not a foreign corporation as described in paragraph “b”.

b. ~~Corporations which qualify under 26 U.S.C. §501(c)(3) A foreign corporation as defined in section 504.141.~~

Sec. 2. Section 9H.4, subsection 1, paragraph b, subparagraph (3), subparagraph division (a), subparagraph subdivisions (i) and (iv), Code 2018, are amended to read as follows:

(i) The corporation or limited liability company must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this subparagraph subdivision, if the corporation or limited liability company has ever entered into another lease under this subparagraph (3), whether or not the lease is in effect. However, this subparagraph subdivision does not apply to a ~~domestic nonprofit corporation organized under chapter 504, Code 1989, or current chapter 504~~ as defined in section 9H.1, subsection 20, paragraph “a”.

(iv) The corporation or limited liability company must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph division does not apply to a ~~domestic nonprofit corporation organized under chapter 504, Code 1989, or current chapter 504~~ as defined in section 9H.1, subsection 20, paragraph “a”.

Sec. 3. Section 9H.4, subsection 1, paragraph c, Code 2018,

1 is amended to read as follows:

2 c. Agricultural land, including a leasehold interests  
3 interest, acquired by a nonprofit corporation ~~organized~~  
4 ~~under the provisions of chapter 504, Code 1989,~~ and current  
5 chapter 504 as defined in section 9H.1, subsection 20,  
6 paragraph "a", including land acquired and operated by or for  
7 a state university for research, experimental, demonstration,  
8 foundation seed increase or test purposes and land acquired  
9 and operated by or for nonprofit corporations organized  
10 specifically for research, experimental, demonstration,  
11 foundation seed increase or test purposes in support of or in  
12 conjunction with a state university.

13 Sec. 4. Section 10B.1, subsection 9, Code 2018, is amended  
14 by striking the subsection and inserting in lieu thereof the  
15 following:

16 9. "Nonprofit corporation" means the same as defined in  
17 section 9H.1.

18 DIVISION II

19 UNIFORM LIMITED PARTNERSHIP ACT

20 Sec. 5. Section 488.102, subsection 19, Code 2018, is  
21 amended to read as follows:

22 19. "Registered office" means:

23 a. ~~With respect to a limited partnership,~~ means the office  
24 that ~~the~~ a limited partnership or foreign limited partnership  
25 is required to designate and maintain under section 488.114.

26 b. ~~With respect to a foreign limited partnership, its~~  
27 ~~principal office.~~

28 Sec. 6. Section 488.114, Code 2018, is amended to read as  
29 follows:

30 **488.114 Registered office and registered agent for service**  
31 **of process.**

32 1. A limited partnership or foreign limited partnership  
33 shall designate and continuously maintain in this state ~~both~~  
34 all of the following:

35 a. A registered office, which need not be a place of its

1 activity in this state.

2 *b.* A registered agent for service of process.

3 ~~2. A foreign limited partnership shall designate and~~  
4 ~~continuously maintain in this state a registered agent for~~  
5 ~~service of process.~~

6 ~~3.~~ 2. A registered agent for service of process of a  
7 limited partnership or foreign limited partnership must be an  
8 one of the following:

9 *a.* An individual who is a resident of Iowa ~~or other~~ and  
10 whose business office is identical with the registered office.

11 *b.* A person other than an individual authorized to do  
12 business in this state whose business office is identical with  
13 the registered office.

14 Sec. 7. Section 488.116, subsections 2 and 3, Code 2018, are  
15 amended to read as follows:

16 2. After receiving a statement of resignation, the  
17 secretary of state shall file it and mail a copy to the  
18 registered office of the limited partnership or foreign limited  
19 partnership ~~and another copy to the principal office if the~~  
20 ~~address of the office appears in the records of the secretary~~  
21 ~~of state and is different from the address of the registered~~  
22 ~~office.~~

23 3. A registered agency agent for service of process is  
24 terminated on the date on which the statement of resignation  
25 was filed with the secretary of state.

26 Sec. 8. Section 488.809, subsection 1, Code 2018, is amended  
27 to read as follows:

28 1. The secretary of state may dissolve a limited partnership  
29 administratively if the limited partnership does not, ~~within~~  
30 ~~sixty days after the due date,~~ do any of the following:

31 *a.* Pay, within sixty days after the due date, any fee, tax,  
32 or penalty under this chapter or other law due the secretary of  
33 state.

