

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 162

Introduced By: Fischer, 43;
Read first time: January 8, 2007
Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to certificates of title; to amend section
2 37-1282, Reissue Revised Statutes of Nebraska, and section
3 60-164, Revised Statutes Cumulative Supplement, 2006; to
4 provide for an electronic lien system as prescribed; and to
5 repeal the original sections.

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

1 Section 1. Section 37-1282, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 37-1282. (1) The Department of Motor Vehicles shall
4 implement an electronic lien system for certificates of title after
5 January 1, 2009.

6 ~~(1)~~ (2) The provisions of article 9, Uniform Commercial
7 Code, shall not be construed to apply to or to permit or require the
8 deposit, filing, or other record whatsoever of a security agreement,
9 conveyance intended to operate as a mortgage, trust receipt,
10 conditional sales contract, or similar instrument or any copy of the
11 same covering a motorboat. Any mortgage, conveyance intended to
12 operate as a security agreement as provided by article 9, Uniform
13 Commercial Code, trust receipt, conditional sales contract, or other
14 similar instrument covering a motorboat, if such instrument is
15 accompanied by delivery of such manufacturer's or importer's
16 certificate and followed by actual and continued possession of same by
17 the holder of the instrument or, in the case of a certificate of
18 title, if a notation of same has been made by the county clerk, the
19 designated county official, or the ~~Department of Motor Vehicles~~
20 department on the face of the certificate, shall be valid as
21 against the creditors of the debtor, whether armed with process or
22 not, and subsequent purchasers, secured parties, and other lienholders
23 or claimants, but otherwise shall not be valid against them, except
24 that during any period in which a motorboat is inventory, as defined
25 in section 9-102, Uniform Commercial Code, held for sale by a person
26 or corporation that is in the business of selling motorboats, the
27 filing provisions of article 9, Uniform Commercial Code, as applied to

1 inventory shall apply to a security interest in the motorboat created
2 by such person or corporation as debtor without the notation of lien
3 on the instrument of title. A buyer at retail from a dealer of any
4 motorboat in the ordinary course of business shall take the motorboat
5 free of any security interest.

6 ~~(2)~~ (3) All liens, security agreements, and encumbrances
7 noted upon a certificate of title shall take priority according to the
8 order of time in which the same are noted on the certificate by the
9 county clerk, the designated county official, or the department.
10 Exposure for sale of any motorboat by the owner thereof with the
11 knowledge or with the knowledge and consent of the holder of any lien,
12 security agreement, or encumbrance on the motorboat shall not render
13 the same void or ineffective as against the creditors of the owner or
14 holder of subsequent liens, security agreements, or encumbrances upon
15 the motorboat.

16 ~~(3)~~ (4) Upon presentation of a security agreement, trust
17 receipt, conditional sales contract, or similar instrument to the
18 county clerk or designated county official of the county where the
19 certificate of title was issued or, if issued by the department, to
20 the department together with the certificate of title and the fee
21 prescribed by section 37-1287, the holder of such instrument may have
22 a notation of the lien made on the face of the certificate of title.
23 Beginning on January 2, 2009, the holder of a security interest,
24 trust receipt, conditional sales contract, or similar instrument may
25 present the instrument electronically as prescribed by the department
26 to the department, if the certificate of title was issued by the
27 department, or to any county clerk or designated county official

1 together with the certificate of title and the fee prescribed by
2 section 37-1287 and have a notation of such lien recorded in the
3 electronic lien system. The county clerk, the designated county
4 official, or the department shall enter the notation and the date
5 thereof over the signature of the person making the notation and the
6 seal of office and shall also note the lien and the date thereof on
7 the duplicate of the certificate on file. The county clerk, the
8 designated county official, or the department shall also indicate by
9 appropriate notation and on such instrument itself the fact that the
10 lien has been noted on the certificate of title. A lien shall be
11 perfected upon notation of the lien on the face of the certificate of
12 title.

