

Senate Study Bill 3078 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON DAWSON)

A BILL FOR

1 An Act establishing a central filing system relating to
2 security interests in farm products, providing fees, and
3 including applicability, contingent implementation, and
4 effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 554.9102, subsection 4, Code 2020, 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12 b. This subsection is repealed on the date that this Act is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 implemented as provided in this Act.

14 Sec. 2. NEW SECTION. 554C.1 Definitions.

15 As used in this chapter, unless the context otherwise
16 requires:

17 1. "*Buyer*" means a person who, in the ordinary course of
18 business, buys farm products from a person engaged in farming
19 operations who is in the business of selling farm products. A
20 buyer includes a commission merchant or selling agent.

21 2. "*Central filing system*" means a system for filing
22 effective financing statements, and statements amending,
23 continuing, or terminating effective financing statements,
24 established under section 554C.4.

25 3. "*Commission merchant*" means a person engaged in the
26 business of receiving any farm product for sale, on commission,
27 or for or on behalf of another person.

28 4. "*Crop year*" means the calendar year in which a crop is or
29 will be harvested, animals are born or acquired, or poultry or
30 eggs are or will be sold.

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

34 6. "*Secretary*" means the secretary of state.

35 7. "*Security interest*" means an interest in farm products

1 that secures payment or performance of an obligation in the
2 same manner as provided in chapter 554.

3 8. "*Selling agent*" means a person, other than a commission
4 merchant, who is engaged in the business of negotiating the
5 sale and purchase of a farm product on behalf of a person
6 engaged in farming operations.

7 9. "*Signature*" means to sign, execute, or otherwise adopt a
8 symbol or to encrypt or similarly process a record, in whole or
9 in part, with the present intent of authenticating the record
10 for purposes of identifying the person adopting or accepting
11 the record.

12 Sec. 3. NEW SECTION. 554C.2 **Special definitions.**

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

15 1. "*Agricultural lien*" means the same as defined in section
16 554.9102.

17 2. "*Debtor*" means a debtor as defined in section 554.9102
18 who has an interest other than a security interest or lien in a
19 farm product, or any other person who owns a farm product and
20 subjects the farm product to a security interest whether or not
21 that person owes a debt to the secured party.

22 3. "*Farm products*" means the same as defined in section
23 554.9102.

24 4. "*Farming operation*" means the same as defined in section
25 554.9102.

26 5. "*Secured party*" means a secured party as defined in
27 section 554.9102 in whose favor a security interest in farm
28 products is created.

29 6. "*Security interest*" means an interest in farm products
30 that secures payment or performance of an obligation in the
31 same manner as provided in chapter 554.

32 7. "*Unique identifier*" means a number, combination of
33 numbers and letters, or other identifier selected by the
34 secretary using a selection system or method approved by the
35 United States secretary of agriculture.

1 Sec. 4. NEW SECTION. 554C.3 Chapter interpreted in
2 conjunction with uniform commercial code.

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

7 Sec. 5. NEW SECTION. 554C.4 Central filing system —
8 establishment and certification.

9 1. The secretary shall establish and administer a central
10 filing system, for filing and examining of effective financing
11 statements and statements amending, continuing, or terminating
12 effective financing statements.

13 2. The central filing system shall be designed to allow
14 persons to file and examine statements described in subsection
15 1 using the internet. The secretary may provide for the filing
16 and examining of the statements in a paper format.

17 3. The central financing system must comply with the
18 requirements set forth in 7 U.S.C. §1631, and must be certified
19 by the United States secretary of agriculture prior to the date
20 that this Act is implemented.

21 Sec. 6. NEW SECTION. 554C.5 Filing requirements.

22 1. The secretary shall provide for filing effective
23 financing statements, and statements amending, continuing, or
24 terminating effective financing statements, as provided in this
25 section. The secretary shall prescribe all forms to be used
26 for filing. The presentation of a statement for filing and the
27 acceptance of the statement by the secretary constitutes filing
28 under this section.

29 2. An effective financing statement is valid if the
30 statement substantially complies with the requirements of this
31 section even though it contains minor errors that are not
32 seriously misleading.

33 3. An effective financing statement must be an original or
34 reproduced copy which is signed by the secured party and the
35 debtor. If filed electronically, the debtor is not required to

1 sign the effective financing statement. The statement must be
2 filed with the secretary by the secured party. The secretary
3 shall record the date and hour of the filing of the effective
4 financing statement.

