Notes on Agricultural Landlords
Lien's Under Revised Article 9 of the Uniform Commercial Code

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Last year, Arkansas adopted most of the revisions to Article 9 of the Uniform Commercial Code proposed by the American Law Institute and the National Conference of Commissioners of Uniform State Laws.¹ These revisions, referred to simply as “Revised Article 9” represent the most significant changes proposed to overall secured transaction laws since 1972.

It has been said that Revised Article 9 was designed to bring greater certainty to financing transactions, thus reducing the overall cost of credit.² This broad goal is to be accomplished by expanding the scope of Article 9 and clarifying the rules governing security interests. One specific example of this expansion is the inclusion of agricultural statutory liens, including agricultural landlord’s liens, within Revised Article 9. Agricultural liens, particularly those of a “secret” nature,³ have long been a thorn in the side of traditional lenders with consensual security interests.⁴ Nevertheless, they represent at least historical concern on the part of state legislators that a particular group of otherwise unsecured creditors are deserving of special protection. Many of these liens can be characterized as providing protection of the sort provided to “purchase money” lenders in that the lien is given to someone who has provided an essential component to the creation of a farm product. According to this rationale, but for this essential component, no farm product could have been produced, therefore the person making the contribution should be compensated prior to a lender with a blanket

¹ 2001 Ark. Acts 1439, § 1 (repealing the former chapter 9 of title 4 and replacing it with provisions taken from U.C.C. Revised Article 9).
³ Statutory liens are considered to be secret liens when they arise automatically by statute without the need for any public filing of the interest. See, Donald W. Baker, Some Thoughts on Agricultural Liens Under the New U.C.C. Article 9, 51 Ala. L. REV. 1417, 1423-24 (2000).
security interest.

The inclusion of agricultural liens within the scope of Revised Article 9 broadens its coverage in a way that will be particularly significant in agricultural states. However, whether this actually results in a clarification of the rules governing security interests and agricultural liens remains to be seen. At least in the short run, it may provide an unexpected disappointment to holders of statutory agricultural liens such as the agricultural landlord's lien. This article outlines this important change to Arkansas secured transaction law and discusses its impact on agricultural landlord's liens.

I. Prior Article 9 and Agricultural Liens

The former uniform provisions of Article 9 provided rules for consensual security interests. With regard to growing crops, a security interest would attach to a farmer's crop if: 1) the debtor signed a security agreement that described the collateral and included a description of the property on which the crops were to be grown; 2) value was given; and, 3) the debtor had rights in the collateral. Non-possessory statutory liens, including landlord's liens were excluded from the Article's coverage. These liens came into existence and their holders were entitled to priorities dependent solely upon the state law other than Article 9.

Arkansas crop financing prior to the adoption of Revised Article 9 exemplified this framework. A lender could obtain a security interest that would attach to a farmer's crop so long as the attachment requirements, including the real estate description requirement were met. This interest could be perfected by filing, and in general, the creditor would be protected against other creditors that filed subsequent interests. However, in addition to this consensual security interest, the crops could become encumbered pursuant to one of Arkansas's statutory liens. One of the most significant of these liens is the agricultural landlord's lien, and at least

