

LEGISLATIVE BILL 589

Approved by the Governor May 3, 1995

Introduced by Hall, 7

AN ACT relating to the statutes; to amend sections 2-955, 18-510, 21-20,130, 21-20,131, 28-1475, 31-331, 31-333, 35-517, and 46-197, Reissue Revised Statutes of Nebraska, section 49-765, Revised Statutes Supplement, 1994, and sections 2A-104, 9-203, 9-302, and 9-306, Uniform Commercial Code; to change and eliminate references to the Revised Statutes of Nebraska; to repeal a provision governing citation of the statutes; to harmonize provisions; to repeal the original sections; and to outright repeal section 49-803, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 2-955, Reissue Revised Statutes of Nebraska, is amended to read:

2-955. (1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

..... County Weed Control Authority
OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at:

.....
The noxious weed or weeds are The method of control recommended by the control authority is as follows:

.....
Other appropriate control methods are acceptable if approved by the county weed control superintendent.

Because the stage of growth of the noxious weed infestation on the above-specified property warrants immediate control, if such infestation remains uncontrolled after ten days from the date specified at the bottom of this notice, the control authority may enter upon such property for the purpose of taking the appropriate weed control measures. Costs for the control activities of the control authority shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

.....
Weed Control Superintendent
or (ii)

.....
Dated;

..... County Weed Control Authority
OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, 1943, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority,

including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at:

..... The noxious weed or weeds are The method of control recommended by the control authority is as follows:

..... Other appropriate control methods are acceptable if approved by the county weed control superintendent. IF, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of \$100.00 per day for each day of noncompliance beginning on, up to a maximum of fifteen days of noncompliance (maximum \$1,500).

..... Upon request to the control authority, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the control authority to challenge the existence of a noxious weed infestation on property owned by you at

..... Weed Control Superintendent

..... Dated.

In all counties having a population of three hundred thousand or more inhabitants, the control authority may dispense with the individual notices and may publish general notices if published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

(2) At the request of any owner served with an individual notice pursuant to subdivision (1)(b)(ii) of this section, the control authority shall hold an informal public hearing to allow such landowner an opportunity to be heard on the question of the existence of an uncontrolled noxious weed infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to the act and any notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation up to a total of one thousand five hundred dollars for fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax

foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority.

Sec. 2. Section 18-510, Reissue Revised Statutes of Nebraska, is amended to read:

18-510. The terms sewage system, sewerage system, and disposal plant or plants as used herein are defined to mean and include any system or works above or below ground which has for its purpose any or all of the following: The removal, discharge, conduction, carrying, treatment, purification, or disposal of the liquid and solid waste and night soil of a municipality. It is intended that ~~Chapter 18, article 5, Revised Statutes of Nebraska, 1943, as amended, sections 18-501 to 18-512~~ may be employed in connection with sewage projects which do not include the erection or enlargement of a sewage disposal plant.

Sec. 3. Section 21-20,130, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,130. All corporations organized under article 1, 2, or 3, Chapter 24, Compiled Statutes of Nebraska, 1929, as amended, and all corporations organized for profit under article 1, 4, 5, 7, 9, or 16, Chapter 21, Reissue Revised Statutes of Nebraska, 1943, as amended, or any law which ~~said~~ such articles may have replaced, shall operate under and be subject to the provisions of sections 21-2001 to 21-20,134 Nebraska Business Corporation Act and may operate under sections 21-2001 to 21-20,134 the act without any change of name. ~~No~~ PROVIDED, that no rights, privileges, and immunities vested or accrued by and under prior statutes repealed by sections 21-2001 to 21-20,134 the act, no suits pending, no rights of action conferred, and no duties, restrictions, liabilities, and penalties imposed or required by and under such prior statutes shall be impaired, diminished, or affected thereby.

Sec. 4. Section 21-20,131, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,131. Unless contrary to the provisions of some other statute, any corporation operating for financial profit and now organized under any law of this state other than article 1, 2, or 3, Chapter 24, Compiled Statutes of Nebraska, 1929, as amended, and other than article 1, 4, 5, 7, 9, or 16, Chapter 21, Reissue Revised Statutes of Nebraska, 1943, as amended, may become subject to the provisions of sections 21-2001 to 21-20,134 Nebraska Business Corporation Act by filing in the office of the Secretary of State such amendments to its articles of incorporation as shall make such articles comply with the requirements of sections 21-2052 and 21-2053, and by stating in ~~said~~ the amended articles that such corporation intends to become organized under sections 21-2001 to 21-20,134 the act. Certified copies of such amended articles of incorporation shall be filed with the county clerk of the county in which such corporation has its registered office and notice of such amendment shall be published in the manner provided for in section 21-20,125.

