

COMMITTEE STATEMENT

LB 550

HEARING DATE: February 16, 1999

COMMITTEE ON: Banking, Commerce, and Insurance

TITLE: (Landis) Adopt uniform provisions relating to secured transactions

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8	Yes	Senators Landis, Tyson, Bourne, Bruning, Byars, Jensen, Kremer, Schmitt
	No	
	Present, not voting	
	Absent	

PROPOSERS	REPRESENTING
Bill Marienau	Introducer for Senator David Landis
John McCabe	National Conference of Commissioners on Uniform State Laws
Prof. Terry Anderson, Creighton Law School	NE State Bar Association
Prof. Catherine Wilson, UNL College of Law	Self
Robert Hallstrom	NE Bankers Association
Greg Lemon	Secretary of State's Office
Rick Wade	NE Cooperative Council
Prof. Harvey Perlman, UNL College of Law	NE Commission on Uniform State Laws
OPPOSERS	REPRESENTING
Alice Licht	NE Fertilizer & Ag-Chemical Institute
NEUTRAL	REPRESENTING

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 550 (Landis) would repeal current Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC) and replace it with an all-new Revised Article 9 as approved and recommended to the states by the National Conference of Commissioners on Uniform State Laws in 1998.

COMMITTEE STATEMENT

Article 9 provides a comprehensive statutory framework that governs secured transactions – transactions which involve the granting of credit secured by personal property and fixtures.

LB 550 would also enact conforming amendments in other articles of the UCC (Articles 1, 2, 2A, 4, 5, 7, and 8) as approved and recommended by the uniform law commissioners (sections 45 to 65) as part of their promulgation of Revised Article 9. The bill would also enact conforming amendments, generally in the nature of internal reference changes, in various statutes, including , of note, particular statutory liens: artisan’s liens (sections 11 and 12); thresher’s liens (sections 14 and 15); veterinarian’s liens (sections 16 and 17); petroleum products liens (sections 18 to 20); federal liens (sections 21 and 22); fertilizer and agricultural chemical liens (sections 23 to 25); seed or electrical power and energy liens (sections 26 to 28); agricultural production liens (sections 29 and 30); master lien list (section 31); agister’s liens and feed or feed ingredients liens (sections 33 to 35); and state tax liens (section 41).

The bill, section by section;

Sections 1 to 10. would amend sections 23-1517, 23-1527, 25-205, 25-21,188.01, 35-105, 36-709, 37-1282, 37-1290, 45-184, and 48-657 to make technical changes and harmonize provisions;

Sections 11 and 12. would amend sections 52-203 and 52-204 of the artisan’s lien statutes to make technical changes and harmonize provisions;

Section 13. would amend section 52-303 to harmonize provisions;

Sections 14 and 15. would amend sections 52-501 and 52-504 of the thresher’s lien statutes to make technical changes and harmonize provisions;

Sections 16 and 17 would amend sections 52-701 and 52-702 of the veterinarian’s lien statutes to make technical changes and harmonize provisions;

Sections 18 to 20. would amend sections 52-902, 52-903, and 52-905 of the petroleum products lien statutes to make technical changes and harmonize provisions;

Sections 21 and 22. would amend sections 52-1003 and 52-1004 of the Federal Lien Registration Act to make technical changes and harmonize provisions;

Sections 23 to 25. would amend sections 52-1102 to 52-1104 of the fertilizer and agricultural chemical lien statutes to make technical changes and harmonize provisions;

COMMITTEE STATEMENT

Sections 26 to 28. would amend sections 52-1202, 52-1203, and 52-1205 of the seed or electrical power and energy lien statutes to make technical changes and harmonize provisions;

Sections 29 and 30. would amend sections 52-1407 and 52-1409 of the agricultural production lien statutes to make technical changes and harmonize provisions;

Section 31. would amend section 52-1601 of the master lien list statutes to harmonize provisions;

Section 32. would amend section 52-1801 to harmonize provisions;

Sections 33 to 35. would amend sections 54-201, 54-208, and 54-209 of the agister lien and feed or feed ingredients lien statutes to make technical changes and harmonize provisions;

