

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 210
Final Reading

Introduced by Harr, 8.

Read first time January 15, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to secured transactions; to amend sections 9-101
2 and 9-510, Uniform Commercial Code, Reissue Revised
3 Statutes of Nebraska, and section 1-101, Uniform
4 Commercial Code, Revised Statutes Cumulative Supplement,
5 2012; to provide remedies and procedures regarding
6 unauthorized financing statement filings; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 1-101, Uniform Commercial Code,
2 Revised Statutes Cumulative Supplement, 2012, is amended to read:

3 1-101 Short titles.

4 (a) Sections 1-101 to 10-103 and section 4 of this act
5 may be cited as the Uniform Commercial Code.

6 (b) This article may be cited as Uniform Commercial Code-
7 General Provisions.

8 Sec. 2. Section 9-101, Uniform Commercial Code, Reissue
9 Revised Statutes of Nebraska, is amended to read:

10 9-101 Short title.

11 This article and section 4 of this act may be cited as
12 Uniform Commercial Code - Secured Transactions.

13 Sec. 3. Section 9-510, Uniform Commercial Code, Reissue
14 Revised Statutes of Nebraska, is amended to read:

15 9-510 Effectiveness of filed record.

16 (a) A filed record is effective only to the extent that
17 it was filed by a person that may file it under section 9-509 or by
18 the filing office under section 9-513A.

19 (b) A record authorized by one secured party of record
20 does not affect the financing statement with respect to another
21 secured party of record.

22 (c) A continuation statement that is not filed within the
23 six-month period prescribed by section 9-515(d) is ineffective.

24 Sec. 4. The Uniform Commercial Code is amended by adding
25 new section:

1 9-513A Unauthorized financing statement filings;
2 procedures; remedies.

3 (a) An individual personally, or as a representative of
4 an organization, may file in the filing office a notarized affidavit,
5 signed under penalty of perjury, that identifies a filed financing
6 statement and states that:

7 (1) the individual or organization is identified as a
8 debtor in the financing statement;

9 (2) the financing statement was not filed by a financial
10 institution or a representative of a financial institution or by an
11 agricultural input supplier or a representative of an agricultural
12 input supplier; and

13 (3) the financing statement was filed by a person not
14 entitled to do so under section 9-509, 9-708, or 9-808.

15 (b) An affidavit filed under subsection (a) shall include
16 any pertinent information that the office of the Secretary of State
17 may reasonably require.

18 (c) An affidavit may not be filed under subsection (a)
19 with respect to a financing statement filed by a financial
20 institution or a representative of a financial institution or by an
21 agricultural input supplier or a representative of an agricultural
22 input supplier.

23 (d) If an affidavit is filed under subsection (a), the
24 filing office may file a termination statement with respect to the
25 financing statement identified in the affidavit. The termination

1 statement must indicate that it was filed pursuant to this section.
2 Except as provided in subsections (g) and (h), a termination
3 statement filed under this subsection shall take effect thirty days
4 after it is filed.

5 (e) On the same day that the filing office files a
6 termination statement under subsection (d), it shall send to each
7 secured party of record identified in the financing statement a
8 notice advising the secured party of record that the termination
9 statement has been filed. The notice shall be sent by certified mail,
10 return receipt requested, to the mailing address provided for the
11 secured party of record.

12 (f) A secured party of record identified in a financing
13 statement as to which a termination statement has been filed under
14 subsection (d) may bring an action within twenty business days after
15 the termination statement is filed against the individual who filed
16 the affidavit under subsection (a) seeking a determination as to
17 whether the financing statement was filed by a person entitled to do
18 so under section 9-509, 9-708, or 9-808. An action under this
19 subsection shall have priority on the court's calendar and shall
20 proceed by expedited hearing. The action shall be brought in the
21 district court of the county where the filing office in which the
22 financing statement was filed is located.

23 (g) In an action brought pursuant to subsection (f), a
24 court may, in appropriate circumstances, order preliminary relief,
25 including, but not limited to, an order precluding the termination

1 statement from taking effect or directing a party to take action to
2 prevent the termination statement from taking effect. If the court
3 issues such an order and the filing office receives a certified copy
4 of the order before the termination statement takes effect, the
5 termination statement shall not take effect and the filing office
6 shall promptly file an amendment to the financing statement that
7 indicates that an order has prevented the termination statement from
8 taking effect. If such an order ceases to be effective by reason of a
9 subsequent order or a final judgment of the court or by an order
10 issued by another court and the filing office receives a certified
11 copy of the subsequent judgment or order, the termination statement
12 shall become immediately effective upon receipt of the certified copy
13 and the filing office shall promptly file an amendment to the
14 financing statement indicating that the termination statement is
15 effective.

16 (h) If a court determines in an action brought pursuant
17 to subsection (f) that the financing statement was filed by a person
18 entitled to do so under section 9-509, 9-708, or 9-808 and the filing
19 office receives a certified copy of the court's final judgment or
20 order before the termination statement takes effect, the termination
21 statement shall not take effect and the filing office shall remove
22 the termination statement and any amendments filed under subsection
23 (g) from the files. If the filing office receives the certified copy
24 after the termination statement takes effect and within thirty days
25 after the final judgment or order was entered, the filing office

1 shall promptly file an amendment to the financing statement that
2 indicates that the financing statement has been reinstated.

3 (i) Except as provided in subsection (j), upon the filing
4 of an amendment reinstating a financing statement under subsection
5 (h) the effectiveness of the financing statement is retroactively
6 reinstated and the financing statement shall be considered never to
7 have been ineffective against all persons and for all purposes.

8 (j) A financing statement whose effectiveness was
9 terminated under subsection (d) and has been reinstated under
10 subsection (h) shall not be effective as against a person that
11 purchased the collateral in good faith between the time the
12 termination statement was filed and the time of the filing of the
13 amendment reinstating the financing statement, to the extent that the
14 person gave new value in reliance on the termination statement.

15 (k) The filing office shall not charge a fee for the
16 filing of an affidavit or a termination statement under this section.
17 The filing office shall not return any fee paid for filing the
18 financing statement identified in the affidavit, whether or not the
19 financing statement is subsequently reinstated.

20 (l) Neither the filing office nor any of its employees
21 shall be subject to liability for the termination or amendment of a
22 financing statement in the lawful performance of the duties of the
23 filing office under this section.

24 (m) The Secretary of State shall adopt and make available
25 a form of affidavit for use under this section.

1 (n) For purposes of this section:

2 (1) Agricultural input supplier means a person regularly
3 in the business of extending credit to agricultural producers; and

4 (2) Financial institution means a person that is in the
5 business of extending credit or servicing loans, including acquiring,
6 purchasing, selling, brokering, or other extensions of credit and
7 where applicable, holds whatever license, charter, or registration
8 that is required to engage in such business. The term includes banks,
9 savings associations, building and loan associations, consumer and
10 commercial finance companies, industrial banks, industrial loan
11 companies, insurance companies, investment companies, installment
12 sellers, mortgage servicers, sales finance companies, and leasing
13 companies.

14 Sec. 5. Original sections 9-101 and 9-510, Uniform
15 Commercial Code, Reissue Revised Statutes of Nebraska, and section
16 1-101, Uniform Commercial Code, Revised Statutes Cumulative
17 Supplement, 2012, are repealed.