Sec. 5. Section 28-1475, Reissue Revised Statutes of Nebraska, is amended to read:

28-1475. The Revisor of Statutes shall place in the Appendix to the Reissue Revised Statutes of Nebraska, 1943, a list of all crimes which have been categorized pursuant to sections 28-105 and 28-106. An updated list shall be included in the annual supplement to the statutes.

Sec. 6. Section 31-331, Reissue Revised Statutes of Nebraska, is amended to read:

31-331. The levy of the tax when so fixed and determined, shall be evidenced and certified by the board of supervisors to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)
) ss.
County of)

To county clerk of ~~said~~ the county:
This is to certify that by virtue of the provisions and terms of sections 31-330 and 31-331, Reissue Revised Statutes of Nebraska, 1943, the board of supervisors of (here insert name of drainage district) including lands and property in the counties of in the State of Nebraska, have determined to, and do hereby levy the special tax provided for in the ~~said~~ such sections on the lands and property situated in your county, described in the following table, in which are (1) the names of owners of the lands and property as they appeared in the decree of the district court organizing the district, or as then shown by the deed records of the county, (2) the description of the lands and property opposite the names of the

owners, and (3) the amount of the tax levied on each tract of land or piece of property: (here insert table). The tax shall be collected and payable in annual installments, and the amount of each annual installment will be certified to you not later than September 1 in each year. Witness the signature of the chairman chairperson of the board of supervisors, attested by the seal of the district and the signature of the secretary of the board on this day of A.D. 19.....

.....
Secretary (Seal) Chairman
Secretary (Seal) Chairperson

The county clerk shall file the certificate in his or her office and record the same.

Sec. 7. Section 31-333, Reissue Revised Statutes of Nebraska, is amended to read:

31-333. The board of supervisors shall annually thereafter determine, order, and levy the amount of the installment of the tax hereinafter named which shall become due and be collected during the year at the same time that county taxes are due and collected, and in case bonds are issued, the amount of the interest which will accrue on such bonds shall be included and added to the tax. The annual installment and levy shall be evidenced and certified by the board, on or before September 10, to the county clerk of each county in which lands of the district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)
) ss.
County of)

To county clerk of the county:

This is to certify that by virtue of the provisions of sections 31-330 to 31-333, Reissue Revised Statutes of Nebraska, 1943, the board of supervisors of drainage district, including lands and property in the counties of in the State of Nebraska, have determined to and do hereby levy the annual installment of the total tax, heretofore certified to you under the direction of such sections, on the lands and property situated in your county described in the following table in which are (1) the names of the owners of such lands and properties as they appeared in the decree of the district court organizing the district or as shown by the certificate heretofore filed showing the total assessment against the property, (2) the description of the lands and property opposite the names of owners, and (3) the amount of the annual installment and interest levied on each tract of land or piece of property: (Here insert table). The installments of tax shall be collectible and payable the present year at the same time that county taxes are due and collected. Witness the signature of the chairperson of the board of supervisors and attested by the seal of the district and the signature of the secretary of the board this day of A.D. 19.....

.....
Secretary (Seal) Chairperson

The certificate shall be filed in the office of the clerk, and the annual installment of the total tax so certified shall be extended by the county clerk on the tax books of the county against the real property, right-of-way, road, or property to be benefited, situated in such drainage district, in the same manner that other taxes are extended on the tax books of the county in a column under the heading of Drainage Tax, and the taxes shall be collected by the treasurer of the county in which the real property is situated on which the tax is levied at the same time and in the same manner that the county taxes on such property are collected. The county clerk shall be allowed the same fees as he or she receives for like services in other cases.

Sec. 8. Section 35-517, Reissue Revised Statutes of Nebraska, is amended to read:

35-517. The county clerk of each county in which any rural fire protection district or districts have been organized under the provisions of Chapter 35, Revised Statutes of Nebraska, 1943, prior to April 28, 1949, shall forthwith designate a time and place for a hearing before the county board of such county and shall give due notice thereof in the manner prescribed by section 35-504. At the time and place so fixed the county board shall meet and all persons interested shall have opportunity to be heard. Thereupon, the county board shall consider the general rural fire protection policy for the county as a whole and shall determine the boundaries of said the district or districts, whether as existing prior to such determination or otherwise, and shall make a written order of such determination which shall be filed in the office of the county clerk. Thereafter, such district or districts shall be

deemed to be organized and operating under the provisions of sections 35-501 to 35-517 and 77-1603. Nothing herein contained shall impair, affect, or discharge any previously existing contract, obligation, lien, or charge of said the district or districts.