Sections 36 to 40. would amend sections 57-812, 60-110, 60-1419, 76-1102, and 76-1902 to make technical changes and harmonize provisions;

Section 41. would amend section 77-3903 of the Uniform State Tax Lien Registration and Enforcement Act to make technical changes and harmonize provisions;

Sections 42 to 44. would amend sections 84-1205, 84-1205.02, and 87-707 to make technical changes and harmonize provisions;

UCC ARTICLE 1 (General Provisions)

Sections 45 to 47. would amend UCC sections 1-105, 1-201, and 1-206 to adopt conforming amendments approved and recommended by the uniform law commissioners;

UCC ARTICLE 2 (Sales)

Sections 48 to 52. would amend UCC sections 2-103, 2-210, 2-326, 2-502, and 2-716 to adopt conforming amendments approved and recommended by the uniform law commissioners;

UCC ARTICLE 2A (Leases)

Sections 53 to 56. would amend UCC sections 2A-103, 2A-303, 2A-307, and 2A-309 to adopt conforming amendments approved and recommended by the uniform law commissioners;

UCC ARTICLE 4 (Bank Deposits and Collections)

Section 57. would amend UCC section 4-210 to adopt conforming amendments approved and recommended by the uniform law commissioners;

COMMITTEE STATEMENT

UCC ARTICLE 5 (Letters of Credit)

Section 58. would amend UCC section 5-118 to adopt conforming amendments approved and recommended by the uniform law commissioners;

UCC ARTICLE 7 (Documents of Title)

Section 59. would amend UCC section 7-503 to adopt conforming amendments approved and recommended by the uniform law commissioners;

UCC ARTICLE 8 (Investment Securities)

Section 60 to 65. would amend UCC sections 8-103, 8-106, 8-110, 8-301, 8-302, and 8-510 to adopt conforming amendments approved and recommended by the uniform law commissioners;

NEW UCC ARTICLE 9 (Secured Transactions)

Part 1

General Provisions

- Section 66. would enact UCC section 9-101. Short title;
- Section 67. would enact UCC section 9-102. Definitions and index of definitions;
- Section 68. would enact UCC section 9-103. Purchase-money security interest; application of payments; burden of establishing;
- Section 69. would enact UCC section 9-104. Control of deposit account;
- Section 70. would enact UCC section 9-105. Control of electronic chattel paper;
- Section 71. would enact UCC section 9-106. Control of investment property;
- Section 72. would enact UCC section 9-107. Control of letter-of credit right;
- Section 73. would enact UCC section 9-108. Sufficiency of description;
- Section 74. would enact UCC section 9-109. Scope;
- Section 75. would enact UCC section 9-110. Security interests arising under article 2 or 2A;

Part 2

Effectiveness of security agreement;

Attachment of security interest;

Rights of parties to security agreement

Section 76. would enact UCC section 9-201. General effectiveness of security agreement;

COMMITTEE STATEMENT

Section 77. would enact UCC section 9-202. Title to collateral immaterial;

Section 78. would enact UCC section 9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites;

Section 79. would enact UCC section 9-204. After-acquired property; future advances;

Section 80. would enact UCC section 9-205. Use or disposition of collateral permissible;

Section 81. would enact UCC section 9-206. Security interest arising in purchase or delivery of financial asset;

Section 82. would enact UCC section 9-207. Rights and duties of secured party having possession or control of collateral;

Section 83. would enact UCC section 9-208. Additional duties of secured party having control of collateral;

Section 84. would enact UCC section 9-209. Duties of secured party if account debtor has been notified of assignment;

Section 85. would enact UCC section 9-210. Request for accounting; request regarding list of collateral or statement of account;

Part 3

Perfection and priority

Section 86. would enact UCC section 9-301. Law governing perfection and priority of security interests;

Section 87. would enact UCC section 9-302. Law governing perfection and priority of agricultural liens;

Section 88. would enact UCC section 9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title;

