

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1187

Introduced by Flood, 19.

Read first time January 20, 2022

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to banking and finance; to amend sections
2 1-201, 9-102, 9-107A, 9-301, 9-310, 9-312, 9-314, 9-331, 9-406,
3 12-101, 12-101A, 12-102, 12-103, 12-104, 12-105, 12-106, 12-107,
4 12-108, and 12-109, Uniform Commercial Code, Revised Statutes
5 Supplement, 2021; to change provisions relating to controllable
6 electronic records; to repeal the original sections; and to declare
7 an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 1-201, Uniform Commercial Code, Revised Statutes
2 Supplement, 2021, is amended to read:

3 1-201 General definitions.

4 (a) Unless the context otherwise requires, words or phrases defined
5 in this section, or in the additional definitions contained in other
6 articles of the Uniform Commercial Code that apply to particular articles
7 or parts thereof, have the meanings stated.

8 (b) Subject to definitions contained in other articles of the code
9 that apply to particular articles or parts thereof:

10 (1) "Action", in the sense of a judicial proceeding, includes
11 recoupment, counterclaim, setoff, suit in equity, and any other
12 proceeding in which rights are determined.

13 (2) "Aggrieved party" means a party entitled to pursue a remedy.

14 (3) "Agreement", as distinguished from "contract", means the bargain
15 of the parties in fact, as found in their language or inferred from other
16 circumstances, including course of performance, course of dealing, or
17 usage of trade as provided in section 1-303.

18 (4) "Bank" means a person engaged in the business of banking and
19 includes a savings bank, savings and loan association, credit union, and
20 trust company.

21 (5) "Bearer" means a person in control of a negotiable electronic
22 document of title or a person in possession of a negotiable instrument,
23 negotiable tangible document of title, or certificated security that is
24 payable to bearer or indorsed in blank.

25 (6) "Bill of lading" means a document of title evidencing the
26 receipt of goods for shipment issued by a person engaged in the business
27 of directly or indirectly transporting or forwarding goods. The term does
28 not include a warehouse receipt.

29 (7) "Branch" includes a separately incorporated foreign branch of a
30 bank.

31 (8) "Burden of establishing" a fact means the burden of persuading

1 the trier of fact that the existence of the fact is more probable than
2 its nonexistence.

3 (9) "Buyer in ordinary course of business" means a person that buys
4 goods in good faith, without knowledge that the sale violates the rights
5 of another person in the goods, and in the ordinary course from a person,
6 other than a pawnbroker, in the business of selling goods of that kind. A
7 person buys goods in the ordinary course if the sale to the person
8 comports with the usual or customary practices in the kind of business in
9 which the seller is engaged or with the seller's own usual or customary
10 practices. A person that sells oil, gas, or other minerals at the
11 wellhead or minehead is a person in the business of selling goods of that
12 kind. A buyer in ordinary course of business may buy for cash, by
13 exchange of other property, or on secured or unsecured credit, and may
14 acquire goods or documents of title under a preexisting contract for
15 sale. Only a buyer that takes possession of the goods or has a right to
16 recover the goods from the seller under article 2 may be a buyer in
17 ordinary course of business. "Buyer in ordinary course of business" does
18 not include a person that acquires goods in a transfer in bulk or as
19 security for or in total or partial satisfaction of a money debt.

20 (10) "Conspicuous", with reference to a term, means so written,
21 displayed, or presented that a reasonable person against which it is to
22 operate ought to have noticed it. Whether a term is "conspicuous" or not
23 is a decision for the court. Conspicuous terms include the following:

24 (A) a heading in capitals equal to or greater in size than the
25 surrounding text, or in contrasting type, font, or color to the
26 surrounding text of the same or lesser size; and

27 (B) language in the body of a record or display in larger type than
28 the surrounding text, or in contrasting type, font, or color to the
29 surrounding text of the same size, or set off from surrounding text of
30 the same size by symbols or other marks that call attention to the
31 language.

1 (11) "Consumer" means an individual who enters into a transaction
2 primarily for personal, family, or household purposes.

3 (12) "Contract", as distinguished from "agreement", means the total
4 legal obligation that results from the parties' agreement as determined
5 by the Uniform Commercial Code as supplemented by any other applicable
6 laws.

7 (13) "Creditor" includes a general creditor, a secured creditor, a
8 lien creditor, and any representative of creditors, including an assignee
9 for the benefit of creditors, a trustee in bankruptcy, a receiver in
10 equity, and a personal representative, an executor, or an administrator
11 of an insolvent debtor's or assignor's estate.

12 (14) "Defendant" includes a person in the position of defendant in a
13 counterclaim, cross-claim, or third-party claim.

14 (15) "Delivery" with respect to an electronic document of title
15 means voluntary transfer of control and with respect to an instrument, a
16 tangible document of title, or chattel paper means voluntary transfer of
17 possession.

