

LIENS

CHAPTER 271

H. B. No. 572

(Collette, Kadlec, Berntson, Christopher,
(Stockman, Vinje, Goebel, Baldwin)

FACTOR'S LIEN

AN ACT

Creating a factor's lien upon merchandise, and the proceeds of the sale thereof, and providing procedures with respect thereto.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) The term "factor" shall mean any person, firm, bank or corporation, United States small business administration or other governmental agency, their successors or assigns, engaged in whole or in part, in the business of lending or advancing money on the security of merchandise whether or not they are employed to sell such merchandise. The term "merchandise" shall mean any personal property intended for sale, either before or after manufacturing or processing or in the process thereof, but shall not include machinery, equipment or trade fixtures of the borrower which is not intended for sale. The term "borrower" shall mean the owner of the merchandise, or his agent, who creates a lien in favor of a factor.

§ 2. Continuing Lien.) If so provided by any written agreement with the borrower, a factor shall have a continuing lien upon all merchandise of the borrower generally described in such agreement, or any separate written statements thereafter signed by the borrower and delivered to the factor, regardless of whether or not such merchandise is in the constructive, actual or exclusive occupancy or possession of the factor, or whether such merchandise shall be in existence at the time of creating the lien or at the time of filing the notice hereinafter referred to, or shall come into existence subsequently thereto or shall be acquired by the borrower thereafter, and upon any accounts receivable or other proceeds resulting from the sale or other disposition of such merchandise, and to the extent provided for in said written agreement or separate written statement such lien shall secure the factor for all his loans and advances to, or for the account of, the borrower made within the time specified in a notice filed

pursuant to the provisions of sections 3 and 4 of this Act, or of any amendment of notice filed pursuant to said sections, together with interest thereon, and all commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower, and for the amounts due or owing upon any notes or other obligations given or received by a factor for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses.

§ 3. Execution of Lien; Contents; Amendment of Notice.)

Notice of the creation of a factor's lien shall be signed by the factor and the borrower, shall be filed as hereinafter in this Act provided, and shall contain the following information:

- (a) The name and address of the factor, and the name under which the factor does business, if an assumed name.
- (b) The name and address of the borrower.
- (c) The general character of merchandise subject to the lien, or which may become subject thereto, together with the place or places where such merchandise is or will be situated.
- (d) The date of the written agreement between the factor and the borrower and the period of time, not exceeding one year from the date of filing the notice, during which loans or advances may be made against merchandise under the terms of said agreement.

Amendments of the notice signed by the factor and the borrower may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent or amended notices, and to record any extension of the time, not exceeding one year from the date of filing such amendment of notice, during which advances may be made under the terms of said written agreement, or any separate written statements signed by the borrower and delivered to the factor subsequent to the original agreement.

§ 4. Notice, Filing of.) Such notice of the creation of a factor's lien shall be filed, as hereafter provided, within fifteen days after the execution of the written agreement between the factor and the borrower providing for the creation of said lien; and no factor's lien created pursuant to this Act shall be valid or enforceable against creditors of the borrower until the notice provided for in section 3 of this Act has been so filed. Notice of the creation of a factor's lien shall be filed in the office of the register of deeds of the county in which the merchandise subject to or to become subject to the lien is or will be situated. Such notice need not be witnessed or acknowledged or contain a receipt for copy.

§ 5. Purchase for Value.) Purchasers for value in the ordinary course of the business of the borrower shall take the merchandise free and clear of the factor's lien provided for herein, whether or not they have knowledge of the existence of such lien.

§ 6. Effectiveness of Factor's Lien; Exceptions.) Any factor's lien created pursuant to this Act shall from and after the date of filing of the notice of creation of the factor's lien be effectual upon, and attach to, the merchandise from time to time described in the written agreement or separate written statements as against all claims of unsecured creditors of the borrower, and as against subsequent liens of creditors, except that notwithstanding the prior perfection of the lien of the factor under the provisions of this statute specific liens for processing, warehousing, or shipping the merchandise in the usual course of the borrower's business preparatory to sale shall be superior to the lien of the factor on said merchandise, but this section shall not obligate the factor personally for any debts secured by such superior lien.

§ 7. Foreclosure.) Any factor's lien created pursuant to this Act may be foreclosed, the property sold, and redemption made in the same manner as provided for foreclosure, sales, or redemption under chattel mortgages or in such other manner as may have been agreed in writing between the borrower and factor.