Section 89. would enact UCC section 9-304. Law governing perfection and priority of security interests in deposit accounts;

Section 90. would enact UCC section 9-305. Law governing perfection and priority of security interests in investment property;

COMMITTEE STATEMENT

Section 91. would enact UCC section 9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

Section 92. would enact UCC section 9-307. Location of debtor;

Section 93. would enact UCC section 9-308. When security interest or agricultural lien is perfected; continuity of perfection;

Section 94. would enact UCC section 9-309. Security interest perfected upon attachment;

Section 95. would enact UCC section 9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply;

Section 96. would enact UCC section 9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties;

Section 97. would enact UCC section 9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession;

Section 98. would enact UCC section 9-313. When possession by or delivery to secured party perfects security interest without filing;

Section 99. would enact UCC section 9-314. Perfection by control;

Section 100. would enact UCC section 9-315. Secured party's rights on disposition of collateral and in proceeds;

Section 101. would enact UCC section 9-316. Continued perfection of security interest following change in governing law;

Section 102. would enact UCC Section 9-317. Interests that take priority over or take free of unperfected security interest or agricultural lien;

Section 103. would enact UCC section 9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers;

Section 104. would enact UCC section 9-319. Rights and title of consignee with respect to creditors and purchasers;

COMMITTEE STATEMENT

Section 105. would enact UCC section 9-320. Buyer of goods;

Section 106. would enact UCC section 9-321. Licensee of general intangible and lessee of goods in ordinary course of business;

Section 107. would enact UCC section 9-322. Priorities among conflicting security interests in and agricultural liens on same collateral;

Section 108. would enact UCC section 9-323. Future advances;

Section 109. would enact UCC section 9-324. Priority of purchase–money security interests;

Section 110. would enact UCC section 9-325. Priority of security interests in transferred collateral;

Section 111. would enact UCC section 9-326. Priority of security interests created by new debtor;

Section 112. would enact UCC section 9-327. Priority of security interests in deposit account;

Section 113. would enact UCC section 9-328. Priority of security interests in investment property;

Section 114. would enact UCC section 9-329. Priority of security interests in letter-of-credit right;

Section 115. would enact UCC section 9-330. Priority of purchaser of chattel paper or instrument;

Section 116. would enact UCC section 9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article 8;

Section 117. would enact UCC section 9-332. Transfer of money; transfer of funds from deposit account;

Section 118. would enact UCC section 9-333. Priority of certain liens arising by operation of law;

Section 119. would enact UCC section 9-334. Priority of security interests in fixtures and crops;

COMMITTEE STATEMENT

Section 120. would enact UCC section 9-335. Accessions;

Section 121. would enact UCC section 9-336. Commingled goods;

Section 122. would enact UCC section 9-337. Priority of security interests in goods covered by certificate of title;

Section 123. would enact UCC section 9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information;

Section 124. would enact UCC section 9-339. Priority subject to subordination;

Section 125. would enact UCC section 9-340. Effectiveness of right of recoupment or set-off against deposit account;

Section 126. would enact UCC section 9-341. Bank's rights and duties with respect to deposit account;

Section 127. would enact UCC section 9-342. Bank's right to refuse to enter into or disclose existence of control agreement;

Part 4

Rights of third parties

Section 128. would enact UCC section 9-401. Alienability of debtor's rights;

Section 129. would enact UCC section 9-402. Secured party not obligated on contract of debtor or in tort;

Section 130. would enact UCC section 9-403. Agreement not to assert defenses against assignee;

Section 131. would enact UCC section 9-404. Rights acquired by assignee; claims and defenses against assignee;

Section 132. would enact UCC section 9-405. Modification of assigned contract;

Section 133. would enact UCC section 9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignments of accounts, chattel paper, payment intangibles, and promissory notes ineffective;

Section 134. would enact UCC section 9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest;

COMMITTEE STATEMENT

Section 135. would enact UCC section 9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective;

Section 136. would enact UCC section 9-409. Restrictions on assignment of letter-of-credit rights ineffective;

Part 5

Filing

Section 137. would enact UCC section 9-501. Filing office;

Section 138. would enact UCC section 9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement;

Section 139. would enact UCC section 9-503. Name of debtor and secured party.

