

FIRST REGULAR SESSION

# HOUSE BILL NO. 594

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LOEHNER (Sponsor), SCHARNHORST, SCHAD, NANCE,  
SATER, BRUNS, DEEKEN, CHAPPELLE-NADAL, POLLOCK, GUERNSEY, COX, JONES (117),  
JONES (89), WILSON (119), SCHLOTTACH, FRANZ, NASHEED, KUESSNER,  
McGHEE AND HODGES (Co-sponsors).

0108L.03I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 400.9-320, RSMo, and to enact in lieu thereof thirteen new sections relating to security interests in farm products, with an effective date.

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

Section A. Section 400.9-320, RSMo, is repealed and thirteen new sections enacted in lieu thereof, to be known as sections 400.9-320, 430.420, 430.425, 430.430, 430.435, 430.440, 430.445, 430.450, 430.455, 430.460, 430.465, 430.470, and 430.475, to read as follows:

400.9-320. (a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. **A buyer of farm products may be subject to a security interest under sections 430.420 to 430.470, RSMo.**

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (c) To the extent that it affects the priority of a security interest over a buyer of goods  
14 under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the  
15 seller is located is governed by section 400.9-316(a) and (b).

16 (d) A buyer in ordinary course of business buying oil, gas, or other minerals at the  
17 wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

18 (e) Subsections (a) and (b) do not affect a security interest in goods in the possession of  
19 the secured party under section 400.9-313.

20 (f) **No buyer shall be allowed to take advantage of and apply the right of offset to**  
21 **defeat a priority established by any lien or security interest.**

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

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

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

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

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

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

12 (a) **Is an original or reproduced copy thereof, or is an electronically reproduced**  
13 **copy of the statement;**

14 (b) **Other than in the case of an electronically reproduced copy of the statement,**  
15 **is signed, authorized, or otherwise authenticated by the debtor, and filed in the office of the**  
16 **secretary of state by the secured party;**

17 (c) **Contains:**

18 a. **The name and address of the secured party;**

19 b. **The name and address of the debtor;**

20 c. **The Social Security number or other approved unique identifier of the debtor**  
21 **or, in the case of a debtor doing business other than as an individual, the Internal Revenue**  
22 **Service taxpayer identification number or other approved unique identifier of such debtor;**

23 d. **A description of the farm products subject to the security interest;**

24 e. **Each county in Missouri where the farm product is produced or located;**

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

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

30           h. Such other information that the secretary of state may require to comply with  
31 7 U.S.C. Section 1631 of the Food Security Act of 1985, as amended, or to more efficiently  
32 carry out his or her duties under sections 430.420 to 430.470;

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

36           (e) Remains effective for a period of five years from the date of filing, subject to  
37 extensions for additional periods of five years each by refiling or filing a continuation  
38 statement within six months before the expiration of the five-year period;

39           (f) Lapses on either the expiration of the effective period of the statement or the  
40 filing of a notice signed by the secured party that the statement is terminated, whichever  
41 occurs first;

42           (g) Is accompanied by the requisite filing fee set by section 430.430; and

43           (h) Substantially complies with the requirements of this subdivision even though  
44 the statement contains minor errors that are not seriously misleading.

45

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

48           (6) "Farm product", an agricultural commodity, a species of livestock used or  
49 produced in farming operations, or a product of such crop or livestock in its  
50 unmanufactured state, that is in the possession of a person engaged in farming operations.  
51 Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley,  
52 bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers,  
53 dry beans, eggs, embryos or genetic products, emus, fish, flax seed, grapes, hay, hogs,  
54 honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich,  
55 popcorn, potatoes, raspberries, seed crops, sheep and lambs, silage, sorghum grain,  
56 soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees,  
57 triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The secretary of state may,  
58 by rule and regulation, add other farm products to the list specified in this section if such  
59 products are covered by the general definition provided by this section;

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

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

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

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

5 (1) That an effective financing statement or notice of such financing statement shall  
6 be filed in the office of the secretary of state. A debtor's residence shall be presumed to be  
7 the residence shown on the filing. The showing of an improper residence shall not affect  
8 the validity of the filing. The filing officer shall mark the statement or notice with a  
9 consecutive file number and with the date and hour of filing and shall hold the statement  
10 or notice or an electronic copy thereof for public inspection. In addition, the filing officer  
11 shall index the statements and notices according to the name of the debtor and shall note  
12 in the index the file number and the address of the debtor given in the statement;

