

LEGISLATIVE BILL 101

Approved by the Governor April 6, 1987

Introduced by Rogers, 41

AN ACT relating to secured interests; to amend section 16, Legislative Bill 1, Eighty-ninth Legislature, Third Special Session, 1986, and sections 9-403 and 9-414, Uniform Commercial Code; to define terms; to provide for agricultural production input liens as prescribed; to provide for the effect of filing a bankruptcy petition as prescribed; to eliminate certain duties of the Secretary of State relating to furnishing information at certain times; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. As used in sections 1 to 11 of this act, unless the context otherwise requires:

(1) Agricultural chemical shall mean a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops;

(2) Feed shall mean a commercial feed, a feed ingredient, a mineral feed, a drug, an animal health product, or a customer-formula feed which is used for the feeding of livestock;

(3) Petroleum product shall mean motor fuel, oil, grease, propane, and special fuel which is used in the production of crops and livestock;

(4) Seed shall mean agricultural seed which is used in the production of crops;

(5) Electricity shall mean electrical energy which is used in the production of crops and livestock;

(6) Labor shall mean labor performed in the application, delivery, or preparation of a product defined in subdivisions (1) to (4) of this section;

(7) Person shall mean an individual, partnership, corporation, company, cooperative, society, or association;

(8) Lender shall mean a person in the business of lending money identified in a lien-notification statement;

(9) Letter of commitment shall mean a binding,

irrevocable, and unconditional agreement by a lender to honor drafts or other demands for payment upon the supplier presenting invoices signed by the purchaser or other proof of delivery; and

(10) Agricultural production input shall mean any agricultural chemical, feed, seed, petroleum product, electricity, or labor used in preparing the land for planting, cultivating, growing, producing, harvesting, drying, and storing crops or crop products or for feeding, producing, or delivering livestock.

Sec. 2. (1) A person supplying an agricultural production input may notify a lender of an agricultural production input lien by providing a lien-notification statement to the lender in an envelope marked IMPORTANT -- LEGAL NOTICE and sent by certified mail or another verifiable method.

(2) The lien-notification statement shall be in the form approved by the Secretary of State and shall disclose the following:

(a) The name and business address of any lender;

(b) The name, address, and signature of the supplier claiming the lien;

(c) A description and the date or anticipated date or dates of the transaction or transactions and the retail cost or anticipated costs of the agricultural production input;

(d) The name, residential address, and signature of the person to whom the agricultural production input was furnished or is to be furnished;

(e) The name and residential address of the owner and a description of the real estate sufficient to identify the same where the crops to which the lien attaches are growing or are to be grown or, if livestock, the name and residential address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock;

(f) A statement that the products and proceeds of the crops or livestock are covered by the agricultural input lien; and

(g) The social security or federal identification number of the person to whom the agricultural production input was furnished, if known.

Sec. 3. Within fifteen calendar days after receiving a lien-notification statement, the lender shall respond to the supplier with either:

(1) A letter of commitment for part or all of the amount in the lien-notification statement and, if the letter of commitment is for only part of the amount

in the lien-notification statement, then a copy of the partial commitment shall be sent to the person to whom the agricultural production input was furnished or is to be furnished; or

(2) A written refusal to issue a letter of commitment, and a copy of such refusal shall be sent to the person to whom the agricultural production input was furnished or is to be furnished.

Sec. 4. If the lender responds with a letter of commitment, the supplier may not obtain a lien for the amount stated in the letter of commitment. If the lender responds with a written refusal to issue a letter of commitment, the rights of the lender and the supplier are not affected by sections 1 to 11 of this act, and any prior perfected lien of the lender under the Uniform Commercial Code shall retain its established priority.

Sec. 5. If a lender does not respond to the supplier within fifteen calendar days after receiving the lien-notification statement:

(1) If the agricultural production input is feed for livestock, a supplier who furnishes the feed has an agricultural production input lien which has priority over any security interest of the lender for the unpaid retail cost of such feed. Such lien may not exceed the amount, if any, that the sales price of the livestock exceeds the greater of the fair market value of the livestock at the time the lien attaches or the acquisition price of the livestock; or

(2) For all other agricultural production input, a supplier who furnishes such agricultural production input has an agricultural production input lien which has priority over any security interest of the lender in the specified crops or their proceeds for the lesser of:

(a) The amount stated in the lien-notification statement; or

(b) The unpaid retail cost of the agricultural production input identified in the lien-notification statement.