13 ~~(4)~~ (5) The county clerk, the designated county
14 official, or the department, upon receipt of a lien instrument duly
15 signed by the owner in the manner prescribed by law governing such
16 lien instruments or, beginning January 2, 2009, upon receipt of an
17 electronic notice of lien, together with the fee prescribed for
18 notation of lien, shall notify the first lienholder to deliver to the
19 county clerk, the designated county official, or the department,
20 within fifteen days from the date of notice, the certificate of title
21 to permit notation of the junior lien and, after notation of the lien,
22 the county clerk, the designated county official, or the department
23 shall deliver the certificate of title to the first lienholder. The
24 junior lien shall be perfected upon notation on the face of the
25 certificate of title. The holder of a certificate of title who
26 refuses to deliver a certificate of title to the county clerk, the
27 designated county official, or the department for the purpose of

1 showing a junior lien on the certificate of title within fifteen days
2 from the date when notified to do so shall be liable for damages to
3 the junior lienholder for the amount of damages the junior lienholder
4 suffered by reason of the holder of the certificate of title refusing
5 to permit the showing of the lien on the certificate of title.

6 ~~(5)~~ (6) When the lien is discharged, the holder shall,
7 within fifteen days after payment is received, note a cancellation of
8 the lien on the face of the certificate of title over his, her, or its
9 signature and deliver the certificate of title to the county clerk,
10 the designated county official, or the department which shall note the
11 cancellation of the lien on the face of the certificate of title and
12 on the records of the office. If delivered to a county clerk or
13 designated county official, he or she shall on that day notify the
14 department which shall note the cancellation on its records. For
15 release of a lien beginning January 2, 2009, the lienholder may also
16 notify the county clerk, designated county official, or department
17 electronically when such lien is discharged. The cancellation of lien
18 shall be effective upon notation on the certificate of title or in
19 the electronic lien system, whichever occurs first. The county
20 clerk, the designated county official, or the department shall then
21 return the certificate of title to the owner or as otherwise directed
22 by the owner. The cancellation of the lien shall be noted on the
23 certificate of title and in the electronic lien system without
24 charge.

25 ~~(6)~~ (7) Any exchange of information may be accomplished
26 by the computerized exchange of information or by any other exchange
27 of electrically, electronically, telephonically, or mechanically

1 processed information.

2 Sec. 2. Section 60-164, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 60-164. (1) The department shall implement an electronic
5 lien system for certificates of title after January 1, 2009.

6 ~~(1)~~ (2) Except as provided in section 60-165, the
7 provisions of article 9, Uniform Commercial Code, shall never be
8 construed to apply to or to permit or require the deposit, filing, or
9 other record whatsoever of a security agreement, conveyance intended
10 to operate as a mortgage, trust receipt, conditional sales contract,
11 or similar instrument or any copy of the same covering a vehicle. Any
12 mortgage, conveyance intended to operate as a security agreement as
13 provided by article 9, Uniform Commercial Code, trust receipt,
14 conditional sales contract, or other similar instrument covering a
15 vehicle, if such instrument is accompanied by delivery of such
16 manufacturer's or importer's certificate and followed by actual and
17 continued possession of the same by the holder of such instrument or,
18 in the case of a certificate of title, if a notation of the same has
19 been made by the county clerk, designated county official, or
20 department on the face ~~thereof~~, of the certificate of title, shall
21 be valid as against the creditors of the debtor, whether armed with
22 process or not, and subsequent purchasers, secured parties, and other
23 lienholders or claimants but otherwise shall not be valid against
24 them, except that during any period in which a vehicle is inventory,
25 as defined in section 9-102, Uniform Commercial Code, held for sale by
26 a person or corporation that is required to be licensed as provided in
27 Chapter 60, article 14, and is in the business of selling such

1 vehicles, the filing provisions of article 9, Uniform Commercial Code,
2 as applied to inventory, shall apply to a security interest in such
3 vehicle created by such person or corporation as debtor without the
4 notation of lien on the ~~instrument~~ certificate of title. A buyer
5 of a vehicle at retail from a dealer required to be licensed as
6 provided in Chapter 60, article 14, shall take such vehicle free of
7 any security interest.

8 ~~(2)~~ (3) Subject to subsection ~~(1)~~ (2) of this
9 section, all liens, security agreements, and encumbrances noted upon a
10 certificate of title shall take priority according to the order of
11 time in which the same are noted ~~thereon~~ on the certificate of
12 title by the county clerk, designated county official, or department.
13 Exposure for sale of any vehicle by the owner thereof with the
14 knowledge or with the knowledge and consent of the holder of any lien,
15 security agreement, or encumbrance on such vehicle shall not render
16 the same void or ineffective as against the creditors of such owner or
17 holder of subsequent liens, security agreements, or encumbrances upon
18 such vehicle.