7 Id.
9 Ark. Code Ann. § 4-9-312(5) (1991). A limited exception was provided for certain crop financing, although the requirements for priority were difficult to achieve. Ark. Code Ann. § 4-9-312(2) (1991); Dennis v. Connor, 733 F.2d 523 (8th Cir. 1984). See also, Steve H. Nickles, Setting Farmers Free: Righting the Untended Anomaly of UCC Section 9-312(2), 71 Minn. L. Rev. 1135 (1987) (concluding that 9-312(2) was largely unsuccessful in protecting intervening creditors that provide crop input value).
10 This article discusses agricultural landlord's liens. For a listing of other agricultural liens in Arkansas, see Martha L. Noble, Statutory Agricultural Liens: Rapid Finder Charts (National Center for Agricultural Law Research & Information, University of Arkansas School of Law 1993) (available from the National Center for Agricultural Law, 479-575-7647). Arkansas statutes also include a more recent provision, enacted subsequent to the Noble publication, protecting those who provide goods and services with respect to crops. Arkansas statute 18-43-118, enacted in 1995 as An Act to Provide that Custom Crop Harvesters and Custom Applicators Shall Have a Lien Against the Crop and for Other Purposes, 1995 Ark. Acts 1273. This statute provides that "[e]very person who harvests agricultural crops shall be entitled to a lien against those crops for payment of the cost of harvesting" and "[e]very person who sprays fertilizer, pesticides, or herbicides as a custom applicator on the agricultural crops or lands belonging to another shall be entitled to a lien for the payment of the custom application, and that lien shall be against those crops sprayed or the crops next harvested after the land is sprayed." Ark. Code Ann. § 18-43-118 (Supp. 2001). Priority with respect to a previously filed Article 9 security interest in crops is not specifically addressed in the statute nor confirmed in the case law, but it appears that the lien would arise upon provision of the input and would not take priority over an existing interest. Filing is required, and the statute provides that the manner prescribed for materialman's liens is to be used. Id.
for a limited period of time after harvest, this lien could take priority over any security interest in the debtor’s crops.\textsuperscript{11}

Support for the protection of an agricultural landlord’s interest dates back to the days of sharecropping.\textsuperscript{12} Although sharecropping is no longer practiced in any significant way, the leasing of farmland continues to be an important aspect of Arkansas agriculture. It is estimated that almost 7 million acres of Arkansas farmland, nearly half of the farmland in the state is leased each year.\textsuperscript{13} As such, the agricultural landlord’s lien has both a long history and a current significance in Arkansas law.\textsuperscript{14}

The current Arkansas agricultural landlord’s lien statute grants landlords an automatic lien on the crop grown on the rented property.\textsuperscript{15} Under Arkansas law prior to the enactment of Revised Article 9, this lien was not affected by the Article 9 provisions that governed security interests.\textsuperscript{16} Rather, the non-UCC statutory provisions and the judicial interpretations thereof controlled. Judicial interpretations concluded that the lien attached as soon as the crop came into existence\textsuperscript{17} and further held that the landlord’s lien would have priority over a security interest granted by the tenant.\textsuperscript{18}

II. Revised Article 9 and Agricultural Liens

Revised Article 9 offers several advantages for lenders seeking a security interest in farm related collateral. It expands and clarifies the definition of farm products\textsuperscript{19}, and it removes the requirement of a real estate description from both the attach-
ment and perfection provisions for growing crops.20 Particularly because of the latter change, under Revised Article 9, it is easier for an operating lender to claim a security interest in all of the debtor's present and future crops, regardless of location. Crops grown on any acreage farmed by a farmer, even leased acreage not farmed when the security interest was granted, is now covered by a general interest in crops.21

Agricultural lienholders do not fare nearly as well under the changes. Under Revised Article 9, although non-possessory statutory liens remain generally excluded from the coverage of Article 9,22 the special category of "agricultural liens" is brought within Article 9 coverage.23 Although this inclusion presents some advantages to agricultural lienholders, it may result in a significant priority disadvantage.

"Agricultural liens" are defined broadly as [A]n interest, other than a security interest, in farm products:24

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming opera-

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.25

Clearly, Arkansas' agricultural statutory liens fall within this definition and are now brought within the coverage of Article 9.26 Moreover, even though "landlord's liens" are specifically excluded from Revised Article 9,27 the broad definition of "agricultural lien," includes agricultural landlord's liens.28 Therefore, liens created under the Arkansas landlord's crop lien statute are now subject to the provisions of Article 9.29 This inclusion raises se-

20 Ark. Code Ann. §§ 4-9-203(b); 4-9-502(a) (2001).
21 Under prior Article 9 as well as Revised Article 9, a security interest in crops is likely to extend to all crops grown in the future as well as crops growing at the time value is given. Ark. Code Ann. § 4-9-204 (2001).
24 See note 19.
25 Ark. Code Ann. § 4-9-102(a)(5) (2001). Note that this definition does not apply to liens created to protect producers of farm products.
rious concerns regarding the priority of agricultural liens in Arkansas.\(^{30}\)

III. The Significance of the Inclusion of Agricultural Liens

The inclusion of agricultural liens into the coverage of Revised Article 9 has significance in two major respects. First, it dramatically changes the rules for priority determinations, particularly when an agricultural lien is in conflict with a pre-existing security interest. Second, it gives agricultural lienholders the rights of secured parties in pursuing the collateral upon default.

