

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **Security Interests In Farm Products**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **Senate Document No. 19**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1987**

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REPORT OF THE JOINT SUBCOMMITTEE  
STUDYING SECURITY INTERESTS IN FARM PRODUCTS  
to  
The Governor and General Assembly of Virginia  
Richmond, Virginia  
January, 1987

TO: Honorable Gerald L. Baliles, Governor of Virginia

and

The General Assembly of Virginia

INTRODUCTION

A joint subcommittee was established by the 1985 General Assembly pursuant to Senate Joint Resolution No. 123 to study Title 8.9 of the Uniform Commercial Code relating to security interests in farm products and equipment. In 1985 Congress passed legislation, effective December 23, 1986, eliminating the farm products exception to the general rule under the Uniform Commercial Code providing protection to buyers in the ordinary course of business. In response to this, the joint subcommittee recommended passage of legislation, designed to protect lienholders, which also eliminated the farm products exemption to the UCC and provided that failure to pay the lienholder secured by such farm products within ten days of the sale of the farm products should be prima facie evidence of larceny unless the evidence of indebtedness provided otherwise. The 1986 General Assembly passed this legislation, with an effective date to coincide with the effective date of the federal legislation. It also passed Senate Joint Resolution No. 44, also recommended by the joint subcommittee, which continued the study because of the federal legislation and the differing views of the special interest groups in the state in regards to what the most appropriate legislative action Virginia should take. The continuing legislation reads as follows:

SENATE JOINT RESOLUTION NO. 44

*Continuing the joint subcommittee studying security interests in farm products and the feasibility of requiring the State Corporation Commission to computerize filings of certain secured transactions relating to farm activities.*

WHEREAS, pursuant to Senate Joint Resolution No. 123 of 1985 a joint subcommittee was established to study security interests in farm products; and

WHEREAS, the joint subcommittee learned that farm product purchasers need immediate access to farm product lien information so as to avoid double payment, one at the time of purchase and again when the seller fails to repay the lender, and that lenders need reasonable assurance of the repayment of loans on secured farm products; and

WHEREAS, to protect purchasers of farm products from double payment which they feel inhibits free competition in the market for farm products and obstructs interstate commerce in farm products, Congress passed legislation in December, 1985, preempting state laws in this area; and

WHEREAS, such legislation provides that a person who buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller even though the security interest is perfected and the buyer knows of such interest, except in states that have prenotification or central filing systems; and

WHEREAS, the interest groups testifying before the joint subcommittee had differing views on what type of system would be in the best interest of the farmers and lenders of the Commonwealth; and

WHEREAS, because of the complexity of the issue and the differing views on what type of system would be in the best interest of the Commonwealth, the joint subcommittee feels that the study should be continued so that they may thoroughly study all options available to determine which is best for Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the joint subcommittee studying security interests in farm products and the feasibility of the State Corporation Commission computerizing filings of certain secured transactions relating to farm products is continued to monitor the federal legislation in this area and to determine what type of system addressing this issue would be in the best interest of the Commonwealth.

The membership of the joint subcommittee shall remain the same. In the event a vacancy should occur in the membership, such vacancy shall be filled by the same person or committee as provided in Senate Joint Resolution No. 123 of 1985.

The joint subcommittee shall complete its work in time to make any recommendations it deems appropriate to the 1987 General Assembly.

The costs of this study, including direct and indirect costs, are estimated to be \$18,000.

Senate Document No. 24 of the 1986 General Assembly summarizes the work of the joint subcommittee in 1985.

Senator Frank W. Nolen of Augusta continued to serve as Chairman of the joint subcommittee. Other Senate members who continued to serve were: Richard J. Holland of Windsor, Robert E. Russell of Chesterfield, and William A. Truban of Shenandoah.

Delegate Lewis W. Parker, Jr. of Mecklenburg continued to serve as Vice-Chairman of the joint subcommittee. Other members of the House of Delegates who continued to serve were: Willard R. Finney of Franklin County, Charles C. Lacy of Wythe, and John Watkins of Chesterfield.

Two citizen members who continued to serve on the joint subcommittee were: Jack W. Peoples, Sr. of Chesapeake, representing the agribusiness public sector, and F. Bruce Spencer of Farmville, representing the banking community.

C. William Cramme', III, Senior Attorney, and Terry Mapp Barrett, Research Associate, of the Division of Legislative Services served as legal and research staff for the subcommittee. The Senate Clerk's Office provided the administrative and clerical staff assistance.

#### WORK OF THE SUBCOMMITTEE

The joint subcommittee held two meetings in 1986, on October 14 and December 15. The first meeting was intentionally postponed to see if efforts to have the effective date of the federal legislation, December 23, 1986, delayed by Congress were successful and to see what other states had done in the area. During these meetings the joint subcommittee heard a great deal of testimony from representatives of the following organizations: the Virginia Bankers Association, the Virginia Agribusiness Council, the State Corporation Commission, the Virginia-Carolina Peanut Growers' Association, Continental Grain Company of Norfolk, Virginia, the Virginia Farm Bureau Federation, the Farmers' Home Administration, Dominion Bank and Sovran Bank.

At its October 14 meeting the joint subcommittee found that, as in the previous year, those representing banking interests and those representing farming interests disagreed in regards to the most appropriate action the Commonwealth should take in light of Congress' action which eliminated the farm products exemption from the Uniform Commercial Code. Those representing banking interests indicated that the establishment by the State Corporation Commission of a central filing system where liens for farm products would be filed and such information would be available to potential buyers would be the most appropriate action. Those representing farming interests indicated that a prenotification system whereby banks would notify potential buyers of any liens on the products would be the most appropriate action.

In regards to a central filing system, the State Corporation Commission testified that they did not have all of the information needed to determine the costs of such a system, such as the volume of loans for all agricultural purposes, how such loans are secured, etc., and felt that a survey would provide this information. The joint subcommittee determined that since a survey might help them in determining the most appropriate action Virginia should take they would sponsor one, a copy of which appears as Appendix 1, which would be sent to commercial banks, farm credit associations, the Farmers' Home Administration, the Commodity Credit Corporation, feed, seed and supply dealers, etc. They also requested that legislation, similar to a Michigan statute that established a prenotification system, be drafted for discussion at the next meeting.

At its December 15th meeting, the joint subcommittee learned that attempts to postpone the effective date of the federal legislation were unsuccessful, heard from the State Corporation Commission regarding the results of the survey, and went over the legislation establishing a prenotification system that they had requested at the October 14 meeting. A representative of the State Corporation Commission testified that although the results of the survey were not complete nor totally reliable, they obtained some valuable information from them. From the results they were able to estimate that a central filing system would handle somewhere between 68,000 and 104,000 liens, cost somewhere in the range of \$600,000 to \$800,000 to set up, including the software costs and computer time rented from the Department of Information Technology for system development, and take twelve months to implement.

The joint subcommittee then reviewed the legislation they had requested at the previous meeting, which, modeled after a Michigan statute, set up a prenotification system. After making various changes to it they decided to recommend that the legislation be adopted by the 1987 General Assembly. They also decided to recommend the passage of a resolution continuing the study so that the subcommittee could monitor the progress of the prenotification system and any federal legislation that might be passed in 1987. They determined that a meeting would be held in 1987 only if problems arose with the newly enacted federal legislation or if the prenotification system was not progressing as expected.