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

15 (a) Organized according to farm product;

16 (b) Arranged within each such product:

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

20 b. In numerical order according to the Social Security number or other approved  
21 unique identifier of the individual debtors or, in the case of debtors doing business other  
22 than as individuals, the Internal Revenue Service taxpayer identification number or other  
23 approved unique identifier of such debtors;

24 c. Geographically by county; and

25 d. By crop year; and

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

27 (3) That the secretary of state cause the information on the master list to be  
28 published in lists by farm product arranged alphabetically by debtor and by farm product  
29 arranged numerically by the debtor's Social Security number or other approved unique  
30 identifier for individual debtors or, in the case of debtors doing business other than as  
31 individuals, the Internal Revenue Service taxpayer identification number or other

32 approved unique identifier of such debtors. If a registered buyer so requests, the list or  
33 lists for such buyer may be limited to any county or group of counties where the farm  
34 product is produced or located or to any crop year or years or a combination of such  
35 identifiers;

36 (4) That all buyers of farm products, commission merchants, selling agents, and  
37 other persons may register with the secretary of state to receive lists described in  
38 subdivision (3) of this subsection. Such registration shall constitute effective notice to the  
39 registrant of effective financing statement subject to particular security interests. Any  
40 buyer of farm products, commission merchant, selling agent, or other person conducting  
41 business from multiple locations shall be considered as one entity. Such registration shall  
42 be on an annual basis. The secretary of state shall provide the form for registration which  
43 shall include the name and address of the registrant and the list or lists described in  
44 subdivision (3) of this subsection which such registrant desires to receive. A registration  
45 shall not be completed until the form provided is properly completed and received by the  
46 secretary of state accompanied by the proper registration fee. The fee for annual  
47 registration shall be thirty dollars. A registrant shall pay an additional annual fee to  
48 receive quarterly lists described in subdivision (3) of this subsection. For each farm  
49 product list provided on paper, the annual fee shall be two hundred dollars. The annual  
50 fee for a special list which is a list limited to fewer than all counties or less than all crop  
51 years shall be one hundred fifty dollars for each farm product. The secretary of state shall  
52 maintain a record of the registrants and the lists and contents of the lists received by the  
53 registrants for a period of five years;

54 (5) That distribution of the list as identified under subdivision (4) of this subsection  
55 may be in electronic, written, or printed form; and if Social Security or taxpayer  
56 identification numbers on the master list are encrypted, the secretary of state may  
57 distribute the master list only:

58 (a) By compact disc or other electronic media that contains the recorded list of  
59 debtor names; and an encryption program that enable the buyer, commission merchant,  
60 and selling agent to enter a Social Security number for matching against the recorded list  
61 of encrypted Social Security or taxpayer identification numbers; and

62 (b) On the written request of the buyer, commission merchant, or selling agent, by  
63 paper copy of the list to the requestor;

64 (6) That the secretary of state furnish to those who are not registered under this  
65 section oral confirmation within twenty-four hours of any effective financing statement on  
66 request followed by written confirmation to any buyer of farm products buying from a  
67 debtor or commission merchant or selling agent selling for a seller covered by such

68 statement. This confirmation shall be for informational purposes only and shall not  
69 provide the protection afforded a buyer registered under this section; and

70 (7) That the secretary of state remove lapsed and terminated effective financing  
71 statements or notices of such financing statements from the master list prior to preparation  
72 of the lists required to be distributed by subdivision (5) of this subsection.

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

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

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

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

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

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

430.435. The record of effective financing statements maintained by the secretary  
2 of state may be made available electronically. For batch requests, there shall be a fee of  
3 two dollars per requested effective financing statement record accessed electronically,  
4 except that the fee for a batch request for one thousand or more effective financing  
5 statements shall be two thousand dollars. All fees collected under this section shall be  
6 deposited in the state treasury and credited to the secretary of state's technology trust fund  
7 account.