A. Attachment, Perfection, and Priority

Statutory liens such as agricultural liens are not referenced in the attachment provisions of Revised Article 9, presumably because they arise by statute rather than agreement.\(^{31}\) Revised Article 9 refers instead to the lien becoming "effective."\(^{32}\) The statute creating the lien will govern when the lien is effective.\(^{33}\)

Agricultural liens are covered, however, by the perfection and priority provisions of Revised Article 9. Section 9-308 provides that an agricultural lien is perfected "if it has become effective and all of the applicable requirements for perfection in §§ 4-9-310 - 4-9-316 have been satisfied."\(^{34}\) Section 9-310 requires that a financing statement be filed in order to perfect either a security interest or an agricultural lien.\(^{35}\) This is a new requirement for many agricultural liens, including the Arkansas agricultural landlord's lien.\(^{36}\)

With regard to priorities, Section 9-322 provides a general rule that conflicting perfected security interests and perfected agricultural liens rank in priority according to time of filing.\(^{37}\) This general rule gives priority to pre-existing security interests, undercutting the special treatment previously afforded statutory lienholders.

Revised Article 9 provides one important exception to the general priority rule, however. Section 9-322(g) provides that a "perfected" agricultural lien will have priority over a conflicting security interest in the same collateral "if the statute creating the agricultural lien so provides."\(^{38}\) This exception allows the lienholder's interest to "trump" a pre-existing security interest, but only if two re-

\(^{30}\) The transition rules for Revised Article 9 protect pre-effective date agricultural liens. Ark. Code Ann. § 9-702 (2001). However, as agricultural landlords liens are only valid for six months after the rent is due (see infra, notes 70-72 and the accompanying text), and Revised Article 9 was effective as of July 1, 2001, this protection is no longer any help to agricultural landlords. Ark. Code Ann. § 9-701 (2001).


\(^{33}\) See Edwin E. Smith, An Introduction to Revised UCC Article 9 (1999), in The New Article 9 Uniform Commercial Code, 17, 27 (Corrine Cooper, ed., 2nd ed. 2000). For example, under Arkansas law, a landlord's crop lien is effective as soon as the crop comes into existence. Murphy v. Myar, 128 S.W. 359 (1910).

\(^{34}\) Ark. Code Ann. § 9-308(b) (2001). This section also provides that an agricultural lien can be perfected at the time it becomes effective if all of the applicable perfection requirements are satisfied before the lien becomes effective. Id.


quirements are met. First, the lien must be perfected, and second, the lien statute must establish the priority. Each of these requirements presents potential problems for Arkansas agricultural landlord's lienholders.

1. The Perfection Requirement

The exception set forth in section 9-322(g) provides only that a "perfected" agricultural lien will have priority over a conflicting security interest in the same collateral. Unperfected liens thus fall under the general rule, and under Revised Article 9, a perfected security interest will always have priority over an unperfected agricultural lien.

As noted, in order for an agricultural lien to become perfected, a financing statement must be filed.39 Section 502 of Revised Article 9 sets forth the required contents of a financing statement.40 It must provide the name of the debtor, the name of the secured party,41 and a description of the collateral.42

The place of filing presents two potentially confusing issues. First, Arkansas legislators chose not to adopt the recommended central filing system for farm related collateral such as crops.43 This puts Arkansas filing procedures for this collateral at odds with the majority of other jurisdictions that have moved to central filing. Arkansas's version of Revised Article 9 provides for local filing "if the debtor is engaged in a farming operation and the collateral is equipment used in farming operations, or farm products, or accounts arising from the sale of farm products."44 To perfect an interest in these items of collateral, filing is to be made in "the office of the circuit court in the county in which the debtor is located in this state . . . ."45

The second potential point of confusion concerns the application of the new law to cover farm products produced in cross-state farming operations. A filing problem can arise when "where the debtor is located" is not where the "farm products are located." Similarly, a related, but distinct problem occurs when the farm products cross jurisdictional lines. Each of these problems is discussed in turn.

