

## HOUSE BILL No. 2414

By Committee on Appropriations

5-13

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1 AN ACT concerning security interests; relating to farm products,  
2 implementation of a central filing system; amending K.S.A. 2012 Supp.  
3 84-9-320 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. There is hereby adopted a central filing system for  
7 security interests relating to farm products, pursuant to section 1324 of the  
8 food security act of 1985, (Pub. L. No. 99-198, 7 U.S.C. § 1631) and 9  
9 C.F.R. §§ 205.1 through 205.214. The secretary of state shall implement  
10 by January 1, 2015, and thereafter maintain the central filing system.  
11 When any provision of sections 1 through 5, and amendments thereto,  
12 requires any notice to be filed with the central filing system, the notice  
13 shall be filed in the form and manner prescribed by the secretary of state  
14 and in accordance with the provisions of sections 1 through 5, and  
15 amendments thereto. The secretary, or the secretary's designee, shall be the  
16 system operator. The secretary of state shall apply to the secretary of the  
17 United States department of agriculture for certification of the central  
18 filing system and approval of the system or method of selecting an  
19 approved unique identifier.

20 New Sec. 2. As used in sections 1 through 5, and amendments  
21 thereto:

22 (a) "Approved unique identifier" means a number, combination of  
23 numbers and letters or other identifier selected by the secretary and  
24 approved by the secretary of the United States department of agriculture.

25 (b) "Buyer in the ordinary course of business" means a person who,  
26 in the ordinary course of business, buys farm products from a person  
27 engaged in farming operations who is in the business of selling farm  
28 products.

29 (c) "Central filing system" means a system for filing effective  
30 financing statements or notice of such financing statements on a statewide  
31 basis which has been certified by the secretary of the United States  
32 department of agriculture and which complies with the requirements of  
33 section 1324 of the food security act of 1985 (Pub. L. No. 99-198, 7  
34 U.S.C. § 1631) as in effect on the effective date of this act, including the  
35 following provisions:

36 (1) Effective financing statements or notice of such financing

- 1 statements are filed with the office of the secretary;
- 2 (2) the secretary records the date and hour of the filing of such  
3 statements;
- 4 (3) the secretary compiles all such statements into a master list:
- 5 (A) Organized according to farm products and arranged within each  
6 such product:
- 7 (i) In alphabetical order according to the last name of the individual  
8 debtors, or, in the case of debtors doing business other than as individuals,  
9 the first word in the name of such debtors;
- 10 (ii) in numerical order according to the social security number, or  
11 other approved unique identifier, of the individual debtors or, in the case of  
12 debtors doing business other than as individuals, the internal revenue  
13 service taxpayer identification number, or other approved unique identifier,  
14 of such debtors. The numerical list containing social security or taxpayer  
15 identification numbers may be encrypted for security purposes if the  
16 secretary provides a method by which an effective search may be  
17 conducted to determine whether the farm product at issue is subject to one  
18 or more liens;
- 19 (iii) geographically by county; and
- 20 (iv) by crop year; and
- 21 (B) containing the information referred to in subsection (e)(3);
- 22 (4) the secretary maintains a list of all buyers of farm products,  
23 commission merchants and selling agents who register with the secretary  
24 and have paid a reasonable registration fee as may be established by the  
25 secretary, on a form indicating:
- 26 (A) The name and address of each buyer, commission merchant and  
27 selling agent;
- 28 (B) the interest of each buyer, commission merchant and selling agent  
29 in receiving the lists described in paragraph (5); and
- 30 (C) the farm products in which each buyer, commission merchant and  
31 selling agent has an interest;
- 32 (5) the secretary distributes, starting January 1, 2015, at least monthly  
33 to each buyer, commission merchant and selling agent on the list described  
34 in paragraph (4) who have paid an annual distribution fee as may be  
35 established by the secretary a copy in written or printed form of those  
36 portions of the master list described in paragraph (3) that cover the farm  
37 products in which such buyer, commission merchant or selling agent has  
38 registered an interest. The distribution of the portion of the master list may  
39 be in electronic, written or printed form. If social security or taxpayer  
40 identification numbers on the master list are encrypted, the secretary may  
41 distribute the master list only:
- 42 (A) By compact disc or other electronic media that contains the  
43 recorded list of debtor names and an encryption program that enables the

1 buyer, commission merchant and selling agent to enter a social security  
2 number for matching against the recorded list of encrypted social security  
3 or taxpayer identification numbers; and

4 (B) on the written request of the buyer, commission merchant or  
5 selling agent, by paper copy of the list to the requestor; and

6 (6) the secretary furnishes, starting January 1, 2015, to those who are  
7 not registered pursuant to paragraph (4) oral confirmation within 24 hours  
8 of any effective financing statement on request and payment of a fee that  
9 may be established by the secretary followed by written confirmation  
10 issued within three business days to any buyer of farm products buying  
11 from a debtor, or commission merchant or selling agent selling for a seller  
12 covered by such statement.