## RECOMMENDATIONS

After careful consideration the joint subcommittee decided to offer the following recommendations to the General Assembly:

- I. THAT THE GENERAL ASSEMBLY SHOULD PASS THE BILL OFFERED BY THE SUBCOMMITTEE WHICH ESTABLISHES A PRENOTIFICATION SYSTEM WHEREBY A DEBTOR ENGAGED IN FARM OPERATIONS MUST PROVIDE A WRITTEN LIST OF POTENTIAL BUYERS OF PRODUCTS SECURING HIS LOAN TO THE SECURED PARTY, WHO, IN TURN, MUST NOTIFY THE POTENTIAL BUYERS OF ANY LIENS EXISTING ON THE GOODS.
  
- II. THAT A JOINT RESOLUTION CONTINUING THE STUDY SHOULD BE PASSED BY THE GENERAL ASSEMBLY. THAT THE RESOLUTION SHOULD PROVIDE THAT THE SUBCOMMITTEE MEET ONLY IF PERTINENT FEDERAL LEGISLATION IS ENACTED OR IF THE PRENOTIFICATION SYSTEM IS NOT PROGRESSING AS EXPECTED.

## REASONS FOR RECOMMENDATIONS

- I. THAT THE GENERAL ASSEMBLY SHOULD PASS THE BILL OFFERED BY THE SUBCOMMITTEE WHICH ESTABLISHES A PRENOTIFICATION SYSTEM WHEREBY A DEBTOR ENGAGED IN FARM OPERATIONS MUST PROVIDE A WRITTEN LIST OF POTENTIAL BUYERS OF PRODUCTS SECURING HIS LOAN TO THE SECURED PARTY, WHO, IN TURN, MUST NOTIFY THE POTENTIAL BUYERS OF ANY LIENS EXISTING ON THE GOODS.

The joint subcommittee arrived at this recommendation after hearing testimony for two years regarding the advantages and disadvantages of a central filing system and a prenotification system and thoroughly studying the issues. The majority of the testimony regarding these two systems was heard in 1985 and thus is summarized in the joint subcommittee's report for that year, Senate Document No. 24 of the 1986 General Assembly.

Proponents of a prenotification system, those representing farming interests, claimed that such a system will permit lenders who are in a better position to determine the cash flows of sellers to notify buyers of high risk sellers and that such a system is equitable for all. A representative of the Virginia Farm Bureau Federation testified that although bankers had indicated that a prenotification system will cause credit to dry up for farmers, he had corresponded with people in several states that require prenotification and that these people had indicated to him that there was not a single incident of credit restrictions or higher interest rates.

Those favoring prenotification testified that two of their major concerns regarding a central filing system were: 1 - who would bear the costs of the system and 2 - all farmers would have to pay for the potential abuses of only a few. Some of their additional concerns included:

- 1 - how will the information in the central filing system be updated;
- 2 - when the information will be accessible (after 5:00 p.m. or on weekends); and
- 3 - the liability of the state in cases in which inaccurate information is given.

A representative of the Farmers' Home Administration informed the subcommittee that they have been using a prenotification system for a number of years on some of their higher risk loans. He explained that because of a recent case in Iowa, Coleman v. Block, within which the court ruled that lenders had to treat all of their customers the same, they may have to use prenotification on all of their loans. He explained further that they have received some complaints about their system, mostly from those who have good credit and thus with whom they have had no problems. It was noted that although their loss experience has been minimal, the Farmers' Home Administration has begun pushing guaranteed lending which places the responsibility of the collateral on the lender, yet they will continue to be the "lender of last resort", offering direct loans on a small scale. It was pointed out that if there is any chance that a bank will make the loan, they will not.

Proponents of a prenotification system argued that since the Farmers' Home Administration has a minimal loss record with its prenotification system, banks should have even fewer losses because they generally lend to better risks.

Proponents of a central filing system, those representing banking interests, testified that if the state goes to a prenotification system, they will greatly reduce or discontinue altogether their agricultural lending. They explained that banks will not be the ultimate sufferers since the demand for loans has recently increased in other areas therefore they can withdraw from making agricultural loans without having to curtail their lending in general. They explained further that under a prenotification system, in those instances where banks continue to make agricultural loans, and thus notify potential buyers of existing liens, the costs of such will be passed on to those borrowers affected by it, namely farmers.



There was some disagreement between those representing farming interests and those representing banking interests as to the effectiveness of the legislation passed by the 1986 General Assembly which, effective December 23, 1986, eliminated the farm products exemption from the Uniform Commercial Code and provides penalties for borrowers who fail to pay their lienholders within ten days of the sale of the farm product securing the loan. Those representing the farming interests indicated that the penalties are sufficient to make farmers notify their lenders of whom they intend to sell to and to pay within the specified time frame. Those representing banking interests testified that the new law has opened the door for fraud as some farmers will sell to someone not on the list provided to the lender and will disperse of the proceeds within the ten day period. They pointed out that a lot of cases have gone unprosecuted and that even if a lender takes a seller who has committed fraud to court and the lender wins, they will still receive a "blackeye" in the community.

Regarding the costs of a central filing system, the State Corporation Commission indicated at the October 14th meeting that they did not have enough information to determine such costs yet they felt that a survey of agricultural lending practices, sent to commercial banks, farm credit associations, the Farmers' Home Administration, the Commodity Credit Corporation, feed, seed and supply dealers, etc., would give them an idea of the size of the system needed to receive and retain farm product liens and thus help them in determining the costs.

Such a survey was sponsored by the subcommittee and the results thereof were explained to the subcommittee at the December 15 meeting. A representative of the SCC explained that although the results of the survey were not totally reliable and that there was a wide range for error, it did provide them with enough information to estimate the costs of a central filing system. They indicated that they had a twenty-eight percent response rate which would have been significant yet many of the surveys were not completely filled out. It was pointed out that Commodity Credit Corporation, the largest holder of liens, did not respond to the survey and, if they had, the results may have been substantially different. A copy of the report on the survey appears as Appendix 2 to this report.

The representative of the SCC explained that during the last fiscal year they handled 65,632 Uniform Commercial Code filings and, after reviewing the surveys, estimated that a central filing system would, handle somewhere between 68,000 and 104,000, take twelve months to implement and cost somewhere in the range of \$600,000 to \$800,000 to set up, purchase software and rent computer time from the Department of Information Technology for the development of the system alone. It was pointed out that the cost figures did not include the additional costs of possible twenty-four-hour or seven-day-a-week access and that extended access to the system would cause problems in that presently one cannot call into the computer unless he is hooked up to the state system. In addition, the cost estimates did not include 1 - the costs of filing the documents and liens prior to their entry into the system; 2 - software maintenance costs of approximately \$6,000 a month; 3 - data entry personnel costs of \$25,000/year; 4 - the cost of renting computer time of \$70,000 - \$75,000/year; and 5 - general maintenance costs of approximately \$50,000/year.

A representative of the Virginia Bankers Association informed the subcommittee that he was not sure that even with the implementation of a central filing system the business practices of commercial banks would change with regard to filing liens and securing loans by crops. It was suggested that those who currently do not secure their loans by crop liens would not change their policy.

After reviewing legislation establishing a prenotification system, drafted along the lines of a Michigan statute, and making a number of changes thereto, the joint subcommittee agreed unanimously to recommend its passage by the 1987 General Assembly. A copy of the draft legislation appears as Appendix 3 to this report. A line-by-line summary of the legislation appears as Appendix 4 to this report.