a. The Law Controlling Perfection

The general rule under Revised Article 9 is that the law of the state where the debtor is located will govern the perfection of a security interest.46 A

45 Revised Article 9 provides rules for determining the "location" of the debtor. Ark. Code Ann. § 4-9-307 (2001). However, Revised Article 9 anticipates a central state filing system in which county location is irrelevant. Nevertheless, some of the general rules regarding location could be applied to determine the county in which the debtor is located. See infra note 47.
46 Ark. Code Ann. § 4-9-301 (2001) ("Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral."). Note, however, that an exception is provided for goods, a category that includes farm products. This exception provides that although perfection will be determined according to the law of the debtor's location, the effect of that perfection and the priority of a security interest will be determined according to the jurisdiction in which the collateral is located. Ark. Code Ann. § 4-9-301(3) (C) (2001).
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secured creditor taking an interest in farm products, such as crops, must look to the state where the debtor is located for the rules on perfecting a security interest, even if the crops are grown elsewhere.\textsuperscript{47}

With regard to agricultural liens, however, a different rule applies. Revised Article 9 provides that "[w]hile farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of an agricultural lien on the farm products."\textsuperscript{48} Thus, in order to perfect an agricultural lien, the lienholder must comply with whatever perfection requirements exist in the state in which the farm products, e.g., crops, are located.

This combination of rules is demonstrated by considering a Mississippi farmer-debtor with farm-land leased in both Mississippi and Arkansas. In order to perfect a security interest in the debtor's crops, the creditor will look to the law of the state "where the debtor is located."\textsuperscript{49} In this example, the farmer's operating lender would be required to file a financing statement with the Mississippi Secretary of State's office in order to perfect a security interest in farm products including crops.\textsuperscript{50} This filing will cover crops grown in both Mississippi and in Arkansas and the date of this filing will be the date of perfection of that security interest.

In contrast, the perfection of an agricultural lien is controlled by the law of the jurisdiction where the farm products are located.\textsuperscript{51} Agricultural liens on growing crops in Arkansas must be perfected according to Arkansas law; a lien on Mississippi growing crops must be perfected according to Mississippi law. Because Mississippi has adopted a central filing system for all collateral, for Mississippi growing crops, the filing location is the Mississippi Secretary of State's Office.\textsuperscript{52} Arkansas law, however, provides that the filing should be in the "office of the circuit clerk in the county in which the debtor is located in this state." If the debtor resides in Arkansas, this calls for filing of the agricultural lien in the appropriate circuit clerk's office.\textsuperscript{53}

But what of the debtor that is not located in this state? Although Arkansas law is not clear, it does provide for filing in the office of the Secretary of State "in all other cases."\textsuperscript{51} Arguably, this rule should apply to agricultural liens on farm prod-

\textsuperscript{47} \textbf{Ark. Code Ann.} § 4-9-307(b) (2001). The "location" of an individual debtor is the individual's principle residence. § 4-9-307(b)(1). A debtor that is an organization and that has only one place of business is located at its place of business. § 4-9-307(b)(2). If an organization has more than one place of business, it is located at its chief executive office. § 4-9-307(b)(3). However, when the organization is a registered organization that is organized under state law, the organization is located in the state in which it is registered. § 4-9-307(c). These rules may not lend themselves easily to farming operations that are likely to not have a typical office and may not be registered. The situation may be further complicated by lending transactions that involve both personal and organizational liability. For example, it is common practice for lenders to require the shareholders of a closely held farm corporation or individual partners in a farm partnership to sign all loan documents personally as well as on behalf of the organization.