Sec. 6. (1) The agricultural production input lien attaches to:

(a) The existing crops upon the land where a furnished agricultural chemical was applied or, if crops are not planted, the next production crop where a furnished agricultural chemical was applied within sixteen months following the last date on which the agricultural chemical was applied;

(b) The crops produced from furnished seed;

(c) The crops produced, harvested, or

processed using a furnished petroleum product or furnished electricity. If the crops are grown on leased land and the lease provides for payment in crops, the lien does not attach to the lessor's portion of the crops. The lien continues in crop products and proceeds, except the lien does not continue in grain after a cash sale; or

(d) All livestock consuming the feed and continues in livestock products and proceeds.

(2) An agricultural production input lien attaches when the agricultural production input is furnished by the supplier to the purchaser.

Sec. 7. (1) To perfect an agricultural production input lien, the lien shall attach and the supplier entitled to the lien shall file a lien-notification statement containing the information required in subsection (2) of section 2 of this act with the appropriate filing office for the filing of security interests in farm products within three months after the last date that the agricultural production input was furnished. Perfection occurs as of the date such lien-notification statement is filed.

(2) An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-312, Uniform Commercial Code.

(3) The filing officer shall enter the time of day and date of filing on the lien-notification statement and shall otherwise file it in the manner provided by section 9-403, Uniform Commercial Code, for a financing statement.

(4) The holder of an agricultural production input lien may enforce the lien in the manner provided in sections 9-501 to 9-507, Uniform Commercial Code. For purposes of enforcement of the lien, the lienholder is the secured party and the person for whom the agricultural production input was furnished is the debtor, and each has the respective rights and duties of a secured party and a debtor under sections 9-501 to 9-507, Uniform Commercial Code.

Sec. 8. An action to enforce an agricultural production input lien may be brought in the district court in a county where some part of the crop or livestock was located after the lien is perfected. A lien-notification statement may be amended, except for the amount demanded, by leave of the court in the furtherance of justice. An agricultural production input lien is extinguished if an action to enforce the lien is not brought within eighteen months after the

date the lien-notification statement is filed.

Sec. 9. When an agricultural production input lien is satisfied, the holder of the lien shall send the person to whom an agricultural production input was furnished a termination statement to the effect that he or she no longer claims an interest under the lien, which shall be identified by file number. A termination statement signed by a person other than the lienholder of record shall be accompanied by a separate written statement of assignment signed by the lienholder of record complying with subsection (2) of section 9-405, Uniform Commercial Code, including payment of the required fee. If the affected lienholder fails to send such a termination statement within fifteen days after the holder of such lien no longer claims an interest, he or she shall be liable to the person to whom the agricultural production input was furnished for one hundred dollars and any losses caused to such person by such failure.

On presentation to the filing officer of such a termination statement, he or she shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

Sec. 10. Nothing in sections 1 to 10 of this act shall be construed to negate or affect the provisions of Chapter 52, articles 2, 5, 7, 9, 11, and 12, and Chapter 54, article 2.

Sec. 11. The filing of a petition for relief under any bankruptcy law of the United States shall render any unperformed letter of commitment under sections 1 to 8 of this act null and void.

Sec. 12. That section 16, Legislative Bill 1, Eighty-ninth Legislature, Third Special Session, 1986, be amended to read as follows:

Sec. 16. (1) Oral and written inquiries regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours, except that until June 30, 1989, the Secretary of State shall provide information required by this section between the hours of 8:00 a.m. and 9:00 p.m., central time, Monday through Saturday, except on January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25. The fee for furnishing file information in writing shall be two dollars for each debtor name searched by the county clerk or Secretary of State. Written confirmation of an

oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

(2) The Secretary of State shall provide a system that assigns an identifying number to each inquiry made pursuant to subsection (1) of this section. Such number shall be given to the inquiring party at the time of the oral response and shall be included in the written confirmation. The Secretary of State and the county clerks shall maintain a record of inquiries made under this section identifying who made the inquiry, on whom the inquiry was made, and the date of the inquiry.

(3) The Secretary of State may provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation under subsection (1) of this section. When such a system is implemented and used, it shall have the same effect as an inquiry and confirmation under subsection (1) of this section.

(4) There shall be no fee charged for actual inspection of records of effective financing statements kept by the county clerk for the inspection of ten names or less per day by a single person. There shall be a uniform fee, in addition to any other charge for services payable to the county clerk, of one dollar per name for each inspection in excess of ten names per day by a single person.

(5) The county clerk and Secretary of State and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information as required by this section, except in cases of willful misconduct or gross negligence.

(6) Fees received pursuant to this section by county clerks shall be deposited in the county general fund. Fees received pursuant to this section by the Secretary of State shall be deposited in the Uniform Commercial Code Cash Fund.

