

LEGISLATIVE BILL 808

Approved by the Governor February 24, 1984

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Labeledz, 5; Clark,
47; Remmers, 1; Schmit, 23; Higgins, 9;
Beyer, 3; Haberman, 44

AN ACT relating to secured transactions; to amend sections 52-203, 52-501, 52-701, 52-902, 52-1004, and 52-1102, Reissue Revised Statutes of Nebraska, 1943, section 54-201, Revised Statutes Supplement, 1982, and sections 9-301, 9-312, 9-403, 9-411, 9-414, and 9-415, Uniform Commercial Code; to provide fees; to change times for filing; to change dates for implementation of certain systems; to provide duties; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 52-203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-203. Such lien shall be in force from and after the date it is filed as aforesaid, and shall be prior and paramount to all other liens upon such property except those previously filed in such office, and shall be treated in all respects as a secured transaction as provided in article 9, Uniform Commercial Code, and may be foreclosed as a secured transaction as provided in article 9, Uniform Commercial Code, except that ; Provided, such foreclosure proceedings shall be instituted within one year after the filing of such lien and the ; and provided further, such lien shall be subject to the rights of purchasers of the property against which the lien is filed, in cases where when the purchasers acquired the property prior to the filing of the lien without knowledge or notice of the rights of the persons performing the work or furnishing the material. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 2. That section 52-501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-501. (1) The owner or operator of any threshing machine or combine used in threshing, combining, or hulling grain or seed, (2) the owner or operator of any mechanical cornpicker or mechanical cornhusker used in picking or husking corn, and (3) the owner or operator of any cornsheller used in shelling corn; shall have and hold a lien upon such grain, seed, or corn which he or she shall

thresh, combine, hull, pick, husk, or shell with such machine or machines to secure the payment to him or her by the owner of such grain, seed, or corn of such charges for such threshing, combining, hulling, picking, husking, or shelling as may be agreed upon or, if no charges are agreed upon, for such charges as may be reasonable for such threshing, combining, hulling, picking, husking, or shelling. Such owner or operator of a threshing machine, combine, mechanical cornpicker, mechanical cornhusker, or cornsheller, so used in threshing, combining, hulling, picking, husking, or shelling grain, seed, or corn, shall file in the office of the county clerk of the county where such threshing, combining, hulling, picking, husking, or shelling was done a notice of such lien, which notice shall (1) (a) designate the name of the person for whom the threshing, combining, hulling, picking, husking, or shelling was done, (2) (b) the amount due for such services, (3) (c) the amount of grain, seed, or corn covered by the lien, (4) (d) the place where the grain, seed, or corn is located, and (5) (e) the date on which the threshing, combining, hulling, picking, husking, or shelling was done. Such notice shall be filed within thirty days after the threshing, combining, hulling, picking, husking, or shelling was done. In the event the party for whom the threshing, combining, hulling, picking, husking, or shelling was done desires to sell or deliver the grain, seed, or corn so threshed, picked, husked, hulled, shelled, or combined to a grain elevator, or to any other person, such party desiring to sell or deliver the grain, seed, or corn shall notify the consignee or purchaser that the threshing, combining, hulling, picking, husking, or shelling bill has not been paid, and the lien herein given on such grain, seed, or corn shall shift therefrom to the purchase price thereof in the hands of the purchaser or consignee above mentioned. In the event the grain, seed, or corn is sold or consigned with the consent or knowledge of the party entitled to a lien thereon, as provided herein, within thirty days after the date of such threshing, combining, hulling, picking, husking, or shelling, such lien shall not attach to the grain, seed, or corn or to the purchase price thereof unless the party entitled to the lien shall notify the purchaser in writing of the lien. The lien may be foreclosed in the manner and form provided for the foreclosure of secured transactions as provided in article 9, Uniform Commercial Code, except that ~~Provided~~, such foreclosure shall be instituted within thirty days after the filing of the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 3. That section 52-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:
52-701. Whenever any person shall procure,

contract with, or hire any person licensed to practice veterinary medicine and surgery, to treat, relieve, or in any way take care of any kind of livestock, such veterinarian shall have a first, paramount, and prior lien upon such livestock so treated by him for the contract price agreed upon, and in case no price has been agreed upon, for the reasonable value of his the services and any medicines or biologics furnished. The person entitled to a lien under the provisions of this section may foreclose the same in the manner provided by law for the foreclosing of secured transactions as provided in article 9, Uniform Commercial Code. Such veterinarian who wishes to use ~~avail himself of~~ the provisions of this section shall file with the clerk of the county in which such livestock was kept, within ninety days from the furnishing of his the services, a statement verified by affidavit, of his or her account and containing a correct description of the livestock ~~to~~ be charged with the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 4. That section 52-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-902. Within six months after the fuel or lubricant, referred to in section 52-901, has been furnished, the person selling such fuel or lubricant shall file with the clerk of the county in which the crop, referred to in section 52-901, is produced a verified notice of such lien, which notice shall show (1) the name and address of the person claiming the lien, (2) the name of the person to whom such fuel or lubricant has been furnished for use in farm machinery in the production of crops, (3) a description of the land upon which such crop or crops were grown, (4) the amount of fuel or lubricant furnished, and (5) the amount due for furnishing such products. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 5. That section 52-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-1004. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) For a tax lien on real estate, or on tangible or intangible personal property, the same as set forth in section 9-403, Uniform Commercial Code; one dollar;

(2) For a tax lien on tangible and intangible personal property, one dollar;

(3) For a certificate of discharge or subordination, ~~fifty cents~~ the same as set forth in section 9-403, Uniform Commercial Code; and

(4) For all other notices, including a certificate of release or nonattachment, one dollar the

same as set forth in section 9-403, Uniform Commercial Code.