18 (16) "Document of title" means a record (i) that in the regular
19 course of business or financing is treated as adequately evidencing that
20 the person in possession or control of the record is entitled to receive,
21 control, hold, and dispose of the record and the goods the record covers
22 and (ii) that purports to be issued by or addressed to a bailee and to
23 cover goods in the bailee's possession which are either identified or are
24 fungible portions of an identified mass. The term includes a bill of
25 lading, transport document, dock warrant, dock receipt, warehouse
26 receipt, and order for delivery of goods. An electronic document of title
27 means a document of title evidenced by a record consisting of information
28 stored in an electronic medium. A tangible document of title means a
29 document of title evidenced by a record consisting of information that is
30 inscribed on a tangible medium.

31 (16A) "Electronic" means relating to technology having electrical,

1 digital, magnetic, wireless, optical, electromagnetic, or similar
2 capabilities.

3 (17) "Fault" means a default, breach, or wrongful act or omission.

4 (18) "Fungible goods" means:

5 (A) goods of which any unit, by nature or usage of trade, is the
6 equivalent of any other like unit; or

7 (B) goods that by agreement are treated as equivalent.

8 (19) "Genuine" means free of forgery or counterfeiting.

9 (20) "Good faith" means honesty in fact in the conduct or
10 transaction concerned.

11 (21) "Holder" means:

12 (A) the person in possession of a negotiable instrument that is
13 payable either to bearer or to an identified person that is the person in
14 possession;

15 (B) the person in possession of a negotiable tangible document of
16 title if the goods are deliverable either to bearer or to the order of
17 the person in possession; or

18 (C) the person in control of a negotiable electronic document of
19 title.

20 (22) "Insolvency proceeding" includes an assignment for the benefit
21 of creditors or other proceeding intended to liquidate or rehabilitate
22 the estate of the person involved.

23 (23) "Insolvent" means:

24 (A) having generally ceased to pay debts in the ordinary course of
25 business other than as a result of bona fide dispute;

26 (B) being unable to pay debts as they become due; or

27 (C) being insolvent within the meaning of federal bankruptcy law.

28 (24) "Money" means a medium of exchange currently authorized or
29 adopted by a domestic or foreign government. The term includes a monetary
30 unit of account established by an intergovernmental organization or by
31 agreement between two or more countries.

1 (25) "Organization" means a person other than an individual.

2 (26) "Party", as distinguished from "third party", means a person
3 that has engaged in a transaction or made an agreement subject to the
4 Uniform Commercial Code.

5 (27) "Person" means an individual, corporation, business trust,
6 estate, trust, partnership, limited liability company, association, joint
7 venture, government, governmental subdivision, agency, or
8 instrumentality, public corporation, or any other legal or commercial
9 entity.

10 (28) "Present value" means the amount as of a date certain of one or
11 more sums payable in the future, discounted to the date certain by use of
12 either an interest rate specified by the parties if that rate is not
13 manifestly unreasonable at the time the transaction is entered into or,
14 if an interest rate is not so specified, a commercially reasonable rate
15 that takes into account the facts and circumstances at the time the
16 transaction is entered into.

17 (29) "Purchase" means taking by sale, lease, discount, negotiation,
18 mortgage, pledge, lien, security interest, issue or reissue, gift, or any
19 other voluntary transaction creating an interest in property.

20 (30) "Purchaser" means a person that takes by purchase.

21 (31) "Record" means information that is inscribed on a tangible
22 medium or that is stored in an electronic or other medium and is
23 retrievable in perceivable form.

24 (32) "Remedy" means any remedial right to which an aggrieved party
25 is entitled with or without resort to a tribunal.

26 (33) "Representative" means a person empowered to act for another,
27 including an agent, an officer of a corporation or association, and a
28 trustee, a personal representative, an executor, or an administrator of
29 an estate.

30 (34) "Right" includes remedy.

31 (35) "Security interest" means an interest in personal property or

1 fixtures which secures payment or performance of an obligation. "Security
2 interest" includes any interest of a consignor and a buyer of accounts,
3 chattel paper, a payment intangible, or a promissory note in a
4 transaction that is subject to article 9. "Security interest" does not
5 include the special property interest of a buyer of goods on
6 identification of those goods to a contract for sale under section 2-401,
7 but a buyer may also acquire a "security interest" by complying with
8 article 9. Except as otherwise provided in section 2-505, the right of a
9 seller or lessor of goods under article 2 or 2A to retain or acquire
10 possession of the goods is not a "security interest", but a seller or
11 lessor may also acquire a "security interest" by complying with article
12 9. The retention or reservation of title by a seller of goods
13 notwithstanding shipment or delivery to the buyer under section 2-401 is
14 limited in effect to a reservation of a "security interest". Whether a
15 transaction in the form of a lease creates a "security interest" is
16 determined pursuant to section 1-203. "Security interest" does not
17 include a consumer rental purchase agreement as defined in the Consumer
18 Rental Purchase Agreement Act.

