

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

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

9 (B) the financing statement was not filed by a financial
10 institution or a representative of a financial institution; and

11 (C) the financing statement was filed by a person not
12 entitled to do so under sections 9-509, 9-708, or 9-808.

13 (b) An affidavit may not be filed under subsection (a)
14 with respect to a financing statement filed by a financial
15 institution or a representative of a financial institution.

16 (c) If an affidavit is filed under subsection (a), the
17 filing office may file a termination statement with respect to the
18 financing statement identified in the affidavit. The termination
19 statement must indicate that it was filed pursuant to this section.
20 Except as provided in subsections (f) and (g), a termination
21 statement filed under this subsection shall take effect 30 days after
22 it is filed.

23 (d) On the same day that the filing office files a
24 termination statement under subsection (c), it shall send to each
25 secured party of record identified in the financing statement a

1 notice advising the secured party of record that the termination
2 statement has been filed. The notice shall be sent by certified mail,
3 return receipt requested, to the mailing address provided for the
4 secured party of record.

5 (e) A secured party of record identified in a financing
6 statement as to which a termination statement has been filed under
7 subsection (c) may, before, on, or after the termination statement
8 takes effect, bring an action against the individual who filed the
9 affidavit under subsection (a) seeking a determination as to whether
10 the financing statement was filed by a person entitled to do so under
11 section 9-509, 9-708, or 9-808. An action under this subsection shall
12 have priority on the court's calendar and shall proceed by expedited
13 hearing. The action shall be brought in the district court of the
14 county where the filing office in which the financing statement was
15 filed is located.

16 (f) In an action brought pursuant to subsection (e), a
17 court may, in appropriate circumstances, order preliminary relief,
18 including, but not limited to, an order precluding the termination
19 statement from taking effect or directing a party to take action to
20 prevent the termination statement from taking effect. If the court
21 issues such an order and the filing office receives a certified copy
22 of the order before the termination statement takes effect, the
23 termination statement shall not take effect and the filing office
24 shall promptly file an amendment to the financing statement that
25 indicates that an order has prevented the termination statement from

1 taking effect. If such an order ceases to be effective by reason of a
2 subsequent order or a final judgment of the court or by an order
3 issued by another court and the filing office receives a certified
4 copy of the subsequent judgment or order, the termination statement
5 shall become immediately effective upon receipt of the certified copy
6 and the filing office shall promptly file an amendment to the
7 financing statement indicating that the termination statement is
8 effective.

9 (g) If a court determines in an action brought pursuant
10 to subsection (e) that the financing statement was filed by a person
11 entitled to do so under section 9-509, 9-708, or 9-808 and the filing
12 office receives a certified copy of the court's final judgment or
13 order before the termination statement takes effect, the termination
14 statement shall not take effect and the filing office shall remove
15 the termination statement and any amendments filed under subsection
16 (f) from the files. If the filing office receives the certified copy
17 after the termination statement takes effect and within 30 days after
18 the final judgment or order was entered, the filing office shall
19 promptly file an amendment to the financing statement that indicates
20 that the financing statement has been reinstated.

21 (h) Except as provided in subsection (i), upon the filing
22 of an amendment reinstating a financing statement under subsection
23 (g) the effectiveness of the financing statement is retroactively
24 reinstated and the financing statement shall be considered never to
25 have been ineffective against all persons and for all purposes.

1 (i) A financing statement whose effectiveness was
2 terminated under subsection (c) and has been reinstated under
3 subsection (g) shall not be effective as against a person that
4 purchased the collateral in good faith between the time the
5 termination statement was filed and the time of the filing of the
6 amendment reinstating the financing statement, to the extent that the
7 person gave new value in reliance on the termination statement.

8 (j) The filing office shall not charge a fee for the
9 filing of an affidavit or a termination statement under this
10 subsection. The filing office shall not return any fee paid for
11 filing the financing statement identified in the affidavit, whether
12 or not the financing statement is subsequently reinstated.

13 (k) Neither the filing office nor any of its employees
14 shall be subject to liability for the termination or amendment of a
15 financing statement in the lawful performance of the duties of the
16 filing office under this section.

17 (l) The Secretary of State shall adopt and make available
18 a form of affidavit for use under this section.

19 (m) For purposes of this section, financial institution
20 means a person that is in the business of extending credit or
21 servicing loans, including acquiring, purchasing, selling, brokering,
22 or other extensions of credit and where applicable, holds whatever
23 license, charter, or registration that is required to engage in such
24 business. The term includes banks, savings associations, building and
25 loan associations, consumer and commercial finance companies,

1 industrial banks, industrial loan companies, insurance companies,
2 investment companies, installment sellers, mortgage servicers, sales
3 finance companies, and leasing companies.

4 Sec. 5. Original sections 9-101 and 9-510, Uniform
5 Commercial Code, Reissue Revised Statutes of Nebraska, and section
6 1-101, Uniform Commercial Code, Revised Statutes Cumulative
7 Supplement, 2012, are repealed.