430.440. 1. A continuation statement may be filed by the secured party within six  
2 months prior to the expiration of the five-year period specified in paragraph (f) of  
3 subdivision (5) of section 430.420. Any such continuation statement shall be signed,  
4 authorized, or otherwise authenticated by the secured party, identify the original statement  
5 by file number, and state that the original statement is still effective. Upon timely filing of  
6 the continuation statement, the effectiveness of the original statement shall be continued  
7 for five years after the last date to which the filing was effective whereupon it shall lapse

8 unless another continuation statement is filed prior to such lapse. If an effective financing  
9 statement exists at the time insolvency proceedings are commenced by or against the  
10 debtor, the effective financing statement shall remain effective until termination of the  
11 insolvency proceedings and thereafter for a period of sixty days or until the expiration of  
12 the five-year period, whichever occurs later. Succeeding continuation statements may be  
13 filed in the same manner to continue the effectiveness of the original statement.

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

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

10 2. If the secured party does not furnish the notice or obtain the waiver specified in  
11 subsection 1 of this section, the secured party shall, within ten days of final payment of all  
12 secured obligations, provide the debtor with a written notification of the debtor's right to  
13 have a notice of lapse filed. The secured party shall on written demand by the debtor send  
14 the debtor a notice of lapse to the effect that he or she no longer claims a security interest  
15 under the effective financing statement, which shall be identified by file number. The  
16 notice of lapse need only be signed, authorized, or otherwise authenticated by the secured  
17 party.

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

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

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

430.450. 1. Oral and written inquiries regarding information provided by the filing  
2 of effective financing statements may be made at the office of the secretary of state during

3 regular business hours. The fee for furnishing file information shall be four dollars and  
4 fifty cents for each debtor name searched by the secretary of state. Written confirmation  
5 of an oral or written inquiry shall be mailed no later than the end of the next business day  
6 after the inquiry is received.

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

13       3. The secretary of state may provide for a computerized system for inquiry and  
14 confirmation which may be used in lieu of the inquiry and confirmation under subsection  
15 1 of this section. When such a system is implemented and used it shall have the same effect  
16 as an inquiry and confirmation under subsection 1 of this section.

17       4. There shall be no fee charged for actual inspection of records of effective  
18 financing statements kept by the secretary of state for the inspection of ten names or less  
19 per day by a single person. There shall be a uniform fee, in addition to any other charge  
20 for services payable to the secretary of state, of one dollar per name for each inspection in  
21 excess of ten names per day by a single person.

22       5. The secretary of state and his or her employees or agents shall be exempt from  
23 all personal liability as a result of any error or omission in providing information as  
24 required by this section except in cases of willful misconduct or gross negligence.

25       6. Fees received under this section by the secretary of state for furnishing file  
26 information by electronic or other means shall be deposited in the state treasury and  
27 credited to the secretary of state's technology trust fund account.

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

      430.460. For purposes of 7 U.S.C. Section 1631 of the Food Security Act of 1985,  
2 as amended, receipt of notice shall mean the date the notice is actually received by a buyer  
3 in the ordinary course of business, commission merchant, or selling agent, or the first date  
4 upon which delivery is attempted by a carrier. A buyer in the ordinary course of business,  
5 commission merchant, or selling agent shall act in good faith. In all cases a buyer in the



6 ordinary course of business, or commission merchant, or selling agent shall be presumed  
7 to have received the notice ten days after it was mailed or sent electronically.

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

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

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

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

430.475. Any payee, endorser, or endorsee on a check or instrument issued in  
2 payment for property subject to a lien under sections 430.420 to 430.470 or farm products  
3 subject to a security interest under article 9, chapter 400, RSMo, the uniform commercial

4 code, who wrongfully refuses to endorse such check or instrument to any other payee,  
5 endorser, or endorsee on such check or instrument who is a superior lienholder, superior  
6 secured party, or other person legally entitled to such check or instrument shall be liable  
7 to any payee, endorser, or endorsee entitled to such endorsement on such check or  
8 instrument for damages. A court shall assess attorney's fees and costs if, upon the motion  
9 of any party or the court itself, the court finds that any payee, endorser, or endorsee on a  
10 check or other instrument wrongfully refused to endorse such check or instrument in  
11 payment for property subject to a lien or farm products subject to a security interest or  
12 that an attorney or party brought or defended an action or in any part of an action that  
13 was frivolous or that the action or any part of the action was interposed solely for delay or  
14 harassment. If a court finds that an attorney or party unnecessarily expanded the  
15 proceedings by other improper conduct, including, but not limited to, abuses of civil  
16 discovery procedures, the court shall assess attorney's fees and costs.

Section B. Section A of this act shall become effective January 1, 2012.

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