34 *b.* Deliver, within sixty days after the due date, its  
35 biennial report to the secretary of state required under

1 section 488.210.

2 c. Designate and continuously maintain a registered office  
3 and appoint and maintain a registered agent for service of  
4 process as required by section 488.114.

5 d. Deliver for filing a statement of a change under section  
6 488.115 within sixty days after the change has occurred.

7 Sec. 9. Section 488.902, subsection 2, Code 2018, is amended  
8 to read as follows:

9 2. A foreign limited partnership shall deliver with the  
10 completed application a certificate of existence or a record  
11 of similar import signed by the secretary of state or other  
12 official having custody of the foreign limited partnership's  
13 publicly filed records in the state or other jurisdiction under  
14 whose law the foreign limited partnership is organized. The  
15 certificate of existence or other record described in this  
16 subsection must be dated not earlier than ninety days prior to  
17 the date the application is filed with the secretary of state.

18 Sec. 10. Section 488.906, subsections 1 and 2, Code 2018,  
19 are amended to read as follows:

20 1. A certificate of authority of a foreign limited  
21 partnership to transact business in this state may be revoked  
22 by the secretary of state in the manner provided in subsections  
23 2 and 3 if the foreign limited partnership does not do any of  
24 the following:

25 a. Pay, within sixty days after the due date, any fee, tax  
26 or penalty under [this chapter](#) or other law due the secretary of  
27 state.

28 b. Deliver, within sixty days after the due date, its  
29 biennial report required under [section 488.210](#).

30 ~~c. Appoint~~ Designate and continuously maintain a registered  
31 office and appoint and maintain a registered agent for service  
32 of process as required by section 488.114, ~~subsection 2.~~

33 d. Deliver for filing a statement of a change under section  
34 488.115 within ~~thirty~~ sixty days after a the change has  
35 occurred ~~in the name or address of the registered agent for~~

1 ~~service of process.~~

2 2. In order to revoke a certificate of authority, the  
3 secretary of state must prepare, sign, and file a notice of  
4 revocation and send a copy to the foreign limited partnership's  
5 registered agent for service of process in this state, or  
6 if the foreign limited partnership does not appoint and  
7 maintain a proper agent in this state, to the foreign limited  
8 partnership's ~~registered~~ principal office. The notice must  
9 state all of the following:

10 a. The revocation's effective date, which must be at least  
11 sixty days after the date the secretary of state sends the  
12 copy.

13 b. The foreign limited partnership's ~~failures~~ failure  
14 to comply with subsection 1 which ~~are~~ is the reason for the  
15 revocation.

16 Sec. 11. Section 488.1206, subsection 1, Code 2018, is  
17 amended by adding the following new paragraph:

18 NEW PARAGRAPH. *Op.* Articles of merger.....\$50

19 DIVISION III

20 IOWA BUSINESS CORPORATION ACT

21 Sec. 12. Section 490.122, subsection 1, paragraph b, Code  
22 2018, is amended by striking the paragraph.

23 DIVISION IV

24 CORPORATIONS FOR PECUNIARY PROFIT

25 Sec. 13. Section 491.16A, Code 2018, is amended to read as  
26 follows:

27 **491.16A Directors and officers — duties and liabilities.**

28 Sections 490.830, 490.831, and 490.833, sections 490.840  
29 through 490.842, sections 490.860 through 490.863, and section  
30 490.870 apply to corporations organized under or subject to  
31 this chapter.

32 DIVISION V

33 REVISED IOWA NONPROFIT CORPORATION ACT

34 Sec. 14. Section 504.832, subsection 1, paragraph a, Code  
35 2018, is amended to read as follows:

1 a. That section 504.202, subsection 2, paragraph "d", or  
2 section 504.901 or the protection afforded by section 504.833  
3 or 504.836, if interposed as a bar to the proceeding by the  
4 director, does not preclude liability.

