

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1035

FINAL READING

Introduced by Williams, 36.

Read first time January 19, 2016

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Secretary of State; to amend sections
2 52-1308, 52-1318, 52-1601, 52-1602, and 52-1603, Reissue Revised
3 Statutes of Nebraska, and section 52-1312, Revised Statutes
4 Supplement, 2015; to redefine farm product and to change provisions
5 relating to the central filing system and the master lien list; and
6 to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 52-1308, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 52-1308 Farm product shall mean an agricultural commodity, a species
4 of livestock used or produced in farming operations, or a product of such
5 crop or livestock in its unmanufactured state, that is in the possession
6 of a person engaged in farming operations. Farm products shall include,
7 but are not limited to, apples, artichokes, asparagus, barley, bees,
8 buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens,
9 corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish,
10 flax seed, grapes, hay, hogs, honey, honeydew melon, horses, llamas
11 ~~legumes~~, milk, millet, muskmelon, oats, onions, ostrich, popcorn,
12 potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and
13 lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar
14 beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys,
15 vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may,
16 by rule and regulation, add other farm products to the list specified in
17 this section if such products are covered by the general definition
18 provided by this section.

19 Sec. 2. Section 52-1312, Revised Statutes Supplement, 2015, is
20 amended to read:

21 52-1312 The Secretary of State shall design and implement a central
22 filing system for effective financing statements. The Secretary of State
23 shall be the system operator. The system shall provide a means for filing
24 effective financing statements or notices of such financing statements on
25 a statewide basis. The system shall include requirements:

26 (1) That an effective financing statement or notice of such
27 financing statement shall be filed in the office of the Secretary of
28 State. A debtor's residence shall be presumed to be the residence shown
29 on the filing. The showing of an improper residence shall not affect the
30 validity of the filing. The filing officer shall mark the statement or
31 notice with a consecutive file number and with the date and hour of

1 filing and shall hold the statement or notice or a microfilm or other
2 digital photographic copy thereof for public inspection. In addition, the
3 filing officer shall index the statements and notices according to the
4 name of the debtor and shall note in the index the file number and the
5 address of the debtor given in the statement;

6 (2) That the Secretary of State compile information from all
7 effective financing statements or notices filed with the Secretary of
8 State into a master list (a) organized according to farm product, (b)
9 arranged within each such product (i) in alphabetical order according to
10 the last name of the individual debtors or, in the case of debtors doing
11 business other than as individuals, the first word in the name of such
12 debtors, (ii) in numerical order according to the approved unique
13 identifier of the ~~individual~~ debtors, (iii) geographically by county, and
14 (iv) by crop year, and (c) containing the information referred to in
15 subdivision (4) of section 52-1307;

16 (3) That the Secretary of State cause the information on the master
17 list to be published in lists (a) by farm product arranged alphabetically
18 by debtor and (b) by farm product arranged numerically by the debtor's
19 approved unique identifier. If a registered buyer so requests, the list
20 or lists for such buyer may be limited to any county or group of counties
21 where the farm product is produced or located or to any crop year or
22 years or a combination of such identifiers;

23 (4) That all buyers of farm products, commission merchants, selling
24 agents, and other persons may register with the Secretary of State to
25 receive or obtain lists described in subdivision (3) of this section. Any
26 buyer of farm products, commission merchant, selling agent, or other
27 person conducting business from multiple locations shall be considered as
28 one entity. Such registration shall be on an annual basis. The Secretary
29 of State shall provide the form for registration which shall include the
30 name and address of the registrant and the list or lists described in
31 subdivision (3) of this section which such registrant desires to receive

1 or obtain. A registration shall not be completed until the form provided
2 is properly completed and received by the Secretary of State accompanied
3 by the proper registration fee. The fee for annual registration shall be
4 thirty dollars.