5 4. An effective financing statement must contain all of the
6 following:

- 7 a. The name and address of the secured party.
- 8 b. The name and address of the debtor.
- 9 c. The unique identifier of the debtor.
- 10 d. A description of the farm products subject to the
11 security interest, the county in Iowa where the farm products
12 are produced or will be produced, the crop year unless every
13 crop of the farm product in question for the duration of
14 the effective financing statement is to be subject to the
15 particular security interest, and further details of the
16 farm products subject to the security interest if needed to
17 distinguish it from other quantities of farm products owned by
18 the same person or persons but not subject to the particular
19 security interest.
- 20 e. Information that the secretary requires to comply with 7
21 U.S.C. §1631 or to administer this section.

22 5. The effective financing statement may cover more than one
23 farm product located in more than one county.

24 6. A continuation statement shall be signed by the secured
25 party, identify the original effective financing statement by
26 file number, and state that the original financing statement
27 is still effective.

28 **Sec. 7. NEW SECTION. 554C.6 Effectiveness.**

29 1. An effective financing statement shall remain effective
30 for a period of five years from the date of filing, subject to
31 extensions for additional periods of five years each by filing
32 or refiling a continuation statement within six months before
33 the expiration of the five-year period.

34 2. Upon timely filing of a continuation statement, the
35 effectiveness of the original financing statement shall be

1 continued for five years after the last date to which the prior
2 filing was effective, whereupon it shall lapse unless another
3 continuation statement is filed prior to the lapse. Succeeding
4 continuation statements may be filed in the same manner to
5 continue the effectiveness of the original effective financing
6 statement.

7 3. The effective financing statement shall be amended in
8 writing to reflect a material change within three months of the
9 material change. The amendment shall be signed and filed as
10 required for an original effective financing statement. If the
11 statement is filed electronically, the signature of the debtor
12 shall not be required.

13 4. *a.* The effective financing statement lapses upon the
14 expiration of the effective period of the effective financing
15 statement or is terminated upon the filing of a statement
16 signed by the secured party that the effective financing
17 statement is terminated.

18 *b.* If the effective financing statement has not lapsed or is
19 not terminated and there are no outstanding secured obligations
20 and no commitments to make advances, incur an obligation, or
21 otherwise give value, the debtor may notify the secured party
22 in writing to terminate the effective financing statement.

23 *c.* Until the debtor instructs the secured party in writing
24 to terminate the effective financing statement, the secured
25 party has no obligation to terminate the effective financing
26 statement.

27 *d.* Within thirty days after receipt by the secured party
28 of the statement from the debtor to terminate the effective
29 financing statement, the secured party shall file with the
30 secretary a termination statement with respect to the effective
31 financing statement.

32 **Sec. 8. NEW SECTION. 554C.7 Master list — organization**
33 **and contents.**

34 1. The secretary shall compile the effective financing
35 statements into a master list.

1 2. The master list shall be organized according to farm
2 products. The master list shall contain information required
3 to be contained in effective financing statements filed with
4 the secretary. The secretary shall arrange the master list for
5 each farm product as follows:

6 a. In alphabetical order according to the last name of the
7 individual debtors or, in the case of debtors doing business
8 other than as individuals, the first word in the name of such
9 debtors.

10 b. In numerical order according to the unique identifiers
11 of the debtors.

12 c. Geographically by county.

13 d. By crop year.

14 3. The master list shall include information regarding
15 buyers who register with the secretary on forms prescribed by
16 the secretary as provided in this section.

17 4. The secretary shall maintain a list of all buyers of farm
18 products who register with the secretary. A buyer registering
19 with the secretary shall complete forms requiring all of the
20 following information, as prescribed by the secretary:

21 a. The name and address of the buyer.

22 b. The interest of the buyer in receiving the list.

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

24 Sec. 9. NEW SECTION. 554C.8 Master list — distribution and
25 inquiries.

26 1. The secretary shall distribute to each registered buyer a
27 copy in written, printed, or electronic form of those portions
28 of the master list relating to farm products in which the buyer
29 has registered an interest. The secretary may provide for the
30 distribution of the master list or portions of the list on any
31 other medium requested by a registered buyer. If a registered
32 buyer so requests, the information provided to the buyer may
33 be limited to a county or group of counties where the farm
34 products are produced or to a crop year or crop years or to a
35 combination of those identifiers.

1 2. Distribution is subject to all of the following:

2 a. The distribution shall be by first class or electronic
3 mail.

4 b. The secretary shall adopt rules pursuant to chapter 17A
5 establishing the dates upon which the quarterly distributions
6 will be made, the dates after which a filing of an effective
7 financing statement will not be reflected on the next quarterly
8 distribution of lists, and the dates by which a buyer must
9 complete a registration to receive the next quarterly list.

