

LEGISLATIVE BILL 210

Approved by the Governor March 7, 2013

Introduced by Harr, 8.

FOR AN ACT relating to secured transactions; to amend sections 9-101 and 9-510, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, and section 1-101, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2012; to provide remedies and procedures regarding unauthorized financing statement filings; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

1-101 Short titles.

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

(b) This article may be cited as Uniform Commercial Code—General Provisions.

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

9-101 Short title.

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

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

9-510 Effectiveness of filed record.

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

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

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

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

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

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

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

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

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

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

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

(d) If an affidavit is filed under subsection (a), the filing office may file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must indicate that it was filed pursuant to this section. Except as provided in subsections (g) and (h), a termination statement filed under this subsection shall take effect thirty days after it is filed.

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

(f) A secured party of record identified in a financing statement as

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

(g) In an action brought pursuant to subsection (f), a court may, in appropriate circumstances, order preliminary relief, including, but not limited to, an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of the court or by an order issued by another court and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall promptly file an amendment to the financing statement indicating that the termination statement is effective.

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

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

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

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

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

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

(n) For purposes of this section:

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

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

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