- II. THAT A JOINT RESOLUTION CONTINUING THE STUDY SHOULD BE PASSED BY THE GENERAL ASSEMBLY. THAT THE RESOLUTION SHOULD PROVIDE THAT THE SUBCOMMITTEE MEET ONLY IF PERTINENT FEDERAL LEGISLATION IS ENACTED OR IF THE PRENOTIFICATION SYSTEM IS NOT PROGRESSING AS EXPECTED.

In making this recommendation, the joint subcommittee determined that the study should be continued so that the group can monitor the progress of the prenotification system and any federal legislation that may be passed in 1987. They agreed that they would meet only if problems arose with the newly enacted federal legislation or if the prenotification system is not progressing as expected. A copy of the continuing resolution appears as Appendix 5 to this report.

## CONCLUSION

The subcommittee expresses its appreciation to all parties who participated in its study. The study group's recommendations have been offered only after careful and thorough study of the information it received. The subcommittee believes that its recommendations are in the best interest of the Commonwealth and it encourages the General Assembly to adopt its recommendations.

Respectfully submitted,

Frank W. Nolen, Chairman  
Lewis W. Parker, Jr., Vice-Chairman  
Richard J. Holland  
Robert E. Russell  
William A. Truban  
Willard R. Finney  
Charles C. Lacy  
John Watkins  
Jack W. Peoples, Sr.  
F. Bruce Spencer

COMMONWEALTH OF VIRGINIA



SENATE

FRANK W. NOLEN  
24TH SENATORIAL DISTRICT  
AUGUSTA, HIGHLAND AND ROCKBRIDGE  
COUNTIES, GROTTOES PRECINCT IN  
ROCKINGHAM COUNTY, CITIES OF BUENA  
VISTA, LEXINGTON, STAUNTON AND  
WAYNESBORO  
P O BOX 13  
NEW HOPE, VIRGINIA 24469

COMMITTEE ASSIGNMENTS:  
AGRICULTURE, CONSERVATION AND  
NATURAL RESOURCES  
COMMERCE AND LABOR  
EDUCATION AND HEALTH  
REHABILITATION AND SOCIAL SERVICES

TO: Persons Involved in the Extension of Credit to Farmers  
FROM: Frank W. Nolen, Chairman, Joint Subcommittee Studying  
Security Interests in Farm Products  
RE: Enclosed Farm Products Lien Survey  
DATE: November 17, 1986

A joint subcommittee was established by the 1985 General Assembly pursuant to Senate Joint Resolution No. 123 to study security interests in farm products. The study was continued by the 1986 General Assembly pursuant to Senate Joint Resolution No. 44 because of legislative action taken at the federal level in this area.

The joint subcommittee is now in the process of determining the most appropriate legislative action Virginia should take in light of this federal legislation which, effective December 23, 1986, eliminates the farm products exemption to the Uniform Commercial Code. Additional information on farm product liens is needed before the subcommittee can make its determination therefore we are requesting that you fill out the enclosed survey and return it by December 2, 1986 in the enclosed stamped return envelope.

Thank you in advance for responding to the survey and for returning it promptly.

FWN:cgw

Enclosure

# Farm Product Lien Survey

Survey Purpose: To collect data to be used in determining the most appropriate legislative action Virginia should take in response to the federal legislation eliminating the farm products exemption from the UCC.

Explanation: As a result of legislation included in the Food Security Act of 1985, effective December 23, 1986, farm products will no longer be exempt under the Uniform Commercial Code. Prior to December 1986, the purchaser of any farm product bought those products subject to existing liens. It was the purchaser's responsibility to determine if the products were under lien by searching records in the appropriate location. As of December 23, 1986, the lender or secured party will be responsible for notifying potential purchasers of farm products of their liens and advising them on how they are to pay for those products. This notice must be given in writing. The lender can require that the borrower provide him with a list of potential purchasers. An alternative method of notifying potential purchasers would be to establish a Central Filing System for farm product liens. In that regard, we would like for you to answer the following questions as accurately as possible:

1. What is your volume of loans for all agricultural purposes for the most recent 12 month period?

\$ \_\_\_\_\_ dollar volume          \_\_\_\_\_ number of loans

2. Do you secure loans with farm products as a normal practice in extending credit to farm customers? (See question 5 for sample list of farm products.)

Yes \_\_\_\_\_ No \_\_\_\_\_

3. If you answered "Yes" to question 2, what portion of your agricultural loans are now secured by liens on farm products (for the most recent 12 mo. period)?

\_\_\_\_\_ %          \_\_\_\_\_ dollar volume  
\_\_\_\_\_ number of loans          \_\_\_\_\_ number of liens

4. Do you occasionally require secondary security such as liens on real estate or equipment, when taking farm products as security?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to question 4, what percent of your loans secured by farm products require secondary security?

\_\_\_\_\_ %          \_\_\_\_\_ dollar volume

5. Indicate the number of liens you have in each of the ag product areas listed below:

Wheat \_\_\_\_\_ Barley \_\_\_\_\_ Corn \_\_\_\_\_ Hay \_\_\_\_\_ Sorghum Grain \_\_\_\_\_  
Cotton \_\_\_\_\_ Tobacco \_\_\_\_\_ Peanuts \_\_\_\_\_ Soybeans \_\_\_\_\_ Potatoes \_\_\_\_\_  
Sweet Potatoes \_\_\_\_\_ Snap Beans \_\_\_\_\_ Broccoli \_\_\_\_\_  
Sweet Corn \_\_\_\_\_ Lettuce \_\_\_\_\_ Peppers \_\_\_\_\_ Tomatoes \_\_\_\_\_  
Melons \_\_\_\_\_ Apples \_\_\_\_\_ Grapes \_\_\_\_\_ Peaches \_\_\_\_\_ Berries \_\_\_\_\_  
Popcorn \_\_\_\_\_ Mushrooms \_\_\_\_\_ Trees \_\_\_\_\_ Turkeys \_\_\_\_\_ Cattle \_\_\_\_\_  
Goats \_\_\_\_\_ Horses \_\_\_\_\_ Hogs \_\_\_\_\_ Sheep \_\_\_\_\_ Milk \_\_\_\_\_  
Wool \_\_\_\_\_ Fish \_\_\_\_\_ Shellfish \_\_\_\_\_ Turf Grass \_\_\_\_\_  
Christmas Trees \_\_\_\_\_ Greenhouse & Nursery products \_\_\_\_\_  
Chickens \_\_\_\_\_ Eggs \_\_\_\_\_

6. Are you filing any of your liens on farm products with the State Corporation Commission (SCC)?

Yes \_\_\_\_\_ No \_\_\_\_\_

7. If you answered "Yes" to question 6, are you filing liens with the SCC on all loans secured by farm products?

Yes \_\_\_\_\_ No \_\_\_\_\_

on all loans secured by grain crops?

Yes \_\_\_\_\_ No \_\_\_\_\_

on all loans where the customer operates in more than one jurisdiction?

Yes \_\_\_\_\_ No \_\_\_\_\_

on loans where farm products will be sold out of state?

Yes \_\_\_\_\_ No \_\_\_\_\_

Please describe other criteria for filing with the SCC.

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8. Do you currently notify any potential purchasers of liens you hold on farm products?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. If you answered "Yes" to question 8, please indicate the number of entities that you have sent prenotification information to for all loans/liens, over the last 12 month period. \_\_\_\_\_

10. If you answered "Yes" to question 8, do you send prenotification on all loans secured by farm products?

Yes \_\_\_\_\_ No \_\_\_\_\_

on all loans where credit factors indicate a need for this practice?