19 ~~(3)~~ (4) The holder of a security agreement, trust
20 receipt, conditional sales contract, or similar instrument, upon
21 presentation of such instrument to the department, if the certificate
22 of title was issued by the department, or to any county clerk or
23 designated county official, together with the certificate of title and
24 the fee prescribed for notation of lien, may have a notation of such
25 lien made on the face of such certificate of title. Beginning on
26 January 2, 2009, the holder of a security interest, trust receipt,
27 conditional sales contract, or similar instrument may present the

1 instrument electronically as prescribed by the department to the
2 department, if the certificate of title was issued by the department,
3 or to any county clerk or designated county official together with
4 the certificate of title and the fee prescribed by section 60-155 and
5 have a notation of such lien recorded in the electronic lien system.
6 The county clerk or designated county official or the department
7 shall enter the notation and the date thereof over the signature of
8 such officer and the official seal. If noted by a county clerk or
9 designated county official, he or she shall on that day notify the
10 department which shall note the lien on its records. The county clerk
11 or designated county official or the department shall also indicate by
12 appropriate notation and on such instrument itself the fact that such
13 lien has been noted on the certificate of title. A lien shall be
14 perfected upon notation of the lien on the face of the certificate of
15 title.

16 ~~(4)~~ (5) A transaction does not create a sale or a
17 security interest in a vehicle, other than an all-terrain vehicle or a
18 minibike, merely because it provides that the rental price is
19 permitted or required to be adjusted under the agreement either upward
20 or downward by reference to the amount realized upon sale or other
21 disposition of the vehicle.

22 ~~(5)~~ (6) The county clerk or designated county official
23 or the department, upon receipt of a lien instrument duly signed by
24 the owner in the manner prescribed by law governing such lien
25 instruments or, beginning January 2, 2009, upon receipt of an
26 electronic notice of lien, together with the fee prescribed for
27 notation of lien, shall notify the first lienholder to deliver to the

1 county clerk or designated county official or the department, within
2 fifteen days from the date of notice, the certificate of title to
3 permit notation of such junior lien and, after such notation of lien,
4 the county clerk or designated county official or the department shall
5 deliver the certificate of title to the first lienholder. The junior
6 lien shall be perfected upon notation on the face of the certificate
7 of title. The holder of a certificate of title who refuses to
8 deliver a certificate of title to the county clerk or designated
9 county official or the department for the purpose of showing a junior
10 lien on such certificate of title within fifteen days from the date
11 when notified to do so shall be liable for damages to such junior
12 lienholder for the amount of damages such junior lienholder suffered
13 by reason of the holder of the certificate of title refusing to permit
14 the showing of such lien on the certificate of title.

15 ~~(6)~~ (7) When such lien is discharged, the holder shall,
16 within fifteen days after payment is received, note a cancellation of
17 the lien on the certificate of title over his, her, or its signature
18 and deliver the certificate of title to the county clerk or designated
19 county official or the department, which shall note the cancellation
20 of the lien on the face of the certificate of title and on the records
21 of such office. If delivered to a county clerk or designated county
22 official, he or she shall on that day notify the department which
23 shall note the cancellation on its records. For release of a lien
24 beginning January 2, 2009, the lienholder may also notify the county
25 clerk, designated county official, or department electronically when
26 such lien is discharged. The cancellation of lien shall be effective
27 upon notation on the certificate of title or in the electronic lien

1 system, whichever occurs first. The county clerk or designated
2 county official or the department shall then return the certificate
3 of title to the owner or as otherwise directed by the owner. The
4 cancellation of lien shall be noted on the certificate of title and
5 in the electronic lien system without charge. If the holder of the
6 title cannot locate a lienholder, a lien may be discharged ten years
7 after the date of filing by presenting proof that thirty days have
8 passed since the mailing of a written notice by certified mail, return
9 receipt requested, to the last-known address of the lienholder.

10 Sec. 3. Original section 37-1282, Reissue Revised Statutes
11 of Nebraska, and section 60-164, Revised Statutes Cumulative
12 Supplement, 2006, are repealed.