

LEGISLATIVE BILL 343

Approved by the Governor May 20, 1983

Introduced by DeCamp, 40; Remmers, 1; Carsten, 2; Sieck, 24; Vickers, 38; Clark, 47; Schmit, 23; Haberman, 44; L. Jonnson, 15; H. Peterson, 35

AN ACT relating to property interests; to amend section 25-205, Reissue Revised Statutes of Nebraska, 1943, and sections 9-307, 9-401, 9-403, 9-411, and 9-412, Uniform Commercial Code; to provide intent; to provide for a filing system as prescribed; to create a council and provide for its termination; to create a fund; to change provisions relating to actions to recover collateral; to change a provision relating to the protection of buyers of goods; to change the place of filing; to change and impose certain fees as prescribed; 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. It is the intent of the Legislature to create a readily available system of filing under the Uniform Commercial Code which will provide for original filings to be made in the office of the county clerk where the debtor resides when the collateral is:

- (1) Equipment used in farming operations;
- (2) Farm products, including, but not limited to, crops growing or to be grown;
- (3) Farm products which have become inventory of a person engaged in farming;
- (4) Accounts or general intangibles arising out of or relating to the sale of farm products by a person engaged in farming; or
- (5) Consumer goods.

The original filing in all other cases shall be in the office of the Secretary of State.

It is the intent of the Legislature that sufficient information relative to items described in subdivisions (1) to (4) of this section be transmitted

by the county clerk to the Secretary of State to permit determination of whether or not financing statements, assignments, and other Uniform Commercial Code documents have been filed and where they are located and that the information be readily accessible by various means of inquiry, including, but not limited to, in person, mail, and telephone and other electronic media including computers.

Sec. 2. (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 immediately transmit to the Secretary of State the following document information:

- (i) Identification of the document;
- (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 filed pursuant to Chapter 52, article 5, 7, 9, 10, or 11 or Chapter 54, article 2, or an amendment, release, or termination of such lien, the county clerk shall immediately transmit to the Secretary of State the following document information:

- (a) Identification of the document;
- (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 amendment, release, or termination of a lien filed pursuant to Chapter 52, article 5, 7, 9, 10, or 11 or Chapter 54, article 2, the county clerk shall charge the same fee as would be charged for a similar document filed under the Uniform Commercial Code. The retention and distribution of such funds shall be the same as is provided for fees under

subsection (9) of section 9-403, Uniform Commercial Code.

(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, 1985, 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 the operative date of this act.

Sec. 3. The Secretary of State shall develop and, not later than January 1, 1985, implement a centralized computer system for the accumulation and dissemination of information relative to financing statements and other necessary Uniform Commercial Code documents whenever the collateral is equipment used in farming operations, farm products, farm products which have become inventory of a person engaged in farming, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer. Such a system shall include the entry of information relative to notice of liens into the computer system by county clerks 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 designed as an interactive system.

Sec. 4. There is hereby created the Uniform Commercial Code Filing Council which may do all things necessary to carry out its duties pursuant to sections 5 and 6 of this act. The council shall consist of fourteen members including thirteen members appointed by the Governor as follows:

- (1) One person representing vendors of farm equipment;
- (2) Two persons representing state or federally chartered banks;
- (3) Two county clerks;
- (4) Two persons representing members of the federal farm credit system;
- (5) Two purchasers of agricultural products including one representing the interests of crop purchasers and one representing the interests of livestock purchasers;
- (6) Three persons engaged in the business of farming; and
- (7) One attorney licensed to practice in Nebraska.

The Secretary of State shall be a voting ex officio member of the council.

Sec. 5. The Governor shall appoint a chairperson from the membership of the Uniform Commercial Code Filing Council. The council shall be responsible for developing or recommending a system or systems to implement the provisions of sections 1 to 8 of this act and sections 9-401, 9-403, 9-411, and 9-412, Uniform Commercial Code, as well as recommended rules and regulations and any further statutory changes as may be necessary to implement such provisions.