5 DIVISION VI

6 IOWA BANKING ACT

7 Sec. 15. Section 524.1404, Code 2018, is amended to read as  
8 follows:

9 **524.1404 Procedure after approval by the superintendent —**  
10 **issuance of certificate of merger.**

11 If applicable state or federal laws require the approval of  
12 the merger by a federal or state agency, the superintendent may  
13 withhold delivery of the approved articles of merger until the  
14 superintendent receives notice of the decision of such agency.  
15 If the final approval of the agency is not given within six  
16 months of the superintendent's approval, the superintendent  
17 shall notify the parties to the plan that the approval of the  
18 superintendent has been rescinded for that reason. If such  
19 agency gives its approval, the superintendent shall deliver  
20 the articles of merger, with the superintendent's approval  
21 indicated on the articles, to the secretary of state, and shall  
22 notify the parties to the plan. The receipt of the approved  
23 articles of merger by the secretary of state constitutes filing  
24 of the articles of merger with that office. The secretary of  
25 state shall record the articles of merger, and forward a copy  
26 of the articles shall be filed and recorded in to the office of  
27 the county recorder in each county in which the parties to the  
28 plan had previously maintained a principal place of business  
29 for filing. On the date upon which the merger is effective  
30 the secretary of state shall issue a certificate of merger and  
31 send the same to the resulting state bank and a copy of the  
32 certificate of merger to the superintendent.

33 Sec. 16. Section 524.1506, subsection 1, Code 2018, is  
34 amended to read as follows:

35 1. The secretary of state shall record the articles of

1 amendment, and forward a copy of the articles of amendment  
2 ~~shall be filed in to~~ the office of the county recorder in the  
3 county in which the state bank has its principal place of  
4 business for filing. The secretary of state upon the filing  
5 of the articles of amendment shall issue a certificate of  
6 amendment and send the same to the state bank.

7 DIVISION VII

8 PROHIBITED UCC RECORD FILINGS

9 Sec. 17. Section 554.9516, subsection 2, Code 2018, is  
10 amended by adding the following new paragraph:

11 NEW PARAGRAPH. *Of.* in the case of an initial financing  
12 statement or an amendment, a secured party and a debtor appear  
13 to be the same party. The secretary of state may require the  
14 person filing the financing statement to furnish reasonable  
15 proof that the parties are not the same.

16 Sec. 18. NEW SECTION. **708.7A Persons unauthorized to file**  
17 **records.**

18 1. A person shall not cause to be communicated to the filing  
19 office, as defined in section 554.9102, for filing a record,  
20 also defined in that section, if all of the following apply:

21 *a.* The person is not authorized or otherwise entitled to  
22 file the record under section 554.9509.

23 *b.* The record is not related to an existing or anticipated  
24 transaction that is or will be governed by chapter 554, article  
25 9.

26 *c.* The record is presented for filing or filed with the  
27 intent to harass or defraud the person identified as a debtor  
28 in the record.

29 2. A person who commits a violation of this section is  
30 guilty of the following:

31 *a.* A simple misdemeanor for a first offense.

32 *b.* A serious misdemeanor for a second or subsequent offense.

33 EXPLANATION

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



1 GENERAL. This bill makes a number of changes to statutes  
2 administered by the secretary of state which relate to business  
3 entities such as corporations operating on a for-profit basis  
4 (Code chapter 490, the "Iowa Business Corporation Act", or  
5 Code chapter 491) or on a nonprofit basis (Code chapter 504,  
6 the "Revised Iowa Nonprofit Corporation Act"), or a limited  
7 partnership (Code chapter 488, the "Uniform Limited Partnership  
8 Act"). The statutory changes also provide for the filing  
9 of certain documents (referred to as records) to secure a  
10 creditor's interest in a debtor's property (Code chapter 554,  
11 the "Uniform Commercial Code") and related provisions.

12 GENERAL — BACKGROUND. A business entity is classified as  
13 "domestic" when it is organized or formed in Iowa (e.g., for  
14 a corporation, including a nonprofit corporation, by filing  
15 articles of incorporation and receiving a certificate of  
16 existence). A business entity may remain organized or formed  
17 under a repealed Iowa law and become subject to a succeeding  
18 state law. Alternatively, a business entity is classified as  
19 "foreign" when it is organized or formed outside of Iowa and  
20 upon application to the secretary of state is recognized to  
21 do business in this state (e.g., obtaining a certificate of  
22 authorization) (Code section 490.128).