Yes \_\_\_\_\_ No \_\_\_\_\_

Indicate other circumstances that normally result in your notifying potential customers.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

On what percentage of your liens do you prenotify potential customers? \_\_\_\_\_%

11. Do you currently require payment for the purchase of farm products to be made

directly to you \_\_\_\_\_ . \_\_\_\_\_ % of liens  
jointly to you and the borrower \_\_\_\_\_ . \_\_\_\_\_ % of liens  
to the borrower alone \_\_\_\_\_ . \_\_\_\_\_ % of liens

12. Do you think your organization will change its policy regarding securing loans with farm products as a result of this change in the Uniform Commercial Code?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. If you answered "Yes" to question 12, how do you think you will change your policies?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Indicate which of the following defines the nature of your business.

- \_\_\_\_\_ commercial banks                      \_\_\_\_\_ reseller                      \_\_\_\_\_ purchaser
- \_\_\_\_\_ farm credit assoc.                      \_\_\_\_\_ commodity credit corp.
- \_\_\_\_\_ farmers home administration                      \_\_\_\_\_ agricultural supply dealers
- \_\_\_\_\_ other, please specify \_\_\_\_\_

Farm Lien Surveys

Surveys Sent	403	
Surveys Returned	113	28%
Insufficient Address	11	
Blank Survey	12	
Surveys Used	89	22%

\$600 - back for a better FILING SYSTEM



Overall Results of Farm Product Lien Survey

Question	Total	Responses Average	Yes/No
1. Total ag loans (\$)		\$5,510,999	
(Number)	13,670	244	
2. Secure loans w/ farm products			26/63
3. .secured ag loans (%)		36	
(\$)		\$5,856,498	
(Loans)	3,993	166	
(Liens)	3,564	155	
4. Secondary security required			32/57
(%)		38	
(\$)		\$2,669,373	
6. File liens w/ SCC			33/56
7. .loans secured by farm products			19/14
.loans secured by grain crops			21/12
.customer in more than 1 juris.			20/13
.farm products sold out of state			17/16
8. Currently notify			15/74
9. .number pre-notified	280	23	
10. .pre-notify farm product loans			6/9
.all loans			7/9
.liens pre-notified (%)		37	
11. Payment directly (%)		55	
.jointly (%)		75	
.borrower alone (%)		94	
12. Change policy			32/57
14. Nature of business			
	47	Commercial Bank	
	5	Farm Credit Assoc.	
	1	FHA	
	1	Reseller	
	0	Commercial Credit Corp.	
	2	Purchaser	
	28	Ag. Supply Dealer	
	5	Other	
	89	Total	

Results of Farm Product Lien Survey - Commercial Banks

Question	----- Total	Responses Average	----- Yes/No
1. Total ag loans (\$)		\$4,071,460	
(Number)	5,927 (43%)	180	
2. Secure loans w/ farm products			15/32
3. .secured ag loans (%)		39	
(\$)		\$4,944,934	
(Loans)	2,213 (56%)	170	
(Liens)	1,943 (55%)	149	
4. Secondary security required			19/28
(%)		39	
(\$)		\$2,625,778	
6. File liens w/ SCC			22/25
7. .loans secured by farm products			15/7
.loans secured by grain crops			15/7
.customer in more than 1 juris.			18/4
.farm products sold out of state			15/7
8. Currently notify			5/42
9. .number pre-notified	48	12	
10. .pre-notify farm product loans			2/3
.all loans			5/0
.liens pre-notified (%)		10	
11. Payment directly (%)		61	
.jointly (%)		88	
.borrower alone (%)		92	
12. Change policy			20/27
14. Nature of business	47 (53%)		

Results of Farm Product Lien Survey - Ag Supply Dealers

Question	----- Total	Responses Average	----- Yes/No
1. Total ag loans (\$)		\$971,250	
(Number)	1,821 (13%)	130	
2. Secure loans w/ farm products			4/24
3. .secured ag loans (%)		11	
(\$)		\$1,096,250	
(Loans)	236 (6%)	59	
(Liens)	67 (2%)	22	
4. Secondary security required			6/22
(%)		41	
(\$)		\$110,000	
6. File liens w/ SCC			3/25
7. .loans secured by farm products			3/0
.loans secured by grain crops			3/0
.customer in more than 1 juris.			1/2
.farm products sold out of state			0/3
8. Currently notify			5/23
9. .number pre-notified	104	35	
10. .pre-notify farm product loans			2/3
.all loans			1/4
.liens pre-notified (%)		88	
11. Payment directly (%)		80	
.jointly (%)		87	
.borrower alone (%)			
12. Change policy			7/21
14. Nature of business	28 (33%)		

Results of Farm Product Lien Survey - Farm Credit Assoc.

Question	----- Total	Responses Average	----- Yes/No
1. Total ag loans (\$)		\$47,418,063	
(Number)	5,061 (37%)	1,265	
2. Secure loans w/ farm products			4/1
3. .secured ag loans (%)		39	
(\$)		\$11,243,250	
(Loans)	930 (23%)	233	
(Liens)	960 (27%)	240	
4. Secondary security required			4/1
(%)		52	
(\$)		\$7,145,000	
6. File liens w/ SCC			5/0
7. .loans secured by farm products			0/5
.loans secured by grain crops			2/3
.customer in more than 1 juris.			1/4
.farm products sold out of state			1/4
8. Currently notify			3/2
9. .number pre-notified	15	5	
10. .pre-notify farm product loans			0/3
.all loans			1/2
.liens pre-notified (%)		17	
11. Payment directly (%)		0	
.jointly (%)		22	
.borrower alone (%)		98	
12. Change policy			5/0
14. Nature of business	5 (6%)		

Number of Liens in Each Ag Product Area (Quest. 5)

Wheat	48	Corn	147	Sorghum Grain	0
Cotton	0	Peanuts	82	Potatoes	2
Sweet Potatoes	1	Snap Beans	0	Broccoli	2
Sweet Corn	3	Lettuce	0	Tomatoes	0
Melons	0	Grapes	5	Berries	5
Popcorn	0	Trees	10	Cattle	1805
Goats	0	Hogs	65	Milk	210
Wool	5	Shellfish	5		
Christmas Trees	1	Eggs	7		
Chickens	9	Hay	7		
Barley	16	Soybeans	107		
Tobacco	63	Peppers	0		
Apples	8	Peaches	4		
Mushrooms	0	Turkeys	6		
Horses	36	Sheep	60		
Fish	3	Turf Grass	3		
Greenhouse & Nursery Products			0		

Many surveys reported liens in these areas but did not give the number.