Such system or systems shall be designed so that for liens arising under Chapter 52, articles 5, 7, 9, 10, and 11, and Chapter 54, article 2, information similar to that required by section 2 of this act may be transmitted and made available in the same manner as provided in sections 1 to 8 of this act for Uniform Commercial Code filings.

Estimates of the costs of such recommendations shall be made, including the costs of computer terminals, line costs, and other associated costs for each county. The council shall recommend a schedule of fees adequate to meet all such costs.

Sec. 6. The Uniform Commercial Code Filing Council shall from time to time advise the Legislature's Banking, Commerce and Insurance Committee of the progress of its work, and shall on or before November 15, 1983, advise the Secretary of State and such committee of its recommendations pursuant to section 5 of this act. The council shall then continue to monitor the implementation of sections 1 to 8 of this act and sections 9-401, 9-403, 9-411, and 9-412, Uniform Commercial Code, provide such assistance to the Secretary of State as is within the ability of the council, and periodically and upon the request of the Banking, Commerce and Insurance Committee, report to such committee.

Sec. 7. The Uniform Commercial Code Filing Council shall cease to exist on December 31, 1986.

Sec. 8. There is hereby created the Uniform Commercial Code Cash Fund. All funds received pursuant to section 9-403, Uniform Commercial Code, shall be placed in the fund and used by the Uniform Commercial Code Filing Council to carry out its duties pursuant to sections 5 and 6 of this act. On and after December 31, 1986, money in the fund shall be used by the Secretary of State to carry out sections 1 to 3 of this act and sections 9-401, 9-403, 9-411, and 9-412, Uniform Commercial Code.

Sec. 9. That section 25-205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-205. ~~As~~ (1) Except as provided in subsection (2) of this section, an action upon a specialty, or any agreement, contract, or promise in

writing, or foreign judgment, can only be brought within five years; PROVIDED, that no action at law or equity may be brought or maintained attacking the validity or enforceability of or to rescind or declare void and uncollectible any written contract entered into pursuant to, in compliance with, or in reliance on, a statute of the State of Nebraska which has been or hereafter is held to be unconstitutional by the Supreme Court of Nebraska where such holding is the basis for such action, unless such action be brought or maintained within one year from the effective date of such decision; or within one year from November 22, 1963, whichever is the latest in time; AND PROVIDED FURTHER, that the provisions hereof shall not operate to extend the time in which to bring any action or to revive any action now barred by reason of the operation of any previously existing limitation provision.

(2) An action to recover collateral (a) the possession and ownership of which a debtor has in any manner transferred to another person and (b) which was used as security for payment pursuant to an agreement, contract, or promise in writing which covers farm products as described in section 9-109, Uniform Commercial Code, or farm products which become inventory of a person engaged in farming, shall be brought within eighteen months from the date possession and ownership of such collateral was transferred.

Sec. 10. That section 9-307, Uniform Commercial Code, be amended to read as follows:
9-307. Protection of buyers of goods.

(1) A buyer in ordinary course of business (subsection (9) of section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his or her seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he or she buys without knowledge of the security interest, for value and for his or her own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase.

(4) A buyer who purchases farm products or a person who sells farm products for another for a fee or commission shall require that the seller identify the first security interest holder with regard to the farm

products being sold. If such seller is then paid the total purchase price by means of a check payable to such seller and the named first security interest holder and if the named first security interest holder authorizes the cashing of such check, the buyer of such farm products so purchased shall take free of any security interest. Any endorsement for payment made on such check shall not serve to establish or alter in any way security interest priorities under Nebraska law.

(5) Subsection (4) of this section shall terminate on September 1, 1987. In 1986 the Executive Board of the Legislature shall designate an appropriate committee of the Legislature to review the operation of subsection (4) of this section. The committee shall conduct such review and may propose legislation to amend or postpone the termination date of subsection (4) of this section if the committee deems such action appropriate.