13 (d) "Commission merchant" means any person engaged in the  
14 business of receiving any farm product for sale, on commission, or for or  
15 on behalf of another person.

16 (e) "Effective financing statement" means a statement that:

17 (1) Is an original or reproduced copy of the statement or an  
18 electronically reproduced copy of the statement;

19 (2) other than in the case of an electronically reproduced copy of the  
20 statement, is signed, authorized or otherwise authenticated by the debtor  
21 and filed with the secretary by the secured party;

22 (3) contains:

23 (A) The name and address of the secured party;

24 (B) the name and address of the person indebted to the secured party;

25 (C) the social security number or other approved unique identifier of  
26 the debtor or, in the case of a debtor doing business other than as an  
27 individual, the internal revenue service taxpayer identification number or  
28 other approved unique identifier of such debtor; and

29 (D) a description of the farm products subject to the security interest  
30 created by the debtor, including the amount of such products where  
31 applicable and the name of each county in which the farm products are  
32 produced or located;

33 (4) shall be amended in writing, within three months, similarly  
34 signed, authorized or otherwise authenticated by the debtor and filed to  
35 reflect material changes;

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

40 (6) lapses on either the expiration of the effective period of the  
41 statement or the filing of a notice signed, authorized or otherwise  
42 authenticated by the secured party that the statement has lapsed, whichever  
43 occurs first;

1 (7) is accompanied by a filing fee as may be established by the  
2 secretary; and

3 (8) substantially complies with the requirements of this subsection  
4 even though it contains minor errors that are not seriously misleading.

5 (f) "Farm product" means an agricultural commodity such as wheat,  
6 corn, soybeans or a species of livestock such as cattle, hogs, sheep, horses  
7 or poultry used or produced in farming operations, or a product of such  
8 crop or livestock in its unmanufactured state, such as ginned cotton, wool-  
9 clip, maple syrup, milk and eggs, that is in the possession of a person  
10 engaged in farming operations.

11 (g) "Knows" or "knowledge" means actual knowledge.

12 (h) "Person" means any individual, partnership, corporation, trust or  
13 any other business entity.

14 (i) "Secretary" means the Kansas secretary of state or the designee of  
15 the secretary of state.

16 (j) "Security interest" means an interest in farm products that secures  
17 payment or performance of an obligation. "Security interest" shall not  
18 include liens on farm products created pursuant to the provisions of article  
19 2 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto,  
20 including, but not limited to, K.S.A. 58-203, and amendments thereto,  
21 (lien for threshing and husking), K.S.A. 58-207, and amendments thereto,  
22 (lien for care and feeding of livestock), K.S.A. 58-218, and amendments  
23 thereto, (liens for seeding and baling broomcorn and baling hay), K.S.A.  
24 58-220, and amendments thereto, (agister's lien), K.S.A. 58-241 et. seq.,  
25 and amendments thereto, (agricultural production input liens).

26 (k) "Selling agent" means any person, other than a commission  
27 merchant, who is engaged in the business of negotiating the sale and  
28 purchase of any farm product on behalf of a person engaged in farming  
29 operations.

30 New Sec. 3. (a) The provisions of this section shall apply on and after  
31 January 1, 2015.

32 (b) (1) Except as provided in subsection (b)(2) and notwithstanding  
33 any other provision of law, a buyer who in the ordinary course of business  
34 buys a farm product from a seller engaged in farming operations shall take  
35 free of a security interest created by the seller, even though the security  
36 interest is perfected and the buyer knows of the existence of such security  
37 interest.

38 (2) A buyer of farm products takes subject to a security interest  
39 created by the seller if:

40 (A) The buyer has failed to register with the secretary, pursuant to  
41 subsection (c)(4) of section 2, and amendments thereto, prior to the  
42 purchase of farm products and the secured party has filed an effective  
43 financing statement or notice that covers the farm products being sold; or

1 (B) the buyer receives from the secretary written notice as provided  
2 in subsections (c)(5) or (c)(6) of section 2, and amendments thereto, that  
3 specifies both the seller and the farm product being sold by such seller as  
4 being subject to an effective financing statement or notice and does not  
5 secure a waiver or release of the security interest specified in such  
6 effective financing statement or notice from the secured party by  
7 performing any payment obligation or otherwise.

8 (c) (1) Except as provided in subsection (c)(2) and notwithstanding  
9 any other provision of law, a commission merchant or selling agent who  
10 sells, in the ordinary course of business, a farm product for others, shall  
11 not be subject to a security interest created by the seller in such farm  
12 product, even though the security interest is perfected and the commission  
13 merchant or selling agent knows of the existence of such security interest.

