

# **One Hundred Sixth Legislature - Second Session - 2020**

## **Introducer's Statement of Intent**

### **LB852**

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**Chairperson: Senator Matt Williams**

**Committee: Banking, Commerce and Insurance**

**Date of Hearing: January 28, 2020**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

This bill was introduced on behalf of the Secretary of State to amend two sections of statute which regard security interests.

Section 1 would amend section 52-1308 of the central filing system statutes to expand the definition of “farm product” to include “goats” and “hemp” for purposes of filing effective financing statements (EFSs).

Nebraska’s central filing system was established in 1986 in response to the federal Food Security Act of 1985. Under the central filing system, when farm products are subjected to a security interest of a secured party (lender), the secured party may file an EFS with the Secretary of State. The EFS identifies the secured party, the debtor, and the farm products subject to the security interest. The Secretary of State compiles information off the EFS, into a master list. Buyers of farm products register with the Secretary of State to receive or obtain the master lists.

A buyer in the ordinary course of business buying farm products covered by an EFS takes free of a security interest on such products if the buyer secures a waiver or release of the security interest specified in the EFS from the secured party. Typically, 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 payable to such seller and a 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 the check, the authorization or endorsement and payment of the check constitutes a waiver or release of the security interest to the extent of the amount of the check.

Adding goats and hemp to the definition of farm products provides specific assurance that these farm products are covered by the central filing system. They buyer knows that it does not risk paying twice – once to the seller and once to the lender. This will make credit more available.

Section 2 would amend Section 9-513A of the Uniform Commercial Code. This section, enacted in 2013, sets out procedures by which victims of unauthorized financing statement filings can obtain relief. A person who is improperly identified a debtor on a financing statement can file an affidavit with the filing office (usually the Secretary of State) seeking filing by the filing office of a termination statement with regard to the financing statement. If the filing office files a termination statement, it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record

that the termination statement has been filed. A secured party of record may bring an action within twenty business days against the person who filed the affidavit seeking a determination as to whether the financing statement was filed by a person entitled to do so.

The bill would provide that if the secured party of record timely files an action, the secured party of record shall send written notification to the Secretary of State of the filing of the action. If the secured party of record does not timely file an action, the Secretary of State may remove the filed financing statement from the searchable index.

**Principal Introducer:** \_\_\_\_\_

Senator Matt Williams