Other Criteria for Filing with SCC (Quest. 7)

loans to corporations

only secured by equipment or crop lien

UCC1 Form filed with state and county

on all loans

when collateral is outside county

all crops, accounts receivable, and inventory

always

if obligator is a corporation or partnership

loans secured by Va. Milk Commission base

for business inventory-milk base

all loans in excess of \$10,000

loans to partnerships and corp.s secured by farm products

inventory type goods

Other Circumstances for Notifying (Quest. 10)

when not selling to our business

deterioration of financial situation

upon purchasers request

if borrower might sell collateral w/o remitting proceeds

limited markets-tobacco, peanuts, milk. grains/livestock too numerous

How Policy Will Change (Quest. 13)

no loans if security is dependent on farm products

we will make ag loans secured only by ag products

not sure

request expected buyer and notify same-need a central filing system for commodity purchasers

no longer make loans to marginal farmer-crop liens will be considered unsecured loans

loans to farmers may not be made unless legis. enacted to protect security interest

will look at peanut liens-purchasers search courthouse records

will not make loans unless secured otherwise

will use farm product liens as method of securing payment

will require credit line deed of trust

secure liens on crops

unsure

will not make crop liens-marginal farmer will be hurt

more security will be taken

no more loans where farm products are collateral

list of buyers

will require secondary security

fewer loans made to farmers

will allocate less dollars to agricultural borrowers

crop liens will be almost impossible to use-won't know purchaser until money collected

will make liens on farm products

become much more restrictive and selective-discontinue crop liens in 2 years

will have to prenotify-will ask for more payments be jointly payable



move to make either unsecured loans or loans secured by real estate

will notify potential purchasers of our security interest

will seek alternate forms of collateral rely less on farm products as collateral

will require real estate liens or stop loans based on farm products

use more stringent credit policies-restrict to borrowers with other security

require other security

### Survey Results

Survey	-- Ag Loans --		(1=Yes,0=No)		- Secured Agricultural Loans -		
	\$ Volume	Number	Secure w/ Farm Prod	%	\$ Volume	# Loans	# Liens
1	0		0				
2	0		0				
3	0		0				
4	0		0				
5	0		0				
6	0		0				
7	0		0				
8	0		0				
9	0		0				
10	0		0				
11	0		0				
12	0		0				
13	0		0				
14	0		0				
15	0		0				
16	0		0				
17	0		0				
18	0		0				
19	0		0				
20	0		0				
21	0		0				
22	0		0				
23	0		0				
24	0		0				
25	0		0				
26	0		0				
27	0		0				
28	0		0				
29	0		0				
30	0		0				
31	0		0				
32	0		0				
33	0		0				
34	0		0				
35	0		0				
36	2,500	2	0				
37	25,000	55	0				
38	25,000	6	0				
39	30,000	20	0				
40	30,000	4	0				
41	35,000	1	1	100	565,000	2	8
42	40,000	2	0				
43	50,000	1	0				
44	75,000	10	1	5	60,000	5	5
45	75,000	4	0				
46	100,000	15	1	65	65,000	12	12
47	100,000	20	0				
48	130,000	3	1	33	312,000	10	3
49	150,000	20	0				

### Survey Results

Survey	-- Ag Loans --		(1=Yes,0=No)				
	\$ Volume	Number	Secure w/ Farm Prod	%	- Secured Agricultural Loans - \$ Volume	# Loans	# Liens
50	197,853	14	0				
51	200,000	35	0				
52	240,000	0	0				
53	250,000	100	1	10	25,000	6	
54	296,711	17	1	12	72,470	2	2
55	300,000	3	0				
56	300,000	5	1	40			
57	376,438	21	0				
58	449,670	75	1				
59	500,000	12	0				
60	500,000	80	0				
61	566,160	63	1	67	380,160	51	51
62	665,000	49	1	11	70,000	3	3
63	747,985	36	0				
64	790,972	41	0				
65	800,000	50	0				
66	824,873	32	0				
67	837,000	28	0				
68	850,000	750	0				
69	1,000,000	10	1	95			
70	1,500,000	25	0				
71	1,568,000	85	1	69	685,500	59	18
72	1,775,778	140	1	10	178,946	5	2
73	3,800,000	34	1	37	1,400,000	12	12
74	4,000,000	100	1	50	2,000,000	50	30
75	4,000,000	30	0				
76	6,600,000	50	1	5	300,000	25	12
77	6,830,000	225	0				
78	7,000,000	400	0				
79	8,000,000	400	1	25	4,000,000	200	50
80	8,590,317	317	1	39	3,373,000	30	30
81	9,771,856	165	1	19	1,500,000	32	32
82	10,000,000	325	0				
83	12,900,000	320	1	75	11,600,000	230	260
84	15,000,000	82	1	10			
85	25,600,000	1,224	1	30	10,000,000	370	370
86	30,382,790	664	1	85	25,825,371	564	564
87	50,000,000	3,000	1	50	25,000,000	1,500	750
88	81,600,000	1,300	1	48	39,000,000	525	1,050
89	190,000,000	3,200	1	10	20,000,000	300	300
Avg.	\$5,510,999	244			\$5,856,498	166	155
Y/N				26			
Avg. %				36			
Number		13,670				3,993	3,564

(1=Yes,0=No)

----- Loans Filed -----

Survey	Second Security	%	\$ Volume	File w/ SCC	Farm Prod	Grain Crops	Cust. Juris	Out of State	Currently Notify
1	0			0					0
2	0			0					0
3	0			0					0
4	0			1	1	1	1	1	0
5	0			0					0
6	0			1	0	1	1	1	1
7	0			0					0
8	0			0					0
9	0			0					0
10	0			0					0
11	0			0					0
12	0			0					0
13	0			0					0
14	0			0					0
15	0			0					0
16	0			0					0
17	0			0					0
18	0			0					1
19	0			0					0
20	0			0					0
21	0			0					0
22	0			1	1	1	1	1	0
23	0			0					0
24	0			0					0
25	0			0					0
26	0			0					0
27	0			1	0	0	1	1	1
28	0			1	1	1			1
29	0			0					0
30	0			0					0
31	0			0					0
32	0			0					0
33	1		50,000	1	1	0	1	1	0
34	0			0					0
35	0			0					0
36	0			0					0
37	0			0					0
38	1	50	15,000	0					0
39	1	95		0					0
40	0			0					1
41	1	50	530,000	1	1	0	1	0	0
42	0			0					0
43	1			1	1	0	0	0	0
44	1	10	50,000	0					1
45	0			0					0
46	1	10	30,000	0					0
47	0			0					0
48	0			1	1	1	1	1	0
49	1	100	150,000	0					0

Survey	Second Security	%	\$ Volume	(1=Yes,0=No)					
				File w/ SCC	Farm Prod	Grain Crops	Loans Filed Cust. Juris	Out of State	Currently Notify
50	0			0					0
51	1	60	120,000	0					0
52	0			0					0
53	1	20	50,000	0					0
54	0			1	1	1	1	1	0
55	1	33	100,000	1	1	1	0	0	1
56	1	5		1	1	1	1	1	0
57	0			0					0
58	1			1	0				1
59	0			0					0
60	0			0					0
61	1	5	30,000	0					0
62	1	11	70,000	1	1	0	0	1	0
63	0			1	1	1	1	0	0
64	0			1	1	1	1	1	0
65	0			0					0
66	0			0					0
67	0			0					0
68	0			0					0
69	1	50		1	1	1	1	1	0
70	0			0					0
71	1	17	253,000	1	1	1	1	1	0
72	1	12	1,214,445	1	0	0	1	1	0
73	1	65	2,200,000	1	0	1	0	1	1
74	1	10	600,000	1	1	0	1	1	0
75	1	15	600,000	1	1	0	1	0	0
76	0			0					0
77	1	50	3,400,000	1	0	1	0	0	0
78	0			1	0	0	1	0	0
79	1	5	200,000	1	1	1	1	0	1
80	1	57	3,080,000	1	0	1	0		0
81	1	100	1,500,000	1	1	1	1	1	1
82	1	75		0					0
83	1	25	8,000,000	1	0	1	0	0	1
84	1	50		0					0
85	1	75	7,500,000	1	0	0	0	0	1
86	1	10	3,000,000	1	0	1	0	0	1
87	1	50	12,000,000	1	0	1	1	1	1
88	1	40	20,000,000	1	0	1	1	0	0
89	1	50	10,000,000	1	0	0	0	0	0
Avg.			\$2,669,373						
Y/N	32			33					15
Avg. %		38							
Number					19	21	21	17	