14 (2) A commission merchant or selling agent who sells a farm product  
15 for others shall be subject to a security interest created by the seller in such  
16 farm product if:

17 (A) The commission merchant or selling agent has failed to register  
18 with the secretary prior to the purchase of farm products and the secured  
19 party has filed an effective financing statement or notice that covers the  
20 farm products being sold; or

21 (B) the commission merchant or selling agent receives from the  
22 secretary written notice as provided in subsections (c)(5) or (c)(6) of  
23 section 2, and amendments thereto, that specifies both the seller and the  
24 farm products being sold by such seller as being subject to an effective  
25 financing statement or notice and does not secure a waiver or release of the  
26 security interest specified in such effective financing statement or notice  
27 from the secured party by performing any payment obligation or  
28 otherwise.

29 New Sec. 4. (a) The secretary shall adopt rules and regulations  
30 necessary to carry out the provisions and terms of sections 1 through 5,  
31 and amendments thereto, consistent with section 1324 of the food security  
32 act of 1985 (Pub. L. No. 99-198, 7 U.S.C. § 1631) and 9 C.F.R. §§ 205.1  
33 through 205.214. The secretary shall promulgate rules and regulations  
34 governing the filing of notice.

35 (b) If necessary to obtain federal certification of the central filing  
36 system, additional or alternative requirements made in conformity with  
37 section 1324 of the food security act of 1985 (Pub. L. No. 99-198, 7  
38 U.S.C. § 1631), may be imposed by the secretary by rules and regulations.

39 (c) The secretary shall prescribe all forms to be used in implementing,  
40 operating and administering the central filing system.

41 (d) The secretary may by rules and regulations establish reasonable  
42 schedules and amounts for the filing, registration and information access  
43 and distribution service fees provided for in sections 1 through 5, and

1 amendments thereto, and may also establish other reasonable fees or  
2 charges for other or additional services provided by the secretary in  
3 implementing and administering sections 1 through 5, and amendments  
4 thereto, in accordance with section 1324 of the food security act of 1985  
5 (Pub. L. No. 99-198, 7 U.S.C. § 1631) and applicable federal rules and  
6 regulations.

7 New Sec. 5. The secretary shall remit all moneys received by or for  
8 the secretary from fees or charges imposed and collected under sections 1  
9 through 5, and amendments thereto, to the state treasurer in accordance  
10 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
11 receipt of each such remittance, the state treasurer shall deposit the entire  
12 amount in the state treasury to the credit of the central security interest  
13 filing system fund, which is hereby established in the state treasury and  
14 which may be used for the administration and operation of the central  
15 filing system. All expenditures from the central security interest filing  
16 system fund shall be made in accordance with appropriation acts upon  
17 warrants of the director of accounts and reports issued pursuant to  
18 vouchers approved by the secretary or by a person or persons designated  
19 by the secretary.

20 Sec. 6. On January 1, 2015, K.S.A. 2012 Supp. 84-9-320 is hereby  
21 amended to read as follows: 84-9-320. (a) **Buyer in ordinary course of**  
22 **business.** Except as otherwise provided in subsection (e), a buyer in  
23 ordinary course of business, other than a person buying farm products  
24 from a person engaged in farming operations, takes free of a security  
25 interest created by the buyer's seller, even if the security interest is  
26 perfected and the buyer knows of its existence. *A buyer of farm products*  
27 *from a person engaged in farming operations may be subject to a security*  
28 *interest, as provided in sections 1 through 5, and amendments thereto.*

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

- 33 (1) Without knowledge of the security interest;
- 34 (2) for value;
- 35 (3) primarily for the buyer's personal, family, or household purposes;
- 36 and
- 37 (4) before the filing of a financing statement covering the goods.

38 (c) **Effectiveness of filing for subsection (b).** To the extent that it  
39 affects the priority of a security interest over a buyer of goods under  
40 subsection (b), the period of effectiveness of a filing made in the  
41 jurisdiction in which the seller is located is governed by K.S.A. 2012  
42 Supp. 84-9-316(a) and (b), and amendments thereto.

43 (d) **Buyer in ordinary course of business at wellhead or minehead.**

1 A buyer in ordinary course of business buying oil, gas, or other minerals at  
2 the wellhead or minehead or after extraction takes free of an interest  
3 arising out of an encumbrance.

4 (e) **Possessory security interest not affected.** Subsections (a) and (b)  
5 do not affect a security interest in goods in the possession of the secured  
6 party under K.S.A. 2012 Supp. 84-9-313, and amendments thereto.

7 Sec. 7. On January 1, 2015, K.S.A. 2012 Supp. 84-9-320 is hereby  
8 repealed.

9 Sec. 8. This act shall take effect and be in force from and after its  
10 publication in the statute book.