23 NONPROFIT CORPORATIONS — RESTRICTIONS ON ACQUIRING  
24 AGRICULTURAL LAND AND REPORTING REQUIREMENTS. The bill  
25 amends Code chapter 9H which restricts certain business  
26 entities, including corporations, from acquiring agricultural  
27 land suitable for use in farming (Code sections 9H.1(2) and  
28 9H.1(14)). The bill also amends related provisions in Code  
29 chapter 10B that require such entities file landholding reports  
30 with the secretary of state. Specifically, the bill replaces  
31 language in the definition of "nonprofit corporation" that  
32 describes such an entity as "organized under" former Code  
33 chapter 504 as published in the 1989 edition of the Code  
34 (prior to its repeal) or "current" Code chapter 504 with  
35 replacement language describing a nonprofit corporation as a

1 corporation defined in Code chapter 504.141, which includes  
2 both a domestic and foreign corporation. It eliminates a  
3 part of the definition that recognizes entities qualifying  
4 as nonprofit corporations under the Internal Revenue Code.  
5 It also makes corresponding changes to another statute that  
6 allows a nonprofit corporation to acquire agricultural land for  
7 research or experimental purposes under two exceptions: (1)  
8 when agricultural land is acquired for research or experimental  
9 purposes by a domestic corporation (Code section 9H.4(1)(b))  
10 and (2) when agricultural land is acquired by a domestic  
11 or foreign nonprofit corporation associated with a state  
12 university (Code section 9H.4(1)(c)).

13       NONPROFIT CORPORATIONS — RESTRICTIONS ON ACQUIRING  
14 AGRICULTURAL LAND AND REPORTING REQUIREMENTS — BACKGROUND.

15 Prior to July 1, 1990, a nonprofit domestic corporation  
16 could have been organized under two now former Code chapters:  
17 former Code chapter 504 or former Code chapter 504A, the "Iowa  
18 Nonprofit Corporation Act" enacted in 1965 (1965 Iowa Acts, ch.  
19 338 and 1990 Iowa Acts, ch. 1164). On July 1, 1990, existing  
20 corporations organized under former Code chapter 504 became  
21 subject to now former Code chapter 504A, the "Iowa Nonprofit  
22 Corporation Act" (1990 Iowa Acts, ch. 1164). On and after July  
23 1, 2004, the "Iowa Nonprofit Corporation Act" was replaced by  
24 new Code chapter 504, the "Revised Iowa Nonprofit Corporation  
25 Act", so that on and after July 1, 2004, all new domestic and  
26 foreign nonprofit corporations were required to be organized  
27 under current Code chapter 504 and on and after July 1, 2005,  
28 existing domestic corporations organized under former Code  
29 chapter 504A became subject to new Code chapter 504 and former  
30 Code chapter 504A was repealed (2004 Iowa Acts, ch. 1049).

31       UNIFORM LIMITED PARTNERSHIP ACT — REGISTERED OFFICE AND  
32 REGISTERED AGENT. The bill provides that a foreign limited  
33 partnership's registered office is no longer its principal  
34 office but rather the registered office required to be  
35 maintained in this state in the same manner as a domestic

1 limited partnership (Code section 488.102(19)). The bill also  
2 requires that for a domestic or foreign limited partnership,  
3 the street and mailing address of the registered office and  
4 the business address of its registered agent must be the same  
5 (Code section 488.114). Under the bill, the secretary of  
6 state may take administrative action to dissolve a domestic  
7 limited partnership or revoke the certificate of authority of  
8 a foreign limited partnership that does not (1) maintain a  
9 registered office or registered agent, or (2) timely notify  
10 the secretary of state that the address of the registered  
11 office or registered agent has changed (Code sections 488.809  
12 and 488.906). The bill provides that a foreign limited  
13 partnership's certificate of existence issued in the limited  
14 partnership's home jurisdiction or similar record accompanying  
15 an application for an Iowa certificate of authorization  
16 must be dated not earlier than 90 days prior to the date the  
17 application is filed (Code section 488.902). The bill provides  
18 that in case a foreign limited partnership fails to maintain a  
19 proper registered office, the secretary of state must deliver  
20 a notice revoking its certificate of authority to the foreign  
21 limited partnership's principal office (Code section 488.906).

22 UNIFORM LIMITED PARTNERSHIP ACT — FILING FEE FOR ARTICLES  
23 OF MERGER. The bill establishes a fee for persons filing  
24 articles of merger with the secretary of state (Code section  
25 488.1206).