10 3. The secretary shall remove information pertaining to
11 lapsed and terminated effective financing statements from the
12 master list prior to preparation of the lists required to be
13 distributed.

14 4. Upon written notice to the secretary by a registered
15 buyer requesting termination of the distribution of the
16 list to the registered buyer, the secretary shall terminate
17 distribution of the list to the registered buyer.

18 5. Oral and written inquiries by a buyer not registered
19 pursuant to section 554C.7 may be made to the secretary during
20 hours determined by the secretary.

21 a. The secretary may provide for a computerized system
22 for inquiry and confirmation which may be used in lieu of the
23 inquiry and confirmation system otherwise provided for in this
24 section.

25 b. Written confirmation of the information provided orally
26 in response to the inquiry shall be delivered by first class
27 mail or electronic mail to the buyer, at an address provided
28 by the buyer, by the secretary not later than the second
29 regular business day following the day on which the inquiry was
30 received.

31 6. In order to verify the existence or nonexistence of a
32 security interest, a buyer may request a seller to disclose the
33 seller's unique identifier.

34 Sec. 10. NEW SECTION. 554C.9 Perfection — creation of
35 superior interests.

1 1. If a buyer fails to register with the secretary prior
2 to the purchase of farm products, the buyer takes subject
3 to a security interest in the farm products only if the
4 secured party has filed an effective financing statement that
5 covers the farm products being sold, and the buyer could have
6 discovered the existence of the effective financing statement
7 prior to the purchase by accessing the database containing
8 effective financing statements filed electronically with the
9 secretary.

10 2. If the buyer registers with the secretary prior to the
11 purchase of the farm products, the buyer takes subject to a
12 security interest in the farm products only if the secured
13 party has filed an effective financing statement that covers
14 the farm products being sold, and the buyer does not secure
15 a waiver or release of the security interest as specified in
16 the effective financing statement from the secured party.
17 If a buyer in the ordinary course of business buying farm
18 products covered by the central filing system as provided in
19 section 554C.4 tenders to the seller the total purchase price
20 by means of a check or any other form of payment payable to
21 such seller and each security interest holder of the seller
22 identified in the central filing system for such products and
23 if such security interest holder authorizes the negotiation
24 of such check or other form of payment, such authorization or
25 endorsement and payment thereof shall constitute a waiver or
26 release of the security interest specified to the extent of
27 the amount of the instrument. Such waiver or release of the
28 security interest shall not serve to establish or alter in any
29 way security interest or lien priorities under Iowa law.

30 **Sec. 11. NEW SECTION. 554C.10 Fees.**

31 1. The secretary shall establish fees for initially filing
32 an effective financing statement, and for filing a statement
33 amending, continuing, or terminating an effective financing
34 statement. The fees shall not be more than provided for filing
35 financing statements as provided in section 554.9525.

1 2. a. Except as provided in paragraph "b", the secretary
2 may charge a buyer a fee for registering to receive a master
3 list or for receiving responses to inquiries which are accessed
4 in a printed format.

5 b. The secretary shall not charge a buyer a fee for
6 registering to receive a master list or for responding to
7 buyer inquiries, including by examining or printing effective
8 financing statements, and statements amending, continuing, or
9 terminating effective financing statements which are accessed
10 in an electronic format.

11 3. All moneys received by the secretary under this section
12 shall be handled in the same manner as repayment receipts, as
13 defined in section 8.2, and shall be used by the secretary
14 exclusively for the administration of this chapter.

15 Sec. 12. NEW SECTION. 554C.11 Rules.

16 The secretary shall adopt rules pursuant to chapter 17A
17 necessary or desirable to administer this chapter.

18 Sec. 13. DIRECTIONS TO THE SECRETARY OF STATE.

19 Notwithstanding the date that all provisions of this Act
20 become applicable, the secretary of state shall adopt rules
21 necessary to implement this Act. If necessary to obtain
22 federal certification of the central filing system, additional
23 or alternative requirements made in conformity with 7 U.S.C.
24 §291631 may be imposed by the secretary of state by rule. The
25 additional or alternative requirements shall expire not later
26 than July 1 of the succeeding legislative session.