The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

Sec. 6. That section 52-1102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

52-1102. Any lien under section 52-1101 shall be perfected by filing a notice of lien with the county clerk of the county where the land is located upon which the crops are growing or are to be planted. The notice of lien shall state (1) the name and address of the person to whom any product, machinery, or equipment was furnished or for whom work or labor was done, (2) the name and address of the person claiming the lien, (3) the last date upon which such product, machinery, or equipment was furnished or work or labor done under the contract, and (4) the legal description of the land upon which the crops are growing or are to be planted. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 7. That section 54-201, Revised Statutes Supplement, 1982, be amended to read as follows:

54-201. (1) When any person, firm, corporation, or partnership not provided for in subsection (2) of this section shall procure, contract with, or hire any other person to feed and take care of any kind of livestock, the person so procured, contracted with, or hired, shall have a first, paramount, and prior lien upon such property for the feed and care bestowed by him or her upon the same for the contract price agreed upon, and in case no price has been agreed upon, then for the reasonable value of such feed and care, provided as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. The person, firm, corporation, or partnership entitled to a lien under the provisions of this section may foreclose the same in the manner provided by law for foreclosure of secured transactions as provided in article 9 of the Uniform Commercial Code. Prior to removal of such livestock from his or her premises, the person, firm, corporation, or partnership entitled to a lien shall file in the office of the county clerk, in the county in which such livestock may be fed and kept, an affidavit describing the livestock, and setting forth the amount justly due for the feeding and keeping of the same. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

(2) When any person, firm, corporation, or partnership whose residence or principal place of business is located outside the State of Nebraska shall procure, contract with, or hire any other person, firm, corporation, or partnership within the State of Nebraska,

to feed and take care of any kind of livestock, the person so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such property for the feed and care bestowed by him or her upon the same for the contract price agreed upon, and in case no price has been agreed upon, then for the reasonable value of such feed and care. The person, firm, corporation, or partnership entitled to a lien under the provisions of this subsection may foreclose the same in the manner provided by law for the foreclosure of secured transactions as provided in article 9 of the Uniform Commercial Code. Prior to removal of such livestock from his or her premises, the person, firm, corporation, or partnership entitled to a lien shall file in the office of the county clerk, in the county in which such livestock may be fed and kept, an affidavit describing the livestock, and setting forth the amount justly due for the feeding and keeping of the same. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-403, Uniform Commercial Code.

Sec. 8. That section 9-301, Uniform Commercial Code, be amended to read as follows:

9-301. Persons who take priority over unperfected security interests; right of "lien creditor".

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he or she gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he or she gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty ~~ten~~ days after the debtor receives possession of the collateral, he or she takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment,

levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he or she becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Sec. 9. That section 9-312, Uniform Commercial Code, be amended to read as follows:

9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 9-103 on security interests related to other jurisdictions; section 9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of section 9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ~~ten~~ twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Sec. 10. 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; uniform fees; 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, an amendment, a separate statement of assignment, a continuation statement, a partial release, or a full release shall be five dollars. There shall be no fee for the filing of a termination statement. ~~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 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. 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 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, shall be five 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 or register of deeds

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 three dollar fee and two dollars of each five dollar fee received pursuant to subsection (5) of this section such fee to the Secretary of State for deposit in the Uniform Commercial Code Cash Fund.

(10) The Secretary of State shall deposit one dollar of each three dollar fee and 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. 11. 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; Secretary of State; duties; fees; liability; when.

(1) Telephone and written inquiries regarding information provided by the filing shall be accepted and answered by the filing officer. 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 on or before January 1, 1986, 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. 12. That section 9-414, Uniform Commercial Code, be amended to read as follows:

9-414. 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; (e) 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 described in section 9-401, each county clerk or register of deeds shall immediately 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 filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, or 11 or Chapter 54, article 2, or an amendment, release, or termination of such lien, the county clerk or register of deeds shall immediately 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 amendment, release, or termination of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, or 11 or Chapter 54, article 2, the county clerk or register of deeds shall charge the same fee such fees as are set forth in section 9-403, 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 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. 13. That section 9-415, Uniform Commercial Code, be amended to read as follows:
9-415. Secretary of State; ~~develop~~ implement of centralized computer system.

The Secretary of State shall, ~~develop and, not later than~~ on or before January 1, 1985 1986, implement a centralized computer system as developed or recommended by the Uniform Commercial Code Filing Council 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. 14. That original sections 52-203, 52-501, 52-701, 52-902, 52-1004, and 52-1102, Reissue Revised Statutes of Nebraska, 1943, section 54-201, Revised Statutes Supplement, 1982, and sections 9-301, 9-312, 9-403, 9-411, 9-414, and 9-415, Uniform Commercial Code, are repealed.