Survey	Number	-- Pre-Notify --			(1=Yes,0=No)			Change Policy
		Farm Loans	All Loans	%	----- Payment Made -----	-----	-----	
					Directly	Jointly	Borrower	
50								0
51					100			0
52								0
53								1
54								1
55	4	1	0			100		0
56						100		1
57								0
58	8	1						0
59								0
60								1
61					100			1
62						100		0
63								0
64								0
65						100		0
66								0
67								0
68								0
69					100			0
70								0
71						100		1
72						100		1
73	4	0	1	30				1
74								0
75								0
76						100		1
77							100	1
78								1
79	100	0	1	75		100		1
80						5	95	1
81	6	0	1	1	1	49	50	1
82						100		1
83	1	0	0	0	0	1	99	1
84							99	1
85	3	0	0	1		1	99	1
86	105	1		100		100		0
87		0	1	10	5	95		1
88								0
89						2		1
Avg.								
Y/N								32
Avg. %				37	55	75	94	
Number	280	6	7					

Survey	Nature of Business						Other
	Comm Bank	Farm Credit	FHA	Comm Resell	Comm Credit Purch	Ag Supply Dealer	
1						1	
2						1	
3	1						
4	1						
5							
6	1						
7						1	
8						1	
9						1	
10							not sure
11						1	
12						1	
13						1	
14							Feed Manufacturer
15	1						
16						1	
17						1	
18	1						
19	1						
20	1						
21	1						
22	1						
23					1		
24						1	
25	1						
26						1	
27		1					
28						1	
29	1						
30						1	
31	1						
32	1						
33	1						
34	1						
35							Lawn & Garden Retailer
36							Feed, Seed, & Fertilize
37						1	
38	1						
39	1						
40						1	
41	1						
42	1						
43	1						
44						1	
45						1	
46	1						
47						1	
48	1						
49				1		1	



Survey	----- Nature of Business -----							Other
	Comm Bank	Farm Credit	FHA	Resell	Comm Credit	Purch	Ag Supply Dealer	
50	1							
51	1							
52							1	
53							1	
54	1							
55							1	
56	1							
57	1							
58								National Bank
59	1							
60							1	
61	1							
62	1							
63	1							
64	1							
65	1							
66	1							
67	1							
68							1	
69	1							
70	1							
71	1							
72	1							
73	1							
74						1		
75	1							
76							1	
77	1							
78	1							
79							1	
80		1						
81	1							
82							1	
83		1						
84	1							
85		1						
86			1					
87	1							
88	1							
89		1						
Avg.								
Y/N								
Avg. %								
Number	47	5	1	1	0	2	28	5

Survey Results - Commercial Banks

Survey			(1=Yes,0=No)	- Secured Agricultural Loans -			
	-- Ag Loans \$ Volume	-- Number	Secure w/ Farm Prod	%	\$ Volume	# Loans	# Liens
1	0		0				
2	0		0				
3	0		0				
4	0		0				
5	0		0				
6	0		0				
7	0		0				
8	0		0				
9	0		0				
10	0		0				
11	0		0				
12	0		0				
13	0		0				
14	0		0				
15	0		0				
16	25,000	6	0				
17	30,000	20	0				
18	35,000	1	1	100	565,000	2	8
19	40,000	2	0				
20	50,000	1	0				
21	100,000	15	1	65	65,000	12	12
22	130,000	3	1	33	312,000	10	3
23	197,853	14	0				
24	200,000	35	0				
25	296,711	17	1	12	72,470	2	2
26	300,000	5	1	40			
27	376,438	21	0				
28	500,000	12	0				
29	566,160	63	1	67	380,160	51	51
30	665,000	49	1	11	70,000	3	3
31	747,985	36	0				
32	790,972	41	0				
33	800,000	50	0				
34	824,873	32	0				
35	837,000	28	0				
36	1,000,000	10	1	95			
37	1,500,000	25	0				
38	1,568,000	85	1	69	685,500	59	18
39	1,775,778	140	1	10	178,946	5	2
40	3,800,000	34	1	37	1,400,000	12	12
41	4,000,000	30	0				
42	6,830,000	225	0				
43	7,000,000	400	0				
44	9,771,856	165	1	19	1,500,000	32	32
45	15,000,000	82	1	10			
46	50,000,000	3,000	1	50	25,000,000	1,500	750
47	81,600,000	1,300	1	48	39,000,000	525	1,050

Survey Results - Commercial Banks

Survey	-- Ag Loans --		(1=Yes,0=No)	- Secured Agricultural Loans -			
	\$ Volume	Number	Secure w/ Farm Prod	%	\$ Volume	# Loans	# Liens
Total		5,947				2,213	1,943
Avg.	\$4,071,460	180			\$4,944,934	170	149
Y/N				15			
Avg. %				39			
Number							

(1=Yes,0=No)

Survey	----- Loans Filed -----					File w/ SCC	Farm Prod	Grain Crops	Cust. Juris	Out of State	Currently Notify
	Second Security	%	\$ Volume								
1	0				0						0
2	0				0						0
3	1		50,000		1	1	0	1	1		0
4	0				0						0
5	0				0						0
6	0				1	0	1	1	1		1
7	0				0						1
8	0				0						0
9	0				0						0
10	0				0						0
11	0				0						0
12	0				1	1	1	1	1		0
13	0				1	1	1	1	1		0
14	0				0						0
15	0				0						0
16	1	50	15,000		0						0
17	1	95			0						0
18	1	50	530,000		1	1	0	1	0		0
19	0				0						0
20					1	1	0	0	0		0
21	1	10	30,000		0						0
22	0				1	1	1	1	1		0
23	0				0						0
24	1	60	120,000		0						0
25	0				1	1	1	1	1		0
26	1	5			1	1	1	1	1		0
27	0				0						0
28	0				0						0
29	1	5	30,000		0						0
30	1	11	70,000		1	1	0	0	1		0
31	0				1	1	1	1	0		0
32	0				1	1	1	1	1		0
33	0				0						0
34	0				0						0
35	0				0						0
36	1	50			1	1	1	1	1		0
37	0				0						0
38	1	17	253,000		1	1	1	1	1		0
39	1	12	1,214,445		1	0	0	1	1		0
40	1	65	2,200,000		1	0	1	0	1		1
41	1	15	600,000		1	1	0	1	0		0
42	1	50	3,400,000		1	0	1	0	0		0
43	0				1	0	0	1	0		0
44	1	100	1,500,000		1	1	1	1	1		1
45	1	50			0						0
46	1	50	12,000,000		1	0	1	1	1		1
47	1	40	20,000,000		1	0	1	1	0		0

(1=Yes,0=No)

Survey Total	Second Security	%	\$ Volume	----- Loans Filed -----					
				File w/ SCC	Farm Prod	Grain Crops	Cust. Juris	Out of State	Currently Notify
Avg.			\$2,625,778						
Y/N	19			22					5
Avg. %		39							
Number					15	15	18	15	



		(1=Yes,0=No)						
		-- Pre-Notify --		----- Payment Made -----			Change	
Survey	Number	Farm	All	%	Directly	Jointly	Borrower	Policy
Total		Loans	Loans					
	48							
Avg.	12							
Y/N								20
Avg. %				10	61	88	92	
Number		2	5					

