

LEGISLATIVE BILL 1

Approved by the Governor November 20, 1986

Introduced by DeCamp, 40

AN ACT relating to secured interests; to amend sections 9-307, 9-411, 9-415, and 9-420, Uniform Commercial Code; to state intent; to define terms; to provide for a central filing system for effective financing statements; to provide duties; to provide fees; to change a liability standard; to harmonize provisions; to provide operative dates; to provide severability; 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 adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products used or produced in the State of Nebraska which are included in the central filing system.

Sec. 2. For purposes of sections 1 to 21 of this act, unless the context otherwise requires, the definitions found in sections 3 to 11 of this act shall be used.

Sec. 3. Buyer in the ordinary course of business shall mean a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

Sec. 4. Central filing system shall mean the system for filing effective financing statements or notice of such financing statements established pursuant to section 12 of this act pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198.

Sec. 5. Commission merchant shall mean any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

Sec. 6. Debtor shall mean the person

subjecting a farm product to a security interest.

Sec. 7. Effective financing statement shall mean 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 county clerk in the county of the debtor's residence or, if the debtor is not a resident of this state, in the office of the county clerk in any county in which any of the farm products are used or produced;

(3) Is signed by the debtor;

(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, is to be subject to the effective financing statement, (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 1 to 21 of this act;

(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 13 of this act; 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.

Sec. 8. Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, fish, flax seed, fur-bearing animals, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, muskmelon, oats, onions, popcorn, potatoes, pumpkins, raspberries, rye, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Sec. 9. Person shall mean any individual, partnership, corporation, trust, or any other business entity.

Sec. 10. Security interest shall mean an interest in farm products that secures payment or performance of an obligation.

Sec. 11. Selling agent shall mean any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

Sec. 12. The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. County clerks, for purposes of section 1324 of the Food Security Act of 1985, Public Law 99-198, shall be designees of the State of Nebraska to perform the functions set out in sections 1 to 21 of this act. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed 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, in the office of the county clerk in any county in which any of the farm products are used or produced. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The county clerk shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition the county clerk shall index the statements and notices 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:

(2) That the county clerks transmit to the Secretary of State on the day received sufficient information from all effective financing statements filed pursuant to subdivision (1) of this section to permit the compilation of the master list required by subdivision (3) of this section;

(3) That the Secretary of State compile all such statements or notices into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 7 of this act;

(4) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is used or produced or to any crop year or years or a combination of such identifiers;

(5) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive

lists described in subdivision (4) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis, except that the first registration and fee shall be for calendar years 1986 and 1987. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (4) of this section which such registrant desires to receive. 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.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (4) of this section, except that the first fee for a list shall be for calendar years 1986 and 1987. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be one hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(6) That the lists as identified pursuant to subdivision (5) of this section be distributed by the Secretary of State on a quarterly basis and shall be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(7) That the Secretary of State remove lapsed and terminated effective financing statements or notices

of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (6) of this section.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for certification of the central filing system.

Sec. 13. (1) Presentation for filing of an effective financing statement and the acceptance of the statement by the county clerk constitutes filing under sections 1 to 21 of this act.

(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 fees set forth in subsection (2) of this section shall apply to filing of all instruments on paper no smaller than eight by five inches and no larger than eight and one half by eleven inches in size. For instruments filed on paper of any other size there shall be added to the fee for filing the sum of three dollars. The fee for attachments to all instruments submitted for filing shall be fifty cents per page for the first five pages of attachments.

(4) Any county clerk receiving a fee under subsection (2) of this section shall, on a monthly basis, forward two dollars of each fee to the Secretary of State for deposit in the Uniform Commercial Code Cash Fund and shall deposit the balance in the county general fund.

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

Sec. 14. A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 7 of this act. Any such continuation statement shall be signed by the secured party and the debtor or debtors, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the

effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

Sec. 15. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for one hundred dollars and in addition for any loss caused to the debtor by such failure.

(4) On presentation to the county clerk of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the termination statement in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Sec. 16. (1) Oral and written inquiries

regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours, except that until June 30, 1989, the Secretary of State shall provide information required by this section between the hours of 8:00 a.m. and 9:00 p.m., central time, Monday through Saturday, except on January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25. The fee for furnishing file information in writing shall be two dollars for each debtor name searched by the county clerk or Secretary of State. Written confirmation of an oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

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

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

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

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

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

Commercial Code Cash Fund.

Sec. 17. In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such seller.

Sec. 18. (1) The State of Nebraska hereby adopts the federal rules and regulations in effect on the effective date of this act 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 1 to 21 of this act, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 1 to 21 of this act pursuant to Chapter 84, article 9. 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. 19. For purposes of section 1324 of the Food Security Act of 1985, Public Law 99-198, receipt of written notice shall mean the date the notice is actually received by a buyer in the ordinary course of business or the first date upon which delivery is attempted by a carrier. A buyer in the ordinary course of business shall act in good faith. In all cases a buyer in the ordinary course of business shall be presumed to have received the notice ten days after it was mailed.

Sec. 20. (1) A buyer in the ordinary course of business buying farm products covered by the central filing system shall take subject to the security interest identified under such system, except that a registrant or a buyer in the ordinary course of business making an inquiry under section 16 of this act shall not take subject to the security interest if the central filing system does not correctly identify the debtor.