26 UNIFORM LIMITED PARTNERSHIP ACT — PRINCIPAL OFFICE,  
27 REGISTERED OFFICE, AND REGISTERED AGENT — BACKGROUND. A  
28 "principal office" is the office where the principal executive  
29 office of a limited partnership or foreign limited partnership  
30 is located (Code section 488.102(17)). A registered office is  
31 the place where the limited partnership is required to keep  
32 a number of its business records (Code section 488.111) and  
33 where it receives formal communications, including where its  
34 registered agent may accept service of process (Code sections  
35 488.102, 488.114, and 488.115).

1 IOWA BUSINESS CORPORATION ACT — ELIMINATION OF FEE. The  
2 bill strikes a provision that requires a person to submit  
3 a fee to the secretary of state with an application to use  
4 an indistinguishable name which is not further described by  
5 statute (Code section 490.122).

6 CORPORATIONS FOR PECUNIARY PROFIT — DIRECTOR CONFLICT  
7 OF INTEREST TRANSACTIONS AND BUSINESS OPPORTUNITY — IOWA  
8 BUSINESS CORPORATION ACT. One exception to the requirement  
9 that a for-profit corporation is subject to the "Iowa Business  
10 Corporation Act" is a corporation organized under Code chapter  
11 491 prior to July 1, 1971, (Code section 491.1) and which has  
12 elected to remain subject to that Code chapter (Code section  
13 490.1701). This includes certain corporations offering  
14 insurance (Code section 515.1). The bill provides that in  
15 the case of a corporation organized under Code chapter 491, a  
16 director's "conflict of interest transaction" is subject to  
17 the same requirements as provided for a corporation organized  
18 under and therefore subject to the "Iowa Business Corporation  
19 Act" (Code sections 490.860 through 490.863), including the  
20 so-called "safe harbor" exception. The bill also allows a  
21 director of a corporation organized under and subject to Code  
22 chapter 491 to take advantage of a "business opportunity"  
23 according to the same requirements that apply to a director  
24 of a corporation organized and subject to the "Iowa Business  
25 Corporation Act" (Code section 490.870).

26 CORPORATIONS FOR PECUNIARY PROFIT AND CORPORATIONS SUBJECT  
27 TO THE IOWA BUSINESS CORPORATION ACT — BACKGROUND. Under  
28 the "Iowa Business Corporation Act", a director's conflicting  
29 interest transaction involves a director who is a party to a  
30 transaction that affects the corporation, had knowledge of a  
31 material financial interest in such transaction, or knew that  
32 a related person was a party to or had a material financial  
33 interest in the transaction (Code section 490.862). The safe  
34 harbor exception applies to exempt a director's conduct, and  
35 consequently validates a conflicting interest transaction when

1 qualified directors approve the transaction (Code sections  
2 490.143 and 490.862), the shareholders later ratify the  
3 transaction (Code section 490.863) after disclosure, or it  
4 is found that the transaction is "fair to the corporation"  
5 (Code sections 490.860 through 490.862). The business  
6 opportunity rule recognizes that a director owes a duty to  
7 the corporation but allows the director to take advantage of  
8 a situation that may result in a gain to a party other than to  
9 the corporation (e.g., the director or another corporation to  
10 which the director owes a duty) if qualified (disinterested  
11 and independent) directors disclaim the corporation's  
12 interest, the issue is treated in the same manner as director's  
13 conflicting interest transaction, or the shareholders disclaim  
14 the corporation's interest in the transaction (Code section  
15 490.870).

16 NONPROFIT CORPORATIONS SUBJECT TO REVISED IOWA NONPROFIT  
17 CORPORATION ACT — STANDARD OF LIABILITY FOR DIRECTORS —  
18 BUSINESS OPPORTUNITY RULE. The bill provides that for a  
19 plaintiff to move forward in a legal or equitable action  
20 alleging a director is liable for violating the general duty  
21 of care owed to the nonprofit corporation, the plaintiff must  
22 establish that the director's liability is not precluded by  
23 the director having acted under the business opportunity  
24 rule if such a defense is raised (interposed as a bar to the  
25 proceeding) (Code section 504.832).