\textsuperscript{53} Which county the debtor is "located in" will determine which circuit clerk's office is appropriate for filing purposes. In many cases, the county will be obvious, but in other cases, there may be some difficulty in determining the county in which the debtor is located. In these cases, reference to the Revised Article 9 location rules may be helpful. \textit{See supra} notes 45 and 47.

ucts when the debtor resides out of state. Indeed, this would appear to be the only logical choice. Because of Mississippi's central filing system, it would be inappropriate to attempt a filing with the circuit clerk of the Mississippi county where the debtor is located. Similarly, adopting Mississippi law and filing with the Mississippi Secretary of State does not comport with the rule that provides that Arkansas law will control. As this is an unsettled area of law, an agricultural lienholder may be well advised to attempt multiple filings.

b. Change in Location of Farm Products

The rule that the perfection of an agricultural lien is tied to the location of the farm products also presents a problem if the farm products are moved across a state line. Recall that for agricultural liens, unlike security interests, the governing law for perfection will be the state in which the farm products are located. Crops grown in Arkansas will be governed by Arkansas law, but if the farmer harvests the crops and transports them to a farm in Mississippi, Mississippi law will now govern the perfection and priority of the agricultural lien. In order to obtain protection in Mississippi, the lienholder would also have to file the agricultural lien in Mississippi's central filing system. For security interests, Revised Article 9 provides that perfection will be maintained for four months after a change in the location of the debtor, but no such protection is provided for the holders of agricultural liens.55 Lienholders are well advised to file according to the perfection systems for any state that the farm products are likely to be located.

2. Lien Statute Priority Provision

The second requirement for the application of the priority exception for agricultural liens in § 322(g) is that the statute creating the agricultural lien must provide for the priority.56 The official comments explain:

Statutes other than this Article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (g), if another statute grants priority to an agricultural lien, that agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected.57

B. Default Provisions

Part 6 of Revised Article 9 sets forth the rights and responsibilities of the "secured party" when the debtor defaults on a secured obligation. The definition of secured party, however, includes agricultural lienholders, so all provisions that discuss the rights of secured parties upon default now apply to agricultural lienholders equally.58 This may be a significant advantage to some agricultural lienholders, as frequently state statutes are vague in terms of collection rights. Confusion may arise, however, if the lien statute has specific enforcement procedures that continue in force after the enact-

56 Ark. Code Ann. § 4-9-322(g) (2001) ("A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the lien so provides.")
57 Official Comment 12, U.C.C. Revised Article 9, § 9-322 (2000).
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ment of Revised Article 9. Revised Article 9 does not repeal any state lien law provision. In fact, Revised Article 9 provides that default under an agricultural lien occurs at the time that the lienholder would be entitled to enforce the lien under the agricultural lien statute.59

IV. Application of Revised Article 9 to Arkansas Agricultural Landlords Liens

Arkansas agricultural landlords liens, as well as many other agricultural statutory liens fall within the broad definition of agricultural liens under Revised Article 9.60 As such, they are now included within the scope of Revised Article 9.61

Under the general perfection rules applicable to security interests and agricultural liens, the “first to file” rule applies.62 Under this general rule, an agricultural landlord’s lien on crops will be secondary to a perfected security interest.63 The exception to the general rule provides the only mechanism for the landlord to obtain the priority status that was granted under Arkansas law prior to the enactment of Revised Article 9. The landlord’s lien must meet the two requirements for this exception: 1) the lien must be perfected; and 2) the statute creating the lien must provide for priority.64

Applying the perfection requirement to the Arkansas agricultural landlord’s crop lien is problematic. The landlord’s crop lien statute makes no reference to filing. Thus, this not only poses a new requirement, it is a requirement set forth in a different statute than that which creates the lien.

Nevertheless, Revised Article 9 provides the authority for such a filing. Section 9-509 authorizes a “person holding an agricultural lien that has become effective at the time of filing” to file a financing statement provided that covers “only collateral in which the person holds an agricultural lien.”65 The filing requirements are the most basic and should not pose a problem.66 Aside from the special problems discussed with regard to multi-state issues as discussed previously, the general rule for place of filing will be the circuit clerk in the county where the debtor is located.67 Attorneys advising their landlord clients should encourage them to file in order to perfect any agricultural landlord’s lien that they may wish to assert.68

The second requirement for the priority exception is that the statute that creates the lien must provide for the lien to take priority. This seemingly straightforward requirement presents a sig-