5 A registrant shall pay an additional annual fee to receive or obtain
6 ~~quarterly~~ lists described in subdivision (3) of this section. For each
7 farm product list, the fee shall be an amount determined by the Secretary
8 of State not to exceed two hundred dollars per year ~~For each farm product~~
9 ~~list provided on microfiche, the annual fee shall be twenty-five dollars.~~
10 ~~For each farm product list provided on paper, the annual fee shall be two~~
11 ~~hundred dollars. The annual fee for a special list which is a list~~
12 ~~limited to fewer than all counties or less than all crop years shall be~~
13 ~~one hundred fifty dollars for each farm product.~~

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

17 (5) That the lists as identified pursuant to subdivision (4) of this
18 section be distributed or published by the Secretary of State not more
19 often than once every month and not less often than once every three
20 months as determined by the Secretary of State ~~on a quarterly basis and~~
21 ~~be in written or printed form. A registrant may choose in lieu of~~
22 ~~receiving a written or printed form to receive statewide lists on~~
23 ~~microfiche. The Secretary of State may provide for the distribution or~~
24 publication of the lists on any ~~other~~ medium and establish reasonable
25 charges for such lists, not to exceed the charges provided for in
26 subdivision (4) of this section therefor. ~~The distribution shall be made~~
27 ~~by either certified or registered mail, return receipt requested.~~

28 The Secretary of State shall, by rule and regulation, establish the
29 dates upon which the ~~quarterly~~ distributions or publications will be
30 made, the dates after which a filing of an effective financing statement
31 will not be reflected on the next ~~quarterly~~ distribution or publication

1 of lists, and the dates by which a registrant must complete a
2 registration to receive or obtain the next ~~quarterly~~ list; and

3 (6) That the Secretary of State remove lapsed and terminated
4 effective financing statements or notices of such financing statements
5 from the master list prior to preparation of the lists required to be
6 distributed or published by subdivision (5) of this section.

7 Effective financing statements or any amendments or continuations of
8 effective financing statements originally filed in the office of the
9 county clerk that have been indexed and entered on the Secretary of
10 State's central filing system need not be retained by the county filing
11 office and may be disposed of or destroyed.

12 The Secretary of State shall apply to the Secretary of the United
13 States Department of Agriculture for (a) certification of the central
14 filing system and (b) approval of the system or method of selecting an
15 approved unique identifier.

16 The Secretary of State shall deposit any funds received pursuant to
17 subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

18 Sec. 3. Section 52-1318, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 52-1318 (1) The State of Nebraska hereby adopts the federal rules
21 and regulations ~~in effect on September 1, 2007,~~ adopted and promulgated
22 to implement section 1324 of the Food Security Act of 1985, Public Law
23 99-198. If there is a conflict between such rules and regulations and
24 sections 52-1301 to 52-1322, the federal rules and regulations shall
25 apply.

26 (2) The Secretary of State shall adopt and promulgate rules and
27 regulations necessary to implement sections 52-1301 to 52-1322 pursuant
28 to the Administrative Procedure Act. If necessary to obtain federal
29 certification of the central filing system, additional or alternative
30 requirements made in conformity with section 1324 of the Food Security
31 Act of 1985, Public Law 99-198, may be imposed by the Secretary of State

1 by rule and regulation.

2 (3) The Secretary of State shall prescribe all forms to be used for
3 filing effective financing statements and subsequent actions.

4 Sec. 4. Section 52-1601, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 52-1601 ~~(1) Prior to July 1, 2001, the Secretary of State shall~~
7 ~~compile lien information received by his or her office pursuant to~~
8 ~~subsection (2) of section 9-414, Uniform Commercial Code, into a master~~
9 ~~lien list in alphabetical order according to the last name of the~~
10 ~~individual against whom such lien is filed or, in the case of an entity~~
11 ~~doing business other than as an individual, the first word in the name of~~
12 ~~the debtor. Such master lien list shall contain the name and address of~~
13 ~~the debtor, the name and address of the lienholder, and the type of such~~
14 ~~lien.~~

15 The ~~(2) On and after July 1, 2001, the Secretary of State shall~~
16 compile lien information relative to liens created under Chapter 52,
17 articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2, received
18 by his or her office pursuant to subsection (a) of section 9-530, Uniform
19 Commercial Code, into a master lien list in alphabetical order according
20 to the last name of the individual against whom such lien is filed or, in
21 the case of an entity doing business other than as an individual, the
22 first word in the name of the debtor. Such master lien list shall contain
23 the name and address of the debtor, the name and address of the
24 lienholder, and the type of such lien.

