

LEGISLATIVE BILL 1035

Approved by the Governor March 09, 2016

Introduced by Williams, 36.

A BILL FOR AN ACT relating to the Secretary of State; to amend sections 52-1308, 52-1318, 52-1601, 52-1602, and 52-1603, Reissue Revised Statutes of Nebraska, and section 52-1312, Revised Statutes Supplement, 2015; to redefine farm product and to change provisions relating to the central filing system and the master lien list; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 52-1308, Reissue Revised Statutes of Nebraska, is amended to read:

52-1308 Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, llamas legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Sec. 2. Section 52-1312, Revised Statutes Supplement, 2015, is amended to read:

52-1312 The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other digital photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the approved unique identifier of the ~~individual~~ debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's approved unique identifier. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive or obtain lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive or obtain. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive or obtain quarterly lists described in subdivision (3) of this section. For each farm product list, the fee shall be an amount determined by the Secretary of State

~~not to exceed two hundred dollars per year. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.~~

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received or obtained by the registrants for a period of five years;

(5) ~~That the lists as identified pursuant to subdivision (4) of this section be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months as determined by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche.~~ The Secretary of State may provide for the distribution or publication of the lists on any other medium and establish reasonable charges for such lists, not to exceed the charges provided for in subdivision (4) of this section therefor. ~~The distribution shall be made by either certified or registered mail, return receipt requested.~~

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions or publications will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution or publication of lists, and the dates by which a registrant must complete a registration to receive or obtain the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed or published by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Sec. 3. Section 52-1318, Reissue Revised Statutes of Nebraska, is amended to read:

52-1318 (1) The State of Nebraska hereby adopts the federal rules and regulations ~~in effect on September 1, 2007,~~ adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

Sec. 4. Section 52-1601, Reissue Revised Statutes of Nebraska, is amended to read:

~~52-1601 (1) Prior to July 1, 2001, the Secretary of State shall compile lien information received by his or her office pursuant to subsection (2) of section 9-414, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.~~

~~The (2) On and after July 1, 2001,~~ the Secretary of State shall compile lien information relative to liens created under Chapter 52, articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2, received by his or her office pursuant to subsection (a) of section 9-530, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

Sec. 5. Section 52-1602, Reissue Revised Statutes of Nebraska, is amended to read:

52-1602 (1) The master lien list prescribed in section 52-1601 shall be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months on the date on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed or published. ~~Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1322. If mailed separately, the master lien list shall be mailed by either~~

~~certified or registered mail, return receipt requested.~~

(2) Any person may register with the Secretary of State to receive or obtain the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. ~~A Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive or obtain the quarterly master lien lists prescribed in section 52-1601. For each master lien list, the fee shall be an amount determined by the Secretary of State not to exceed two hundred dollars per year. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars.~~ The Secretary of State may provide for the distribution or publication of master lien lists on any other medium and may establish reasonable charges for such lists, not to exceed the charges provided for in this subsection therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next ~~quarterly~~ distribution or publication of the master lien list and the date by which a registrant shall complete a registration in order to receive or obtain the next ~~quarterly~~ master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Sec. 6. Section 52-1603, Reissue Revised Statutes of Nebraska, is amended to read:

52-1603 (1) A buyer of farm products who is registered to receive or obtain the master lien list as provided in section 52-1602 and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of any lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is not on the most recent master lien list received or obtained by the buyer pursuant to sections 52-1601 to 52-1605, except that such buyer shall take subject to any such lien if the lien was filed after the last date for inclusion in the most recent quarterly distribution or publication of the master lien list and if the buyer has received from the lienholder or seller written notice of the lien. For purposes of this subsection, the form of such written notice of the lien may be a copy of the lien filing. For purposes of this subsection, received or obtained by the buyer shall mean the first date upon which delivery or publication of the master lien list is attempted by a carrier or, in the case of electronic publication, the first date upon which the Secretary of State made the most current master lien list available electronically, and in all cases a buyer shall be presumed to have received or obtained the master lien list ten days after it was mailed or published by the Secretary of State.

(2) If a buyer buying property subject to a lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and the lienholder of any such lien for such property and if such lienholder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the lien specified to the extent of the amount of the check or instrument. Such waiver or release of the lien shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(3) Except as otherwise provided in the provisions of subsections (1) and (2) of this section, sections 52-1601 to 52-1605 shall not be interpreted or construed to alter liability of buyers of property subject to liens created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14.

Sec. 7. Original sections 52-1308, 52-1318, 52-1601, 52-1602, and 52-1603, Reissue Revised Statutes of Nebraska, and section 52-1312, Revised Statutes Supplement, 2015, are repealed.