63 Id.
68 In contrast to the agricultural landlord’s lien, the Arkansas crop input lien statute requires a filing, but directs the lienholder to follow the procedures in place for materialman liens, a different type of filing than the usual UCC financing statement. It is likely that a lienholder would have to comply with the filing requirements under the input lien statute in order to create the lien and then also file a financing statement to perfect the lien. Cf., Scott J. Burnham, Agricultural Liens Under Revised Article 9, 63 Mont. L.R. 91, 103-105 (2002) (analyzing a Montana statutory lien with separate filing requirements).
significant problem for those who wish to claim this priority under the Arkansas agricultural landlord’s lien statute. The statute that creates the Arkansas landlord’s lien provides, in its entirety:

Every landlord shall have a lien upon the crop grown upon the demised premises in any year for rent that shall accrue for the year. The lien shall continue for six (6) months after the rent shall become due and payable, and no longer. 69

This statutory language does not address priority, despite the fact that Arkansas courts have consistently held that an agricultural landlord’s lien was superior to a security interest in the crop. 70 A secured creditor is likely to argue that because the statute is silent as to priority, the agricultural lien does not meet the requirements for the exception, even if it is perfected. In contrast, a lienholder may argue that the judicial interpretation of the statute is clear and that this has been held to part of the law for many years. Although there may be strong local and political support for the lienholder’s argument, it appears that the requirements of § 4-9-322(g) are specific, and according to the Official Comments, even a separate statute cannot grant the priority. Thus, arguing that judicial interpretation can substitute for actual statutory language may be difficult.

The lienholder’s rights upon default also raise some difficult issues. The agricultural landlord’s lien statute provides that the lien will “continue for six (6) months after the rent shall become due and payable, and no longer.” 71 This has been interpreted to mean that the lien expires six months after the rent is due. 72 This presents a very practical problem when applied to installment rental agreements. 73 It would appear that Revised Article 9 does nothing to resolve this problem, as the agricultural lien ceases to be a valid lien once the time period is past. The Revised Article 9 default provisions only appear to be available during the six month window of effectiveness.

Another issue concerns the availability of alternative measures of enforcement. Although Revised Article 9 provides for enforcement, it also allows an agricultural lienholder to “reduce a claim to judgment, foreclose, or otherwise enforce the . . . agricultural lien by any available judicial procedure.” 74 This would seem to mean that the lienholder can chose to enforce the lien through a judicial process provided for in the statute that created the lien and/or use the collection provisions provided for under Revised Article 9.

Even if an agricultural lienholder has a priority

72 Cocke v. Clausen, 67 Ark. 455, 55 S.W. 2d 846 (1900); Taylor v. Crawford, 187 Ark. 316, 59 S.W. 2d 484 (1933).
73 As many farmers no longer sell their crops immediately after harvest, flexibility in lease terms is desirable. Consider an agreement that provides for one half payment in December and the remainder due months later. The landlord’s lien may expire as to the December payment in June forcing the landlord to take action prior to that date in order to preserve the lien. However, the second payment may not yet be due. Appreciation is expressed to Arkansas attorney, Paul Keith, for his reference to this problem.
interest under Revised Article 9, unlike a secured creditor, this interest will not automatically extend to the proceeds of the collateral. Although Revised Article 9 provides this protection for secured creditors, it does not provide it for agricultural lienholders. This means that if the tenant sells the crop, the landlord will not have a priority interest in the proceeds of the crop, at least under Revised Article 9. The Official Comments provide that if an agricultural lien is entitled to priority under 9-322(g) and the statute that creates the lien provides for a continued lien on proceeds, then a court should award priority to the agricultural lienholder. The Arkansas agricultural landlord's lien statute does not address the issue of crop proceeds.

V. Suggestions for Change

It has been noted that one of the purposes of Revised Article 9 is to promote greater clarity in secured transactions. There is still more to be done to bring clarity with regard to the interplay between consensual security interests and agricultural statutory liens. This clarity will have to come from the Arkansas state legislature.