Section 140. would enact UCC section 9-504. Indication of collateral;

Section 141. would enact UCC section 9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions;

Section 142. would enact UCC section 9-506. Effect of errors and omissions;

Section 143. would enact UCC section 9-507. Effect of certain events on effectiveness of financing statement;

Section 144. would enact UCC section 9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement;

Section 145. would enact UCC section 9-509. Persons entitled to file a record;

Section 146. would enact UCC section 9-510. Effectiveness of filed record;

Section 147. would enact UCC section 9-511. Secured party of record;

Section 148. would enact UCC section 9-512. Amendment of financing statement;

Section 149. would enact UCC section 9-513. Termination statement;

Section 150. would enact UCC section 9-514. Assignment of powers of secured party of record;

COMMITTEE STATEMENT

Section 151. would enact UCC section 9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement;

Section 152. would enact UCC section 9-516. What constitutes filing; effectiveness of filing;

Section 153. would enact UCC section 9-517. Effect of indexing errors;

Section 154. would enact UCC section 9-518. Claim concerning inaccurate or wrongfully filed record;

Section 155. would enact UCC section 9-519. Numbering, maintaining, and indexing records; communicating information provided in records;

Section 156. would enact UCC section 9-520. Acceptance and refusal to accept record;

Section 157. would enact UCC section 9-521. Uniform form of written financing statement and amendment;

Section 158. would enact UCC section 9-522. Maintenance and destruction of records;

Section 159. would enact UCC section 9-523. Information from filing office; sale or license of records;

Section 160. would enact UCC section 9-524. Delay by filing office;

Section 161. would enact UCC section 9-525. Fees;

Section 162. would enact UCC section 9-526. Filing-office rules;

Section 163. would enact UCC section 9-527. Duty to report;

Section 164. would enact UCC section 9-528. Information provided by filing; telephone and written inquiries; filing officer; Secretary of State; duties; fees; liability; when;

Section 165. would enact UCC section 9-529. Secretary of State; implementation of centralized computer system;

Section 166. would enact UCC section 9-530. Filing information; Secretary of State; duties;

COMMITTEE STATEMENT

Section 167. would enact UCC section 9-531. Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees;

Part 6 Default

Section 168. would enact UCC section 9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes;

Section 169. would enact UCC section 9-602. Waiver and variance of rights and duties;

Section 170. would enact UCC section 9-603. Agreement on standards concerning rights and duties;

Section 171. would enact UCC section 9-604. Procedure if security agreement covers real property or fixtures;

Section 172. would enact UCC section 9-605. Unknown debtor or secondary obligor;

Section 173. would enact UCC section 9-606. Time of default for agricultural lien;

Section 174. would enact UCC section 9-607. Collection and enforcement by secured party;

Section 175. would enact UCC section 9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus;

Section 176. would enact UCC section 9-609. Secured party's right to take possession after default;

Section 177. would enact UCC section 9-610. Disposition of collateral after default;

Section 178. would enact UCC section 9-611. Notification before disposition of collateral;

Section 179. would enact UCC section 9-612. Timelines of notification before disposition of collateral;

Section 180. would enact UCC section 9-613. Contents and form of notification before disposition of collateral; general;

COMMITTEE STATEMENT

Section 181. would enact UCC section 9-614. Contents and form of notification before disposition of collateral; consumer-goods transaction;

Section 182. would enact UCC section 9-615. Application of proceeds of dispositions; liability for deficiency and right to surplus;

Section 183. would enact UCC section 9-616. Explanation of calculation of surplus or deficiency;

Section 184. would enact UCC section 9-617. Rights of transferee of collateral;

Section 185. would enact UCC section 9-618. Rights and duties of certain secondary obligors;

Section 186. would enact UCC section 9-619. Transfer of record or legal title;

Section 187. would enact UCC section 9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral;