Sec. 9. Section 46-197, Reissue Revised Statutes of Nebraska, is amended to read:

46-197. The bonds shall be each of the denomination of not less than one hundred dollars, ~~nor~~ ~~or~~ more than five hundred dollars, ~~shall be~~ negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. They shall be numbered consecutively as issued and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president and secretary. The bonds shall express on their face that they were issued by the authority of Chapter 46, article 1, ~~Reissue Revised Statutes of Nebraska, 1943,~~ entitled Irrigation Districts. Each bond shall be made payable at the given time for its entire amount, and the bonds shall be issued in series only, each series being payable at the expiration of a certain number of years, ~~as hereinbefore set forth.~~

Sec. 10. Section 49-765, Revised Statutes Supplement, 1994, is amended to read:

49-765. The Revisor of Statutes, when reissuing and bringing up to date the Reissue Revised Statutes of Nebraska, ~~1943,~~ shall incorporate in the reissued volumes all laws enacted by the Legislature since the volumes to be reissued were brought up to date. He or she shall make such corrections of clerical and typographical errors as may have been discovered since the last publications thereof. He or she shall also include therein annotations to all decisions of the Supreme Court, the Court of Appeals, and the federal courts construing the sections therein that have been rendered since the last publication thereof. The reissued volumes shall be made up, printed, and bound to correspond, as nearly as practicable, with the present reissued volumes of the Reissue Revised Statutes of Nebraska, ~~1943.~~

Sec. 11. Section 2A-104, Uniform Commercial Code, is amended to read:

U2A-104. Leases subject to other law.

(1) A lease, although subject to this article, is also subject to any applicable:

(a) certificate of title statute of this state (section 60-103 or 60-104, Reissue Revised Statutes of Nebraska); ~~1943);~~

(b) certificate of title statute of another jurisdiction (section 2A-105); or

(c) consumer protection statute of this state, or final consumer protection decision of a court of this state existing on September 6, 1991.

(2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

Sec. 12. Section 9-203, Uniform Commercial Code, is amended to read:

U9-203. Attachment and enforceability of security interest; proceeds, formal requisites.

(1) Subject to the provisions of section 4-210 on the security interest of a collecting bank, section 8-321 on security interests in securities, and section 9-113 on a security interest arising under the Article on Sales or the Article on Leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 9-306.

(4) A transaction, although subject to this article, is also subject to the Credit Union Act, the Nebraska Installment Sales Act, and sections

8-401 to 8-417.01, 8-815 to 8-829, and 45-114 to 45-158, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

(5) For the purposes of this section the debtor has no rights:

- (a) in crops until they are planted or otherwise become growing crops, or in the young of livestock until they are conceived; or
- (b) in fish until caught, in oil, gas, or minerals until they are extracted, or in timber until it is cut.

Sec. 13. Section 9-302, Uniform Commercial Code, is amended to read:

U9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 9-304 or in proceeds for a ten-day period under section 9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (section 4-210) or in securities (section 8-321) or arising under the Article on Sales or the Article on Leases (see section 9-113) or covered in subsection (3) of this section; or

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest;

(b) the following statute of this state: ~~section 60-110, Reissue Revised Statutes of Nebraska, 1943;~~ but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (part 4) apply to a security interest in that collateral created by him or her as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

Sec. 14. Section 9-306, Uniform Commercial Code, is amended to read:

U9-306. "Proceeds"; secured party's rights on disposition of collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash

proceeds". All other proceeds are "noncash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor. Authorization to sell, exchange, or otherwise dispose of farm products shall not be implied or otherwise result, nor shall a security interest in farm products be considered to be waived, modified, released, or terminated, from any course of conduct, course of performance, or course of dealing between the parties or by any trade usage in any case in which: (a) The secured party has filed an effective financing statement in accordance with the provisions of sections 52-1301 to 52-1321, Reissue Revised Statutes of Nebraska, 1943, or (b) the buyer of farm products has received notice from the secured party or the seller of farm products in accordance with the provisions of 7 U.S.C. 1631(e)(1)(A), unless the buyer has secured a waiver or release of the security interest specified in such effective financing statement or notice from the secured party.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Sec. 15. Original sections 2-955, 18-510, 21-20,130, 21-20,131, 28-1475, 31-331, 31-333, 35-517, and 46-197, Reissue Revised Statutes of Nebraska, section 49-765, Revised Statutes Supplement, 1994, and sections 2A-104, 9-203, 9-302, and 9-306, Uniform Commercial Code, are repealed.

Sec. 16. The following section is outright repealed: Section 49-803, Reissue Revised Statutes of Nebraska.