27 Sec. 14. CONTINGENT IMPLEMENTATION.

28 1. The provisions of chapter 554C, as enacted in this Act,
29 shall only be implemented, including administered, by the
30 secretary of state, beginning ninety days after the publication
31 date of the edition of the Iowa administrative bulletin that
32 includes a statement by the secretary of state verifying all
33 of the following:

34 a. The secretary of state has adequate funding to establish
35 and administer the central filing system as established in this

1 Act.

2 b. The central financing system as established in this
3 Act has been certified by the United States secretary of
4 agriculture as provided in 7 U.S.C. §1631.

5 2. The secretary of state shall forward a copy of the
6 statement described in subsection 1 to the Iowa Code editor
7 prior to publication in the Iowa administrative bulletin.

8 3. The secretary of state shall provide notice describing
9 the implementation of this Act in three consecutive editions of
10 the Iowa administrative bulletin prior to the implementation
11 date of this Act as provided in subsection 1.

12 4. Until the implementation date of this Act a person shall
13 take subject to or free of a security interest in farm products
14 in the same manner and according to the same procedures
15 applicable immediately prior to this Act's implementation date.

16 Sec. 15. EFFECTIVE DATE. This Act, being deemed of
17 immediate importance, takes effect upon enactment.

18 EXPLANATION

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

21 GENERAL. This bill provides for credit transactions
22 involving agricultural goods which include crops (e.g., grain)
23 and other farm products governed by Iowa's version of the
24 Uniform Commercial Code (UCC), Code chapter 554, by regulating
25 the commercial relationships existing between debtors,
26 creditors, and buyers.

27 CENTRALIZED FILING SYSTEM. The bill creates a centralized
28 filing system (system) for security interests in farm products
29 to notify buyers of farm products subject to an attached
30 security interest. Farm products include goods other than
31 standing timber produced as part of a farming operation and
32 includes crops, aquatic goods, livestock, supplies used or
33 produced on the farming operation, or products of crops or
34 livestock in an unmanufactured form (Code section 554.9102).
35 The system must be certified by the United States department

1 of agriculture (USDA). The bill allows a person who has a
2 secured interest attached to farm products to complete and file
3 a document referred to as an effective financing statement
4 or a statement amending, continuing, or terminating the
5 effective financing statement, with the secretary of state
6 (secretary). The secretary must compile information contained
7 in the effective financing statements into a master list
8 organized according to farm products which the secretary must
9 regularly distribute to buyers of farm products registered with
10 the secretary. The secretary may also respond to verbal or
11 written inquiries by buyers including unregistered buyers and
12 deliver a written confirmation to inquiring buyers regarding
13 whether a farm product is subject to a security interest. If
14 a buyer registers with the secretary prior to the purchase
15 of farm products, the registered buyer takes subject to the
16 security interest only if the secured party has filed an
17 effective financing statement that covers the farm products
18 being sold, unless the registered buyer secures a release of
19 the security interest. If a buyer fails to register with the
20 secretary, the buyer takes subject to the security interest
21 only if the secured party has filed an effective financing
22 statement that covers the farm products, and the buyer could
23 have discovered the existence of the effective financing
24 statement by conducting an inquiry and receiving a response and
25 confirmation. The bill authorizes the secretary to establish
26 fees for secured parties filing effective financing statements
27 and buyers registering with the secretary. The secretary
28 must adopt rules as necessary to implement and administer the
29 provisions of the system. The system becomes effective 90 days
30 after the publication date of the Iowa administrative bulletin
31 that includes a statement by the secretary verifying that (1)
32 the secretary has adequate funding to implement and administer
33 the centralized filing system and (2) the centralized filing
34 system has been certified by USDA.

35 BACKGROUND. Article 9 of the UCC provides an exception for

1 buyers in the ordinary course of business who generally take
2 free of a security interest created by the seller even in cases
3 in which the security interest has been perfected and the buyer
4 is aware of its existence (Code section 554.9320). However,
5 notwithstanding this exception, a buyer who purchases a farm
6 product from a person engaged in farming operations may not
7 take free of a security interest. The federal Food Security
8 Act of 1985, in relevant part (7 U.S.C. §1631), preempts the
9 state's article 9 requirements by providing that a buyer in
10 the ordinary course of business, a commission merchant, or a
11 selling agent (all classified under the term "buyer") may buy
12 farm products without being subject to a security interest
13 created by the seller but only if the buyer does not have
14 actual or constructive notice of that security interest. The
15 federal law allows states to elect between two notification
16 options: (1) Iowa's current law requiring the secured party to
17 deliver direct notice to potential buyers of a secured party's
18 interest in the farm products within one year prior to sale,
19 or (2) the system described in the bill. In either case, the
20 federal law does not supersede article 9 requirements that
21 establish priorities among creditors.