25 Sec. 5. Section 52-1602, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 52-1602 (1) The master lien list prescribed in section 52-1601 shall
28 be distributed or published by the Secretary of State not more often than
29 once every month and not less often than once every three months on the
30 date on a quarterly basis corresponding to the date on which the lists
31 provided pursuant to sections 52-1301 to 52-1322 are distributed or

1 ~~published. Such master lien list may be mailed with the list provided~~
2 ~~pursuant to sections 52-1301 to 52-1322. If mailed separately, the master~~
3 ~~lien list shall be mailed by either certified or registered mail, return~~
4 ~~receipt requested.~~

5 (2) Any person may register with the Secretary of State to receive
6 or obtain the master lien list prescribed in section 52-1601. Such
7 registration shall be on an annual basis. The Secretary of State shall
8 provide the form for registration. A registration shall not be completed
9 until the form provided is properly completed and received by the
10 Secretary of State accompanied by the proper registration fee. The fee
11 for annual registration shall be thirty dollars, except that a registrant
12 under sections 52-1301 to 52-1322 shall not be required to pay the
13 registration fee provided by this section in addition to the registration
14 fee paid pursuant to sections 52-1301 to 52-1322 for the same annual
15 registration period. ~~A Beginning for calendar year 1989,~~ a registrant
16 under sections 52-1601 to 52-1605 shall pay an additional annual fee to
17 receive or obtain the quarterly master lien lists prescribed in section
18 52-1601. For each master lien list, the fee shall be an amount determined
19 by the Secretary of State not to exceed two hundred dollars per year ~~For~~
20 ~~each master lien list provided on microfiche, the annual fee shall be~~
21 ~~twenty-five dollars. For each master lien list provided on paper, the~~
22 ~~annual fee shall be two hundred dollars.~~ The Secretary of State may
23 provide for the distribution or publication of master lien lists on any
24 ~~other~~ medium and may establish reasonable charges for such lists, not to
25 exceed the charges provided for in this subsection therefor.

26 (3) The Secretary of State, by rule and regulation, shall establish
27 the dates after which a filing of liens will not be reflected on the next
28 quarterly distribution or publication of the master lien list and the
29 date by which a registrant shall complete a registration in order to
30 receive or obtain the next ~~quarterly~~ master lien list.

31 (4) The Secretary of State shall deposit any funds received pursuant

1 to subsection (2) of this section in the Uniform Commercial Code Cash
2 Fund.

3 Sec. 6. Section 52-1603, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 52-1603 (1) A buyer of farm products who is registered to receive or
6 obtain the master lien list as provided in section 52-1602 and who, in
7 the ordinary course of business, buys farm products from a seller engaged
8 in farming operations shall take free of any lien created under the
9 provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is
10 not on the most recent master lien list received or obtained by the buyer
11 pursuant to sections 52-1601 to 52-1605, except that such buyer shall
12 take subject to any such lien if the lien was filed after the last date
13 for inclusion in the most recent ~~quarterly~~ distribution or publication of
14 the master lien list and if the buyer has received from the lienholder or
15 seller written notice of the lien. For purposes of this subsection, the
16 form of such written notice of the lien may be a copy of the lien filing.
17 For purposes of this subsection, received or obtained by the buyer shall
18 mean the first date upon which delivery or publication of the master lien
19 list is attempted by a carrier or, in the case of electronic publication,
20 the first date upon which the Secretary of State made the most current
21 master lien list available electronically, and in all cases a buyer shall
22 be presumed to have received or obtained the master lien list ten days
23 after it was mailed or published by the Secretary of State.

24 (2) If a buyer buying property subject to a lien created under the
25 provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the
26 seller the total purchase price by means of a check or other instrument
27 payable to such seller and the lienholder of any such lien for such
28 property and if such lienholder authorizes the negotiation of such check
29 or other instrument, such authorization or endorsement and payment
30 thereof shall constitute a waiver or release of the lien specified to the
31 extent of the amount of the check or instrument. Such waiver or release

1 of the lien shall not serve to establish or alter in any way security
2 interest or lien priorities under Nebraska law.

3 (3) Except as otherwise provided in the provisions of subsections
4 (1) and (2) of this section, sections 52-1601 to 52-1605 shall not be
5 interpreted or construed to alter liability of buyers of property subject
6 to liens created under the provisions of Chapter 52, article 2, 5, 9, 11,
7 12, or 14.

8 Sec. 7. Original sections 52-1308, 52-1318, 52-1601, 52-1602, and
9 52-1603, Reissue Revised Statutes of Nebraska, and section 52-1312,
10 Revised Statutes Supplement, 2015, are repealed.