Section 188. would enact UCC section 9-621. Notification of proposal to accept collateral;

Section 189. would enact UCC section 9-622. Effect of acceptance of collateral;

Section 190. would enact UCC section 9-623. Right to redeem collateral;

Section 191. would enact UCC section 9-624. Waiver;

Section 192. would enact UCC section 9-625. Remedies for secured party's failure to comply with article;

Section 193. would enact UCC section 9-626. Action in which deficiency or surplus is in issue;

Section 194. would enact UCC section 9-627. Determination of whether conduct was commercially reasonable;

Section 195. would enact UCC section 9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor;

Part 7 Transition

Section 196. would enact UCC section 9-701. Operative date;

COMMITTEE STATEMENT

Section 197. would enact UCC section 9-702. Savings clause;

Section 198. would enact UCC section 9-703. Security interest perfected before operative date;

Section 199. would enact UCC section 9-704. Security interest unperfected before operative date;

Section 200. would enact UCC section 9-705. Effectiveness of action taken before operative date;

Section 201. would enact UCC section 9-706. When initial financing statement suffices to continue effectiveness of financing statement;

Section 202. would enact UCC section 9-707. Persons entitled to file initial financing statement or continuation statement;

Section 203. would enact UCC section 9-708. Priority;

Section 204. would enact UCC section 9-709. Filings; statements filed prior to July 1, 1999; how treated;

Section 205. would provide duties for the Revisor of Statutes;

Section 206. would provide for an operative date of July 1, 2001;

Section 207. would provide repealers; and

Section 208. would provide for outright repeal of existing UCC Article 9.

EXPLANATION OF AMENDMENTS, IF ANY:

1. The committee amendments would strike subsection (h) from Revised UCC section 9-103 (page 118, lines 11 to 16) and would strike subsection (b) from Revised UCC section 9-626 (page 269, lines 4 to 9). In both cases, these subsections, as introduced, would provide that certain rules set out in their respective sections will apply only in non-consumer-goods transactions and that in consumer-goods transactions the rules instead will be left to the courts to develop by way of case law at some future date.

Section 9-103 addresses whether a security interest is a “purchase-money security interest” under Article 9, primarily for purposes of perfection and priority. This section embraces what case law under the current statutes refers to as the “dual-status” rule, under which a security interest may be a purchase-money security interest to some extent

COMMITTEE STATEMENT

and a non-purchase-money security interest to some extent. The committee amendments, by striking subsection (h), would apply this rule to consumer-goods transactions as well as to non-consumer-goods transactions.

Section 9-626 addresses situations in which the amount of a deficiency or surplus is in issue when the secured party has collected, enforced, disposed of, or accepted the collateral. This section contains special rules applicable to a determination of the amount of a deficiency or surplus. These rules apply to noncompliance in connection with collection, enforcement, disposition, or acceptance under this part of Revised Article 9. This section establishes a “rebuttable presumption” rule. The secured party need not prove compliance with the relevant provisions of this part of Revised Article 9 as part of its prima facie case. If, however, the debtor or secondary obligor raises the issue, then the secured party bears the burden of proving that the collection, enforcement, disposition, or acceptance complied. The committee amendments, by striking subsection (b), would apply this rule to consumer-goods transactions as well as to non-consumer-goods transactions.

In both of these cases the public policy rationale of the committee amendments is to apply known rules set out in Revised Article 9 to consumer-goods transactions as well as to non-consumer-goods transactions, and avoid handing away the responsibility to fashion these rules to the courts for some later day.

2. The committee amendments would correct a drafting error in Revised UCC section 9-505 (a) (page 203, line 18) by changing “licensee” to “licensor”.

3. The committee amendments would correct terminology in Revised UCC section 9-528 (page 231, line 7) by changing filing “officer” to filing “office”.

4. The committee amendments would amend Revised UCC section 9-625 (e) (4) (page 267, lines 2 and 3) by striking an erroneous internal reference.

5. The committee amendments would make technical corrections and additions to the repealer provisions (page 280, lines 12 and 15).

Senator David Landis