26 NONPROFIT CORPORATIONS SUBJECT TO REVISED IOWA NONPROFIT  
27 CORPORATION ACT — STANDARD OF LIABILITY FOR DIRECTORS —  
28 BUSINESS OPPORTUNITY RULE — BACKGROUND. Generally, a director  
29 must act in good faith and in a manner that the director  
30 reasonably believes is in the best interest of the corporation  
31 (Code section 504.831). Under Code section 504.832, in order  
32 to bring an action against a director for a breach of this  
33 duty, a plaintiff or plaintiffs (e.g., members of the nonprofit  
34 corporation who are parties in a derivate suit) must establish  
35 a number of facts relating to the alleged breach of the

1 director's duty to act in good faith and in the best interest  
2 of the nonprofit corporation or without having received an  
3 unentitled benefit (Code section 504.832). As part of the  
4 proceeding, the director may raise a recognized protection that  
5 includes: (1) a provision limiting the director's liability  
6 as set forth in the articles of incorporation (Code section  
7 504.202(2)(d)), (2) a general statutory provision prohibiting  
8 a director from having to assume the debts or obligations of  
9 the corporation (Code section 504.901), or (3) a statutory  
10 provision that excuses a director's conflict of interest  
11 transaction (Code section 504.833). The business opportunity  
12 rule applies when a director has brought an opportunity that  
13 could allow the director to receive some personal benefit,  
14 but brings the opportunity to the attention of the nonprofit  
15 corporation and some action was taken by its directors or its  
16 members disclaiming the nonprofit corporation's interest in the  
17 opportunity (Code section 504.836).

18 BANK MERGERS AND AMENDMENTS TO ARTICLES OF INCORPORATION —  
19 FILING OF CERTAIN DOCUMENTS. The bill provides that in the  
20 case of a bank merger, when the secretary of state receives  
21 approved articles of merger from the superintendent of banking  
22 (superintendent), the secretary no longer files the document  
23 with the county recorder in each county in which the parties  
24 maintained a principal place of business but instead records  
25 the document and files copies with the respective county  
26 recorders (Code section 524.1404). The secretary of state  
27 must also record articles of amendment and file a copy with  
28 the county recorder in the county in which the bank has its  
29 principal place of business (Code section 524.1506).

30 UNENTITLED OR UNAUTHORIZED UCC CREDITOR-DEBTOR RECORD  
31 FILINGS — DEMAND OF PROOF. The bill prohibits the wrongful  
32 filing of a financing statement under Iowa's version of the  
33 UCC governing secured transactions (Code chapter 554, article  
34 9). The bill allows the secretary of state to demand a person  
35 who files a financing statement or amendment to produce proof

1 that the secured party and debtor are not the same party (Code  
2 section 554.9516).

3 UNENTITLED OR UNAUTHORIZED UCC CREDITOR-DEBTOR RECORD  
4 FILINGS — PROHIBITION AND PENALTIES. The bill also makes  
5 it a criminal offense for a person to communicate for filing  
6 (delivering) a record if three elements are satisfied: (1)  
7 the person is not authorized or otherwise entitled to file  
8 the record, (2) the record does not relate to an existing or  
9 anticipated creditor-debtor transaction, and (3) the record  
10 is presented or actually filed with an intent to defraud the  
11 person identified in the record as a debtor.

12 A person who violates the prohibition commits a simple  
13 misdemeanor for a first offense and a serious misdemeanor  
14 for a second or subsequent offense. A simple misdemeanor is  
15 punishable by confinement for no more than 30 days or a fine  
16 of at least \$65 but not more than \$625 or by both. A serious  
17 misdemeanor is punishable by confinement for no more than one  
18 year and a fine of at least \$315 but not more than \$1,875.

19 UNENTITLED OR UNAUTHORIZED UCC CREDITOR-DEBTOR RECORD  
20 FILINGS — BACKGROUND. A person alleging that they are  
21 a creditor acting under contract (secured party) may file  
22 a number of different types of records in order to ensure  
23 priority over other secured parties who file later when  
24 claiming proceeds from the sale of the collateral in the event  
25 that the debtor defaults upon a debt obligation subject to the  
26 security agreement. The records include a financing statement  
27 used in order to "perfect" a security interest in collateral  
28 usually possessed by the debtor (Code sections 554.9501,  
29 554.9502, and 554.9510), an amendment to the financing  
30 statement (Code section 554.9512), a statement correcting an  
31 incorrect statement on record, or a termination statement (Code  
32 section 554.9513). A secured party almost always files a  
33 record in the office of the secretary of state. The financing  
34 statement or an amendment to the financing statement that  
35 adds collateral covered by the financing statement must be

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1 authorized by the debtor or be covered as a farm product under  
2 an agricultural lien (Code section 554.9509).