At least some members of the Arkansas state legislature are aware of the problem and have expressed deep concern. Interim Study Proposal 2001-68, filed with the House Interim Committee on Agriculture & Economic Development, contains a draft House Bill for an Act to be entitled:

AN ACT TO RESTORE THIS STATE'S TRADITIONAL SYSTEM FOR ESTABLISHING LANDLORDS' LIENS ON CROPS AND TO EXEMPT LANDLORDS' LIENS ON CROPS FROM THE UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS; AND FOR OTHER PURPOSES.77

The bill asserts that the General Assembly "inadvertently changed the law regarding landlords' liens on crops" when it enacted Revised Article 9. The expressed intent of the bill is to correct this inadvertent change by removing these types of liens from the coverage of Revised Article 9 and "thereby make landlords' liens . . . superior to all other liens on the same collateral."78

Consistent with this expression of intent, the bill excludes any agricultural landlord's lien from the definition of an agricultural lien.79 Despite this blanket exclusion, the drafters apparently remained concerned about the provisions of Revised Article 9 that require perfection of agricultural liens and that require the enacting statute to address priority. The bill also amends the agricultural landlord lien statute to provide that the landlord's lien "is perfected." Despite this characterization, there is no provision for filing. In addition, the bill expressly states that the lien "shall have priority over a conflicting security interest in or agricultural lien on the crop regardless of when the conflicting security interest of agricultural lien is perfected."80

The bill contains an emergency clause to sup-

76 Official Comment 12, U.C.C. Revised Article 9, § 9-322 (2000).
77 Interim Study Proposal 2001-68, Draft House Bill (revised Apr. 18, 2002).
78 Interim Study Proposal 2001-68, Draft House Bill, § 1 (revised Apr. 18, 2002).
79 The bill would amend Ark. Code Ann. § 4-9-102(a)(3) to provide that an "Agricultural lien" is "an interest, other than a security interest or a landlord's lien under § 18-41-101 or § 18-41-103, in farm products . . . ." Interim Study Proposal 2001-68, Draft House Bill, § 2 (revised Apr. 18, 2002).
port an immediate effective date. This clause states:

It is found and determined by the General Assembly that inadvertent changes to the Uniform Commercial Code-Secured Transactions by the Eighty-Third General Assembly substantially altered the traditional method for establishing landlords’ liens on crops which has been operating in this state for over one hundred years. The inadvertent changes have resulted in widespread confusion which threatens to seriously disrupt the traditional process of crop loans and farm land tenancy in this state’s largest industry. This confusion and unintended result will continue until this act becomes effective . . . 81

The drafters of Revised Article 9 anticipated that some state legislatures might wish to perpetuate their “traditional” methods of crop financing and statutory liens. That is basis for the exception authority provided in § 9-322(g). This exception invites state legislatures to consider all of their state agricultural statutory liens within the context of the new Revised Article 9. Those that have valid support and that are deemed to provide important protection could then be amended to comply with the requirements of § 4-9-322(g). Those that are no longer supported or deemed important could be removed or should be amended to clarify that they will not be entitled to priority.

Two requirements are key to compliance with Revised Article 9 and § 9-322(g). First, there must be a clear statement of priority in the statute that creates the lien and second, the lienholder must file a financing statement to perfect the interest. While the proposed bill under study by the Arkansas legislature meets the requirement that the statute expressly establish priority, it does not provide for filing. The drafters of the bill apparently preferred to remove landlord’s liens from the coverage of Revised Article 9 than to impose a filing requirement on landlords.

To simplify those liens that relate to crop production and to provide farmers with added assistance in receiving crop financing credit, state legislatures can also consider the optional Production-Money Security Interest set forth in the Appendix to the model provisions for Revised Article 9. 82 This provision recognizes the purchase money character of “new value” given for crop production and grants a priority security interest to those who provide it. 83

In considering what liens to prioritize, and in particular as Arkansans consider the proposed bill regarding landlord’s liens, the issue of the availability of agricultural credit will no doubt be raised. Commercial lenders frequently argue that the availability of credit to the agricultural sector is directly related to the protections afforded to them. Proponents of this argument view the inclusion of agricultural liens into the coverage of Revised Article 9 as having benefits for both commercial creditors and farm borrowers. On the other hand, however, the availability of credit from non-commercial sources is also affected by the rights afforded to them. Thus, it is likely that when agricultural landlords are uncertain of their rights to collect rents due from crop sales, they will be more inclined to require cash rent up front. In this regard, the uncertainty surrounding landlord’s liens in Arkansas may be a problem for tenant farmers as well as agricultural landlords.