### Survey Results - Ag Supply Dealers

Survey	(1=Yes,0=No)			- Secured Agricultural Loans -			
	-- Ag Loans \$ Volume	-- Number	Secure w/ Farm Prod	%	\$ Volume	# Loans	# Liens
1	0		0				
2	0		0				
3	0		0				
4	0		0				
5	0		0				
6	0		0				
7	0		0				
8	0		0				
9	0		0				
10	0		0				
11	0		0				
12	0		0				
13	0		0				
14	0		0				
15	25,000	55	0				
16	30,000	4	0				
17	75,000	10	1	5	60,000	5	5
18	75,000	4	0				
19	100,000	20	0				
20	150,000	20	0				
21	240,000	0	0				
22	250,000	100	1	10	25,000	6	
23	300,000	3	0				
24	500,000	80	0				
25	850,000	750	0				
26	6,600,000	50	1	5	300,000	25	12
27	8,000,000	400	1	25	4,000,000	200	50
28	10,000,000	325	0				
Total		1,821				236	67
Avg.	\$971,250	130			\$1,096,250	59	22
Y/N			4				
Avg. %				11			
Number							



(1=Yes,0=No)

----- Loans Filed -----

Survey	Second Security	%	\$ Volume	File w/ SCC	Farm Prod	Grain Crops	Cust. Juris	Out of State	Currently Notify
1	0			0					0
2	0			0					0
3	0			0					0
4	0			0					0
5	0			0					0
6	0			1	1	1			1
7	0			0					0
8	0			0					0
9	0			0					0
10	0			0					0
11	0			0					0
12	0			0					0
13	0			0					0
14	0			0					0
15	0			0					0
16	0			0					1
17	1	10	50,000	0					1
18	0			0					0
19	0			0					0
20	1	100	150,000	0					0
21	0			0					0
22	1	20	50,000	0					0
23	1	33	100,000	1	1	1	0	0	1
24	0			0					0
25	0			0					0
26	0			0					0
27	1	5	200,000	1	1	1	1	0	1
28	1	75		0					0
Total									
Avg.			\$110,000						
Y/N	6			3					5
Avg. %		41							
Number					3	3	1	0	

Survey	Number	-- Pre-Notify --			(1=Yes,0=No)			Change Policy
		Farm Loans	All Loans	%	----- Payment Made ----- Directly	Jointly	Borrower	
1							0	
2							0	
3							0	
4							0	
5							0	
6		1				100	0	
7							0	
8							0	
9							0	
10							0	
11							0	
12							0	
13							0	
14							0	
15							0	
16	0	0	0				0	
17		0	0	100	80	20	0	
18							1	
19							0	
20							1	
21							0	
22							1	
23	4	1	0			100	0	
24							1	
25							0	
26						100	1	
27	100	0	1	75		100	1	
28						100	1	
Total	104							
Avg.	35							
Y/N							7	
Avg. %				88	80	87		
Number		2	1					

Survey Results - Farm Credit Assoc.

Survey	-- Ag Loans --		(1=Yes,0=No)		- Secured Agricultural Loans -		
	\$ Volume	Number	Secure w/ Farm Prod	%	\$ Volume	# Loans	# Liens
1	0		0				
2	8,590,317	317	1	39	3,373,000	30	30
3	12,900,000	320	1	75	11,600,000	230	260
4	25,600,000	1,224	1	30	10,000,000	370	370
5	190,000,000	3,200	1	10	20,000,000	300	300
Total		5,061				930	960
Avg.	\$47,418,063	1265			\$11,243,250	233	240
Y/N			4				
Avg. %				39			
Number							

(1=Yes,0=No)

Survey	Second Security	%	\$ Volume	----- Loans Filed -----						
				File w/ SCC	Farm Prod	Grain Crops	Cust. Juris	Out of State	Currently Notify	
1	0			1	0	0	1	1	1	
2	1	57	3,080,000	1	0	1	0		0	
3	1	25	8,000,000	1	0	1	0	0	1	
4	1	75	7,500,000	1	0	0	0	0	1	
5	1	50	10,000,000	1	0	0	0	0	0	
Total										
Avg.			\$7,145,000							
Y/N		4		5		3				
Avg. %		52								
Number					0	2	1	1		

Survey	Number	-- Pre-Notify --			(1=Yes,0=No)			Change Policy
		Farm Loans	All Loans	%	----- Payment Made -----	----- Borrower -----		
					Directly	Jointly		
1	11	0	1	50		100		1
2						5	95	1
3	1	0	0	0	0	1	99	1
4	3	0	0	1		1	99	1
5						2		1
Total	15							
Avg.	5							
Y/N								5
Avg. %				17	0	22	98	
Number		0	1					

APPENDIX 3

3 SENATE BILL NO. .... HOUSE BILL NO. ....

4 A BILL to amend and reenact § 8.9-307 of the Code of  
5 Virginia, relating to the sale of secured farm  
6 products; penalties.

7

8 Be it enacted by the General Assembly of Virginia:

9 1. That § 8.9-307 of the Code of Virginia is amended and  
10 reenacted as follows:

11 § 8.9-307. Protection of buyers of goods;  
12 penalties.--(1) Except as otherwise provided by subsection  
13 (12) of this section, a buyer in ordinary course of business  
14 (subsection (9) of § 8.1-201) takes free of a security  
15 interest created by his seller even though the security  
16 interest is perfected and even though the buyer knows of its  
17 existence.

18 (2) In the case of consumer goods, a buyer takes free  
19 of a security interest even though perfected if he buys  
20 without knowledge of the security interest, for value and  
21 for his own personal, family or household purposes unless  
22 prior to the purchase the secured party has filed a  
23 financing statement covering such goods.

24 (3) A buyer other than a buyer in ordinary course of  
25 business (subsection (1) of this section) takes free of a  
26 security interest to the extent that it secures future  
27 advances made after the secured party acquires knowledge of

1 the purchase, or more than forty-five days after the  
2 purchase, whichever first occurs, unless made pursuant to a  
3 commitment entered into without knowledge of the purchase  
4 and before the expiration of the forty-five day period.

5 (4) Subsections (5) through (12) shall apply in the  
6 case of a person buying farm products from a person engaged  
7 in farming operations.

8 (5) If requested by the secured party, a debtor engaged  
9 in farming operations who gives a security interest in farm  
10 products shall provide to the secured party a written list  
11 identifying potential buyers and points of delivery of the  
12 farm products. If a potential buyer has more than one point  
13 of delivery, each additional point of delivery shall be  
14 counted as a potential buyer.

15 (6) A debtor engaged in farming operations who provides  
16 a written list of potential buyers to a secured party  
17 pursuant to subsection (5) shall not sell farm products that  
18 secure the debt to a buyer who is not identified on the list  
19 without the prior written consent of the secured party. A  
20 person who knowingly or intentionally violates this  
21 subsection is guilty of a Class 6 felony. If appropriate  
22 given the facts and circumstances of the case, the court  
23 shall place the person on probation upon the condition that  
24 restitution be made to the secured party. Payment of, or  
25 application of the proceeds to, the debt upon which the  
26 security interest is based shall be an absolute defense to a  
27 prosecution under this subsection if the payment or  
28 application is made prior to commencement of prosecution.