§ 8. Payment; Satisfaction; Certificate; Time Limitation.) Upon payment or satisfaction of the indebtedness secured by any factor's lien, the factor, upon the request of the borrower, shall furnish to the borrower a certificate or certificates signed by the factor stating that such indebtedness has been paid or such lien satisfied, or both. When such certificate or certificates are filed with the officer with whom the original notice of lien has been filed, such liens shall be deemed discharged. Failure of the factor to deliver any such certificate or satisfaction within 10 days after any such request shall subject the factor to double damages at the suit of any person injured by such neglect. All liens shall be deemed to have expired three years from the date of filing of the notice of creation thereof unless prior to the expiration of such three year period the factor files a statement under oath that the indebtedness secured by said factor's lien has not yet been paid in full or otherwise discharged, and upon the filing of such statement the said lien shall be deemed to continue for one year from the date of such filing or until the prior payment of the indebtedness.

§ 9. Governed by Chapter 9-11, 1957 Supplement; Exceptions.) The lien of the factor upon any accounts receivable

resulting from the sale or other disposition of the merchandise subject to the lien provided for herein, shall be governed as far as applicable by the provisions of chapter 9-11 of the 1957 Supplement to the 1943 Revised Code of North Dakota; provided, however, that unless the factor and the borrower shall agree otherwise, the delivery by the borrower to the factor of a written agreement or separate written statement, as hereinafore provided for, designating the merchandise which will be subject to the lien, shall operate as an assignment of the accounts receivable which will result from the sale or other disposition with the same effect as if an assignment thereof by the borrower to the factor had been duly perfected under said chapter 9-11 of the 1957 Supplement to the 1943 Revised Code of North Dakota.

§ 10. Acts That Do Not Invalidate.) No one or more of the following acts:

- (a) The return to or recovery by the borrower of merchandise sold and the subsequent dealing with said merchandise by the borrower as his own property; or
- (b) The granting of credit allowances or adjustments by the borrower to the person purchasing such merchandise; or
- (c) Failure of the factor to require the borrower to account to the factor for the proceeds of merchandise sold, or to account to the factor for moneys received on any account receivable resulting from the sale of merchandise covered by any factor's lien;

shall impair, invalidate or render void the factor's lien on any such merchandise or any other merchandise remaining subject to such factor's lien nor the factor's right to or lien upon any balance remaining owing on any such account receivable or on any other account receivable resulting from the sale of any other merchandise which is subject to such factor's lien irrespective of whether the factor shall have consented to or acquiesced in any such act or acts.

§ 11. Effect of Possession.) When any factor, or any third party for the account of any such factor, shall have possession of any merchandise, such factor shall have a continuing general lien, as set forth in section 2 of this Act, without filing the notice provided for in this Act. Nothing herein shall be construed as affecting or limiting any other existing or future lien or right of the factor at common law or by statute, or any transaction falling within the provisions of law requiring or permitting filing, recording, consent, publication, notices or formalities of execution of instruments creating chattel mortgages or other liens of any nature.

§ 12. **Construction.**) This Act is to be construed liberally to secure the beneficial interests and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same. This Act shall be construed as supplemental to and not in any way repealing, restricting nor limiting the operation or effect of chapters 3-06 and 35-06 of the Revised Code of North Dakota for the year 1943, or any acts amendatory thereof.

Approved March 17, 1959.

CHAPTER 272

S. B. No. 210
(Wenstrom and Garaas)

FILING AND DISCHARGE OF FEDERAL LIENS

AN ACT

Authorizing the filing of notices of liens for taxes payable to the United States of America and certificates discharging such liens and to make uniform the law relating thereto.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Notice of Lien and Discharge; Where Filed.**) Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the county register of deeds of the county in this state within which the property subject to such lien is situated.

§ 2. **Filing; Entry in Federal Tax Lien Index.**) When a notice of such tax lien is filed, the register of deeds shall forthwith enter the same in an alphabetical federal tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax with the interest, penalties and costs. He shall file and keep all original notices so filed in numerical order in a file or files and designated Federal Tax Lien Notices.

§ 3. **Discharge of Lien, Filing and Indexing.**) When a certificate of discharge of any tax lien issued by the collector of internal revenue or other proper officer is filed in the office of the register of deeds where the original notice of lien is filed, said register of deeds shall enter the same with date of filing in the federal tax lien index on the line where notice

of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

§ 4. Index and Files Furnished Register of Deeds.) The federal tax lien index and files for the federal tax lien notices shall be furnished to the county register of deeds of each county in the state, in the manner now provided by law for the furnishing of books in which deeds are recorded.

§ 5. Purpose.) This Act is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, 37 Statutes at Large, page 1016, and any acts or parts of acts amendatory thereof.

§ 6. Short Title.) This Act may be cited as the Uniform Federal Tax Lien Registration Act.

Approved March 9, 1959.