(2) A buyer in the ordinary course of business buying farm products covered by an effective financing statement takes free of any security interest on such products if such buyer secures a waiver or release of

the security interest specified in such effective financing statement from the secured party. If a buyer in the ordinary course of business buying farm products covered by the central filing system tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and each security interest holder of the seller identified in the central filing system for such products and if such security interest holder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the security interest specified to the extent of the amount of the instrument. Such waiver or release of the security interest shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

Sec. 21. An effective financing statement filed prior to December 24, 1986, shall be considered as filed on such date.

Sec. 22. That section 9-307, Uniform Commercial Code, be amended to read as follows:
U9-307. Protection of buyers of goods. review committee; notice; penalty;

(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. A buyer of farm products may be subject to a security interest under sections 1 to 21 of this act.

(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 may require that the seller, under the penalties prescribed, declare and identify in writing the first security interest holder or first lienholder, as the case may be, with regard to the farm products

being sold. If such buyer acts in good faith and without actual knowledge that such disclosure is other than accurate and if such seller is then tendered the total purchase price by means of a check payable to such seller and, if one be named, the named first security interest holder or first lienholder, as the case may be, and if the named first security interest holder or first lienholder authorizes the negotiation of such check, the buyer of such farm products so purchased shall take free of any security interest or lien. 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. The buyer's good faith reliance upon the seller not naming a security interest holder or lienholder in accordance with this subsection shall allow such buyer to take such farm products free of any security interest or lien. Any endorsement for payment made on such check shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(5) Subsection (4) of this section shall terminate on September 1, 1988. In 1987 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.

(6) Commencing September 1, 1988, a person buying farm products from a person engaged in farming operations shall be subject to a security interest created by his or her seller only when such security interest is indicated on the computer index established pursuant to section 9-415 at the beginning of the business day on which the purchase was completed. The beginning of the business day shall be 8:00 a.m. central daylight time. A business day shall be any day Monday through Friday when state offices are not closed pursuant to an official state holiday. If the purchase is on any day other than a business day as defined in this subsection, then for purposes of this subsection the immediately preceding business day shall be considered the business day on which the purchase was completed.

(7) A buyer who in the ordinary course of business purchases farm products from a person engaged in farming or a person who sells farm products for another for a fee or commission who wishes to avail

himself or herself of the protections of subsection (4) of this section shall post, in public view in a prominent place on the premises where the transactions are initiated, or deliver, in writing to a prospective seller at the time the transaction is initiated, the following or substantially similar notice:

Notice to Sellers

Nebraska law, section 9-307(4), Uniform Commercial Code, provides that a buyer who purchases farm products or a person who sells farm products for another for a fee or commission may require that the seller, under the penalties of a Class I misdemeanor, declare and identify in writing the first security interest holder or first lienholder, as the case may be, with regard to the farm products being sold. If such seller is then tendered the total purchase price by means of a check payable to such seller and, if one is named, payable to the named first security interest holder or first lienholder, as the case may be, and if the named first security interest holder or first lienholder authorizes the negotiation of such check, the buyer of such farm products so purchased shall take free of any security interest or lien.

(8) Any seller who violates the disclosure requirement of subsection (4) of this section shall be guilty of a Class I misdemeanor.

Sec. 23. That section 9-411, Uniform Commercial Code, be amended to read as follows:

U9-411. 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 gross negligence.

(2) There shall be a uniform fee, payable to

the office at which inquiry is made, for any inquiries made by telephone 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. Except as provided in subsection (3) of this section, there shall be no charge for actual inspection of any public records kept by the filing officer.

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

(4) The Secretary of State shall, 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. 24. That section 9-415, Uniform Commercial Code, be amended to read as follows:
U9-415. Secretary of State; implementation of centralized computer system.

The Secretary of State shall, on or before January 1, 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.

When the centralized computer system is implemented, computer access to information regarding obligations of debtors shall be made available twenty-four hours a day, three hundred sixty-five days per year. When such system is implemented, the Secretary of State shall until June 30, 1987, provide

information from the system by telephone between the hours of 8:00 a.m. and 9:00 p.m. central daylight time; Monday through Saturday except on January 1; Memorial Day; Labor Day; Thanksgiving Day; and December 25. After June 30, 1987 the effective date of this act, the Secretary of State shall provide information from the system by telephone during normal business hours.

As soon as feasible after the effective date of this act, the centralized computer system implemented pursuant to this section shall include information relative to effective financing statements as provided in sections 1 to 21 of this act.

Sec. 25. That section 9-420, Uniform Commercial Code be amended to read as follows:
U9-420. Uniform Commercial Code Cash Fund; created; use; Secretary of State; furnish printers.

(1) There is hereby created the Uniform Commercial Code Cash Fund. All funds received pursuant to section 9-403, Uniform Commercial Code, and sections 13 and 16 of this act shall be placed in the fund and used by the Uniform Commercial Code Filing Council to carry out its duties pursuant to sections 9-417 and 9-418. On and after December 31, 1986 the effective date of this act, money in the fund shall be used by the Secretary of State to carry out subsection (2) of this section, sections 9-401, 9-403, and 9-411 to 9-415, Uniform Commercial Code, and sections 1 to 21 of this act.

(2) The Secretary of State shall furnish each county clerk a printer compatible with the centralized computer system established pursuant to section 9-415 so the county clerk is able to mail written confirmation of inquiries by the end of the next business day as required by section 16 of this act.

Sec. 26. Sections 22 and 28 of this act shall become operative on December 24, 1986. The other sections of this act shall become operative on their effective date.

Sec. 27. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 28. That original section 9-307, Uniform Commercial Code, is repealed.

Sec. 29. That original sections 9-411, 9-415, and 9-420, Uniform Commercial Code, are repealed.

Sec. 30. Since an emergency exists, this act shall be in full force and take effect, from and after