1       (7) A secured party who is provided with a written list  
2 of potential buyers pursuant to subsection (5) may notify  
3 buyers identified on the list of the security interest as  
4 provided in this subsection. A secured party shall not  
5 notify a person not identified on the list, except that the  
6 secured party may notify a buyer concerning whom the secured  
7 party has given prior written consent pursuant to subsection  
8 (6) or to whom the secured party has reasonable cause to  
9 believe the debtor is about to sell the farm products. A  
10 notice provided pursuant to this subsection shall be in  
11 writing, and shall be mailed by certified mail, return  
12 receipt requested, or delivered by another method by which  
13 receipt can be verified. The notice may be in a form agreed  
14 upon in writing by the buyer and the secured party, but in  
15 absence of such an agreement the notice shall be an original  
16 financing statement or a carbon, photographic, or other  
17 reproduction of an original that is effective under §  
18 8.9-402, or a statement that contains all of the following:  
19       (a) the full name and address of the debtor;  
20       (b) the full name and address of the secured party;  
21       (c) a description of the collateral;  
22       (d) the date and location of the filing of the  
23 financing statement; and  
24       (e) the date and signature of the secured party.  
25       (8) If the debt that is the basis of the security  
26 interest is satisfied, the secured party shall notify in  
27 writing each potential buyer to whom the secured party sent  
28 notice under subsection (7). The notice may be given within



1 a time period agreed upon in writing by the buyer and the  
2 secured party, but in absence of such an agreement the  
3 notice shall be given within eleven days after the debt is  
4 satisfied.

5 (9) A secured party who knowingly or intentionally  
6 gives false or misleading information in a notice provided  
7 pursuant to subsection (7) is guilty of a Class 2  
8 misdemeanor:

9 (10) A buyer of farm products who receives notice  
10 pursuant to subsection (7) of a security interest in the  
11 farm products shall make payment for the farm products by  
12 check or other instrument made payable to the seller and the  
13 secured party jointly, except that payment may be made  
14 directly to the secured party if authorized in writing by  
15 the seller. This subsection shall not apply to any payment  
16 or partial payment made before notice under subsection (7)  
17 has been received by the buyer. A buyer of farm products  
18 who is subject to the provisions of this section and fails  
19 to make the check payable jointly shall take such farm  
20 products subject to the security interest created by his  
21 seller.

22 (11) As used in subsections (4) through (10), "person  
23 buying farm products " or "buyer" also includes a commission  
24 merchant or selling agent who sells farm products in the  
25 ordinary course of business for a person engaged in farming  
26 operations.

27 (12) A buyer in the ordinary course of business who  
28 receives notice pursuant to subsection (7), who buys farm

1 products from a person engaged in farming operations, and  
2 who withholds all or part of the proceeds of the sale from  
3 the seller in order to satisfy a debt owed by the seller to  
4 the buyer, takes subject to a security interest in those  
5 farm products created by the seller, unless the debt owed by  
6 the seller to the buyer was secured by a prior perfected  
7 security interest. For purposes of this subsection, "debt"  
8 does not include the cost of harvesting; processing,  
9 including packaging, freezing, canning, and drying; storing;  
10 or marketing the farm products, or transporting the farm  
11 products to market.

12

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APPENDIX 4

1. Page 1, lines 12 and 13: Conditions the "farm products" buyer taking free and clear of liens on his adherence to the prenotification system established in new paragraphs (4) through (12). As of December 23, 1986, due to legislation passed at the 1986 Session (S.B 259) a buyer of farm products are to be treated as any other buyer in the ordinary course of business, that is, he takes free and clear of liens created by his seller. This amendment conditions that entitlement to an adherence to the prenotification system being established by the bill.
2. Page 2, lines 5 through 7: Makes prenotice system applicable to persons buying only from those whose business is in farming operations or who works for such a person.
3. Page 2, lines 8 through 14: Requires seller or farmer to give list of potential buyers and points of delivery to lender or secured party.
4. Page 2, lines 15 through 28: Prohibits farmer from selling secured products to anyone not on the list unless lender consents. Makes it a Class 6 Felony ((a) 1 to 5 years or (b) in the discretion of court 12 months and \$1,000 fine, either or both). Allows offender to make restitution and be placed only on probation. Sets up as an absolute defense to prosecution, the payment of or application of proceeds to the debt.
5. Page 3, lines 1 through 24: Permits secured party to notify potential sellers on the list only, or a person to whom the secured party has given its consent to the farmer to sell, or someone of whom the secured party has reason to believe the farm is about to sell. This paragraph also provides a description of the contents of the notice and how it shall be delivered.
6. Page 3, lines 25 through 28 and Page 4, lines 1 through 4: Requires secured party to notify within 11 days those persons notified under preceding paragraph if debt is satisfied unless an agreement prescribes a different period of time.
7. Page 4, lines 5 through 8: Makes it a Class 2 Misdemeanor (6 months and \$500, either or both) for secured party to knowingly give false information in the notice.
8. Page 4, lines 9 through 21: Requires buyer to make joint check when paying for farm products unless authorized by seller that check be made payable to the secured party. Restricts application of paragraph to sales after receipt of the notice. Mandates that a buyer who fails to adhere to this paragraph's provision takes the purchased farm products subject to the lien created by the seller.

9. Page 4, lines 22 through 26: Includes in the term "person buying farm products" or "buyer" as used in the statute, a commission merchant or selling agent.
10. Page 4, lines 27 and 28 and Page 5 lines 1 through 11: Prohibits the buyer from applying any of the proceeds to set off a preexisting debt unless that debt was secured by a prior perfected security interest. Eliminates from the term "debt" the cost of reaping the farm product or certain costs involved in selling it.

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APPENDIX 5

2 SENATE JOINT RESOLUTION NO.....

3 Continuing the joint subcommittee studying security  
4 interests in farm products.

5

6 WHEREAS, pursuant to Senate Joint Resolution No. 123 of  
7 1985, a joint subcommittee was established to study security  
8 interests in farm products; and

9 WHEREAS, pursuant to Senate Joint Resolution No. 44 of  
10 1986, the study by that joint subcommittee was continued to  
11 enable it to study the costs involved in instituting a  
12 central filing system or pre-notification system of existing  
13 liens on farm products and equipment; and

14 WHEREAS, the joint subcommittee has recommended that  
15 legislation be introduced and passed in the 1987 General  
16 Assembly to establish a pre-notification system; and

17 WHEREAS, the joint subcommittee and interest groups  
18 testifying before it felt that it would be in the best  
19 interest of the Commonwealth if the joint subcommittee's  
20 study were continued through 1987 in order that the  
21 subcommittee could monitor federal activity in this area and  
22 the progress of the pre-notification system; and

23 WHEREAS, it was felt that although the study should be  
24 continued, a meeting should be called only if pertinent  
25 federal legislation was enacted or the pre-notification  
26 system was not progressing as expected; now, therefore, be

1 it

2 RESOLVED by the Senate, the House of Delegates  
3 concurring, That the joint subcommittee studying security  
4 interests in farm products is continued to monitor federal  
5 legislation in this area and the progress of the  
6 pre-notification system, with the understanding that it will  
7 call a meeting only if federal legislation should warrant  
8 one or if the pre-notification system is not progressing as  
9 expected.

10 The membership of the joint subcommittee shall remain  
11 the same. In the event a vacancy should occur in the  
12 membership, such vacancy shall be filled by the same person  
13 or committee as provided in Senate Joint Resolution No. 123  
14 of 1985.

15 The joint subcommittee shall complete its work prior to  
16 December 1, 1987.

17 The indirect costs of this study are estimated to be  
18 \$5,860; the direct costs of this study shall not exceed  
19 \$3,600.

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