Sec. 13. That section 9-403, Uniform Commercial Code, be amended to read as follows:
U9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; uniform fees; fee distribution.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of

five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsections (2) and (3) of section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(4) Except as provided in subsection (7) a filing officer shall mark each statement or other document with a consecutive file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements 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.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement, an amendment, a separate statement of assignment, a continuation statement, a partial

release, or a full release shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each name more than one required to be indexed shall be four dollars. The secured party may at his or her option show a trade name for any person and an extra uniform indexing fee of four dollars shall be paid with respect thereto. The uniform fee for filing and indexing and for stamping a copy furnished by a lienholder to show the date and place of filing of a lien or an amendment, a lien-notification statement, a separate statement of assignment, a certificate of discharge or subordination, a notice, a certificate of release or nonattachment, partial release, or full release of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, or 11, ~~or~~ Chapter 54, article 2, or sections 1 to 11 of this act shall be six dollars.

(6) If the debtor is a transmitting utility (subsection (5) of section 9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of section 9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he or she were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) The provisions of subsections (2) and (3) of this section shall not apply to mortgages or deeds of trust and instruments supplementary or amendatory thereto covering real estate as well as personal property where such property constitutes a portion of the property used in carrying on the business of a public utility or a gas or oil pipeline system and which are executed to secure the payment of money. The lien

of such mortgages or deeds of trust and amendments and supplements thereto shall continue in force and effect as to the personal property described therein, together with any interest of the mortgagor in real estate therein described even if the same has been on file five years or more. The instruments filed shall disclose that the mortgagor or grantor therein is then carrying on the business of a public utility or an oil or gas pipeline system or such fact shall be disclosed by an affidavit of the mortgagor or grantor to that effect filed for record with the county clerk.

(9) Any county clerk receiving a fee under subsection (5) of this section for filing any document from which information is required to be transmitted to the Secretary of State shall on a monthly basis forward two dollars of each four-dollar fee and three dollars of each six-dollar fee received pursuant to subsection (5) of this section to the Secretary of State for deposit in the Uniform Commercial Code Cash Fund.

(10) The Secretary of State shall deposit two dollars of each four-dollar fee and three dollars of each six-dollar fee received pursuant to subsection (5) of this section in the Uniform Commercial Code Cash Fund.

Sec. 14. That section 9-414, Uniform Commercial Code, be amended to read as follows: U9-414. Filing information; county clerk; register of deeds; Secretary of State; duties; fees.

(1) Upon receipt of a financing statement, an amendment to a financing statement, an assignment, a continuation statement, a termination statement, or a release of collateral, relating to (a) equipment used in farming operations, (b) farm products, including crops growing or to be grown, (c) farm products which become inventory of a person engaged in farming, or (d) accounts or general intangibles arising from or relating to the sale of farm products by a farmer, each county clerk shall on the day of receipt transmit to the Secretary of State the following document information:

- (i) Identification of the document and the county where the original document may be found;
- (ii) Document number;
- (iii) Name and address of the debtor or debtors;
- (iv) Name and address of the creditor or creditors;
- (v) Type or types of goods covered;
- (vi) Date and time of filing; and
- (vii) Social security or federal

identification number of the debtor or debtors, if available.

(2) Upon receipt of a lien or lien-notification statement filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, or 11, or Chapter 54, article 2, or sections 1 to 11 of this act or an amendment, release, or termination of such lien, the county clerk or register of deeds shall on the day of receipt transmit to the Secretary of State the following document information:

(a) Identification of the document and the county where the original document may be found;

(b) Document number;

(c) Name and address of the debtor or debtors;

(d) Name and address of the creditor or creditors;

(e) Type or types of goods covered;

(f) Date and time of filing; and

(g) Social security or federal identification number of the debtor or debtors, if known.

(3) For each filing, amendment, separate statement of assignment, certificate of discharge or subordination, notice, certificate of release or nonattachment, partial release, or full release of a lien or lien-notification statement filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, or 11, or Chapter 54, article 2, or sections 1 to 11 of this act, the county clerk or register of deeds shall charge such fees as are set forth in section 9-403. The retention and distribution of such funds shall be the same as is provided for fees under subsection (9) of section 9-403.

(4) Upon receipt of information transmitted pursuant to this section, the Secretary of State shall record and index the information so that on or before January 1, 1986, such information shall be available for the following types of inquiry: In person, written, and telephone and other electronic medium, including computers, except that information relative to security interests in crops growing or to be grown shall continue to be available for inquiry in the same manner as provided in section 9-411 before July 1, 1983.

Sec. 15. This act shall become operative on April 15, 1987.

Sec. 16. That original section 16, Legislative Bill 1, Eighty-ninth Legislature, Third Special Session, 1986, and sections 9-403 and 9-414, Uniform Commercial Code, are repealed.

Sec. 17. Since an emergency exists, this act shall be in full force and take effect, from and after