Sec. 11. That section 9-401, Uniform Commercial Code, be amended to read as follows:
9-401. Place of filing; erroneous filing; removal of collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is (i) equipment used in farming operations, (ii) or farm products, including crops growing or to be grown, (iii) farm products which become inventory of a person engaged in farming, (iv) or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or (v) consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk in the county where the goods are kept or grown. 7 and in addition when the collateral is crops growing or to be grown, in the office of the Secretary of State.

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or when the financing statement is filed as a fixture filing (section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded.

(c) In all other cases, in the office of the Secretary of State.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement

against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in section 9-103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of section 9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. This filing constitutes a fixture filing (section 9-313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

Sec. 12. That section 9-403, Uniform Commercial Code, be amended to read as follows: 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; indexing 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 subsection (2) 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 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 shall be five dollars, except that the 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 for consumer goods and for all continuation statements or for a continuation statement shall be three dollars, plus in each case, if the financing statement is subject to subsection (5) of section 9-402, three dollars. The uniform fee for each name more than one required to be indexed shall be three dollars. The secured party may at his or her option show a trade name for any person and an extra uniform indexing fee of three dollars shall be paid with respect thereto.

(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 one dollar of each such fee 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 five dollar fee received by him or her pursuant to subsection (5) of this section in the Uniform Commercial Code Cash Fund.

Sec. 13. That section 9-411, Uniform Commercial Code, be amended to read as follows:
9-411. Information provided by filing; telephone and written inquiries; filing officer; duties; fees; liability; when.

(1) Telephone and written inquiries regarding information provided by the filing may shall be accepted and answered by the filing officer. Written inquiries shall be accepted and answered by the filing officer and, when when a filing party provides the filing officer with a postage paid addressed envelope and a copy of the filing, the filing officer shall note the time and date of filing on the copy and mail it in the envelope provided. The fee for furnishing file

information in writing shall be two dollars for each debtor or trade name searched by the filing officer. If the information request requires attestation by the filing officer, an additional fee of three dollars shall be assessed. The filing officer and his or her employees or agents are exempted 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 negligence.

(2) There shall be a uniform fee, payable to the office at which inquiry is made, for any inquiries regarding information provided by the filing. Such fee shall be one dollar per name and shall be in addition to any other charge for services.

(3) The Secretary of State shall, not later than January 1, 1985, provide twenty-four hour a day seven days a week service for inquiries made by telephone or other electronic media. The Secretary of State shall provide a printed copy of filing information requested for a fee of fifty cents per page.

Sec. 14. That section 9-412, Uniform Commercial Code, be amended to read as follows:
9-412. Filings; transferred to the office of Secretary of State; statements filed prior to September July 1, 1984 1983; how treated.

On September 7, 1984, all filings previously made in the office of the Public Service Commission pursuant to subsection (4) (a) of section 9-407, shall be transferred to the office of Secretary of State, and shall become of record in the office of Secretary of State. A filing which is made in the proper place in this state prior to September July 1, 1984 1983, continues to be effective even though under sections 9-401, and 9-410 to 9-412 the place of filing has been changed. The effectiveness of any financing statement or continuation statement filed prior to September July 1, 1984 1983, may be continued by a continuation statement or amended as permitted by the Uniform Commercial Code, except that if sections 9-401 and 9-410 to 9-412 require a filing in an office where there was no previous financing statement, a new financing statement meeting the requirements of 9-402, except as provided in this section, shall be filed in that office. Such new financing statement operating as a continuation statement may be filed within six months before the perfection of the security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It shall identify the original financing statement and any amendment or continuation thereof, state the office where and the date when each filing was made, and state the filing number thereof. 7 except that if sections 9-407, and 9-410 to 9-412 requires a filing in an

office where there was no previous financing statement, a new financing statement shall be filed in that office. Such new financing statement may be filed within six months before the perfection of the security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the original financing statement and any amendment or continuation thereof, state the office where and the date when each filing was made, and the filing number thereof.

Sec. 15. This act shall become operative on July 1, 1983.

Sec. 16. That original section 25-205, Reissue Revised Statutes of Nebraska, 1943, and sections 9-307, 9-401, 9-403, 9-411, and 9-412, Uniform Commercial Code, are repealed.

Sec. 17. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.