

LEGISLATIVE BILL 4

Approved by the Governor February 3, 2003

Introduced by Executive Board: Engel, 17, Chairperson

AN ACT relating to liens; to amend sections 52-1302, 52-1313, 52-1318, and 52-1602, Reissue Revised Statutes of Nebraska, section 52-1307, Revised Statutes Supplement, 2002, and sections 9-315, 9-320, 9-529, and 9-531, Uniform Commercial Code; to correct internal references relating to the filing system for farm product security interests; to delete obsolete provisions; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 52-1302, Reissue Revised Statutes of Nebraska, is amended to read:

52-1302. For purposes of sections 52-1301 to ~~52-1321~~ 52-1322, unless the context otherwise requires, the definitions found in sections 52-1303 to 52-1311 shall be used.

Sec. 2. Section 52-1307, Revised Statutes Supplement, 2002, is amended to read:

52-1307. Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is signed and filed by the secured party in the office of the Secretary of State;
- (3) Is signed by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is used or produced or to be used or produced, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to ~~52-1321~~ 52-1322;
- (5) Shall be amended in writing, within three months, similarly signed and filed, to reflect material changes;
- (6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;
- (7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (8) Is accompanied by the requisite filing fee set by section 52-1313; and
- (9) Substantially complies with the requirements of this section even though it contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Any effective financing statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 3. Section 52-1313, Reissue Revised Statutes of Nebraska, is amended to read:

52-1313. (1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to ~~52-1321~~ 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall

be five dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

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

Sec. 4. 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 November 21, 1986, 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 ~~52-1321~~ 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 ~~52-1321~~ 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. 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 by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to ~~52-1321~~ 52-1322 are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to ~~52-1321~~ 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 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 ~~52-1321~~ 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 ~~52-1321~~ 52-1322 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. 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 of master lien lists on any other medium and may establish reasonable charges 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 of the master lien list and the date by which a registrant shall complete a registration in order to receive 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 9-315, Uniform Commercial Code, is amended to read: 9-315. Secured party's rights on disposition of collateral and in proceeds.

(a) (1) Except as otherwise provided in this article and in section 2-403(2):

(A) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(B) a security interest attaches to any identifiable proceeds of collateral.

(2) Authorization to sell, lease, license, 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 if such disposition is conditioned upon the secured party's receipt of proceeds or from any course of conduct, course of performance, or course of dealing between the parties or by any usage of trade 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~~ 52-1322, Reissue Revised Statutes of Nebraska, 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.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

(2) the twenty-first day after the security interest attaches to the proceeds.

Sec. 7. Section 9-320, Uniform Commercial Code, is amended to read: 9-320. Buyer of goods.

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer of farm products may be subject to a security interest under sections 52-1301 to ~~52-1321~~ 52-1322, Reissue Revised Statutes of Nebraska.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(f) No buyer shall be allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest.

Sec. 8. Section 9-529, Uniform Commercial Code, is amended to read: 9-529. Secretary of State; implementation of centralized computer system.

(a) The Secretary of State shall implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1). Such a system shall include the

entry of information into the computer system by the Secretary of State pursuant to section 9-530 and the dissemination of such information by a computer system or systems, telephone, mail, and such other means of communication as may be deemed appropriate. Such system shall be an interactive system.

(b) Computer access to information regarding obligations of debtors shall be made available twenty-four hours a day on every day of the year. The Secretary of State shall provide information from the system by telephone during normal business hours.

(c) The centralized computer system implemented and maintained pursuant to this section shall include information relative to effective financing statements as provided in sections 52-1301 to ~~52-1321~~ 52-1322, Reissue Revised Statutes of Nebraska, and statutory liens as provided in sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

Sec. 9. Section 9-531, Uniform Commercial Code, is amended to read: 9-531. Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees. ~~+ transfer of funds.~~

(a) There is created the Uniform Commercial Code Cash Fund. Except as otherwise specifically provided, all funds received pursuant to this part and sections 52-1312, 52-1313, 52-1316, and 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in the fund and used by the Secretary of State to carry out this part, sections 52-1301 to ~~52-1321~~ 52-1322, Reissue Revised Statutes of Nebraska, and sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund and the Records Management Cash Fund may be made at the direction of the Legislature.

(b)(1) The Secretary of State shall furnish each county clerk with computer terminal hardware, including a printer, compatible with the centralized computer system implemented and maintained pursuant to section 9-529, for inquiries and searches of information in such centralized computer system. The terminals shall be readily and reasonably available and accessible to members of the public for such inquiries and searches.

(2) The fees charged by county clerks for inquiries and other services regarding information in the centralized computer system shall be the same as set forth for filing offices in this part.

~~(c) On or before July 5, 2001, the State Treasurer shall transfer one hundred thirty thousand seven hundred twenty-five dollars from the Uniform Commercial Code Cash Fund to the Records Management Cash Fund. On or before July 5, 2002, the State Treasurer shall transfer forty-nine thousand four hundred dollars from the Uniform Commercial Code Cash Fund to the Records Management Cash Fund.~~

Sec. 10. Original sections 52-1302, 52-1313, 52-1318, and 52-1602, Reissue Revised Statutes of Nebraska, section 52-1307, Revised Statutes Supplement, 2002, and sections 9-315, 9-320, 9-529, and 9-531, Uniform Commercial Code, are repealed.