

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 852

Introduced by Williams, 36.

Read first time January 09, 2020

Committee:

1 A BILL FOR AN ACT relating to secured transactions; to amend section
2 52-1308, Revised Statutes Cumulative Supplement, 2018, and section
3 9-513A, Uniform Commercial Code, Revised Statutes Cumulative
4 Supplement, 2018; to change provisions relating to farm product
5 liens and actions relating to termination statements; and to repeal
6 the original sections.

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

1 Section 1. Section 52-1308, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 52-1308 Farm product shall mean an agricultural commodity, a species
4 of livestock used or produced in farming operations, or a product of such
5 crop or livestock in its unmanufactured state, that is in the possession
6 of a person engaged in farming operations. Farm products shall include,
7 but are not limited to, apples, artichokes, asparagus, barley, bees,
8 buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens,
9 corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish,
10 flax seed, goats, grapes, hay, hemp, hogs, honey, honeydew melon, horses,
11 llamas, milk, millet, muskmelon, oats, onions, ostrich, popcorn,
12 potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and
13 lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar
14 beets, sunflower seeds, sweet corn, tomatoes, trees, triticales, turkeys,
15 vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may,
16 by rule and regulation, add other farm products to the list specified in
17 this section if such products are covered by the general definition
18 provided by this section.

19 Sec. 2. Section 9-513A, Uniform Commercial Code, Revised Statutes
20 Cumulative Supplement, 2018, is amended to read:

21 9-513A Unauthorized financing statement filings; procedures;
22 remedies.

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

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

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

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

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

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

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

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

22 (f) A secured party of record identified in a financing statement as
23 to which a termination statement has been filed under subsection (d) may
24 bring an action within twenty business days after the termination
25 statement is filed against the individual who filed the affidavit under
26 subsection (a) seeking a determination as to whether the financing
27 statement was filed by a person entitled to do so under section 9-509,
28 9-708, or 9-808. An action under this subsection shall have priority on
29 the court's calendar and shall proceed by expedited hearing. The action
30 shall be brought in the district court of the county where the filing
31 office in which the financing statement was filed is located. If the

1 secured party of record identified in a financing statement as to which a
2 termination statement has been filed under subsection (d) timely files an
3 action pursuant to this subsection, the secured party of record shall
4 send written notification to the Secretary of State of the action at the
5 time of filing the action. If the secured party of record identified in a
6 financing statement as to which a termination statement has been filed
7 under subsection (d) does not timely file an action pursuant to this
8 subsection, the Secretary of State may remove the filed financing
9 statement from the searchable index of filed financing statements.

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

27 (h) If a court determines in an action brought pursuant to
28 subsection (f) that the financing statement was filed by a person
29 entitled to do so under section 9-509, 9-708, or 9-808 and the filing
30 office receives a certified copy of the court's final judgment or order
31 before the termination statement takes effect, the termination statement

1 shall not take effect and the filing office shall remove the termination
2 statement and any amendments filed under subsection (g) from the files.
3 If the filing office receives the certified copy after the termination
4 statement takes effect and within thirty days after the final judgment or
5 order was entered, the filing office shall promptly file an amendment to
6 the financing statement that indicates that the financing statement has
7 been reinstated.

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

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

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

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

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

31 (n) For purposes of this section:

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

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

12 Sec. 3. Original section 52-1308, Revised Statutes Cumulative
13 Supplement, 2018, and section 9-513A, Uniform Commercial Code, Revised
14 Statutes Cumulative Supplement, 2018, are repealed.