19 (36) "Send" in connection with a writing, record, or notice means:

20 (A) to deposit in the mail or deliver for transmission by any other
21 usual means of communication with postage or cost of transmission
22 provided for and properly addressed and, in the case of an instrument, to
23 an address specified thereon or otherwise agreed, or if there be none to
24 any address reasonable under the circumstances; or

25 (B) in any other way to cause to be received any record or notice
26 within the time it would have arrived if properly sent.

27 (37) "Signed" includes using any symbol executed or adopted with
28 present intention to adopt or accept a writing.

29 (38) "State" means a state of the United States, the District of
30 Columbia, Puerto Rico, the United States Virgin Islands, or any territory
31 or insular possession subject to the jurisdiction of the United States.

1 (39) "Surety" includes a guarantor or other secondary obligor.

2 (40) "Term" means a portion of an agreement that relates to a
3 particular matter.

4 (41) "Unauthorized signature" means a signature made without actual,
5 implied, or apparent authority. The term includes a forgery.

6 (42) "Warehouse receipt" means a receipt issued by a person engaged
7 in the business of storing goods for hire.

8 (43) "Writing" includes printing, typewriting, or any other
9 intentional reduction to tangible form. "Written" has a corresponding
10 meaning.

11 Sec. 2. Section 9-102, Uniform Commercial Code, Revised Statutes
12 Supplement, 2021, is amended to read:

13 9-102 Definitions and index of definitions.

14 (a) In this article:

15 (1) "Accession" means goods that are physically united with other
16 goods in such a manner that the identity of the original goods is not
17 lost.

18 (2) "Account", except as used in "account for", means a right to
19 payment of a monetary obligation, whether or not earned by performance,
20 (i) for property that has been or is to be sold, leased, licensed,
21 assigned, or otherwise disposed of, (ii) for services rendered or to be
22 rendered, (iii) for a policy of insurance issued or to be issued, (iv)
23 for a secondary obligation incurred or to be incurred, (v) for energy
24 provided or to be provided, (vi) for the use or hire of a vessel under a
25 charter or other contract, (vii) arising out of the use of a credit or
26 charge card or information contained on or for use with the card, or
27 (viii) as winnings in a lottery or other game of chance operated or
28 sponsored by a state, governmental unit of a state, or person licensed or
29 authorized to operate the game by a state or governmental unit of a
30 state. The term includes health-care-insurance receivables. The term does
31 not include (i) rights to payment evidenced by chattel paper or an

1 instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv)
2 investment property, (v) letter-of-credit rights or letters of credit, or
3 (vi) rights to payment for money or funds advanced or sold, other than
4 rights arising out of the use of a credit or charge card or information
5 contained on or for use with the card.

6 (3) "Account debtor" means a person obligated on an account, chattel
7 paper, or general intangible. The term does not include persons obligated
8 to pay a negotiable instrument, even if the instrument constitutes part
9 of chattel paper.

10 (4) "Accounting", except as used in "accounting for", means a
11 record:

12 (A) authenticated by a secured party;

13 (B) indicating the aggregate unpaid secured obligations as of a date
14 not more than thirty-five days earlier or thirty-five days later than the
15 date of the record; and

16 (C) identifying the components of the obligations in reasonable
17 detail.

18 (5) "Agricultural lien" means an interest in farm products:

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

20 (i) goods or services furnished in connection with a debtor's
21 farming operation; or

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

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

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

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

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

31 The term also includes every lien created under sections 52-202,

1 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and 54-208, Reissue
2 Revised Statutes of Nebraska, and Chapter 52, article 14, Reissue Revised
3 Statutes of Nebraska.

4 (6) "As-extracted collateral" means:

5 (A) oil, gas, or other minerals that are subject to a security
6 interest that:

7 (i) is created by a debtor having an interest in the minerals before
8 extraction; and

9 (ii) attaches to the minerals as extracted; or

10 (B) accounts arising out of the sale at the wellhead or minehead of
11 oil, gas, or other minerals in which the debtor had an interest before
12 extraction.

13 (7) "Authenticate" means:

14 (A) to sign; or

15 (B) with present intent to adopt or accept a record, to attach to or
16 logically associate with the record an electronic sound, symbol, or
17 process.

18 (8) "Bank" means an organization that is engaged in the business of
19 banking. The term includes savings banks, savings and loan associations,
20 credit unions, and trust companies.

21 (9) "Cash proceeds" means proceeds that are money, checks, deposit
22 accounts, or the like.

23 (10) "Certificate of title" means a certificate of title with
24 respect to which a statute provides for the security interest in question
25 to be indicated on the certificate as a condition or result of the
26 security interest's obtaining priority over the rights of a lien creditor
27 with respect to the collateral. The term includes another record
28 maintained as an alternative to a certificate of title by the
29 governmental unit that issues certificates of title if a statute permits
30 the security interest in question to be indicated on the record as a
31 condition or result of the security interest's obtaining priority over

1 the rights of a lien creditor with respect to the collateral.

2 (11) "Chattel paper" means a record or records that evidence both a
3 monetary obligation and a security interest in specific goods, a security
4 interest in specific goods and software used in the goods, a security
5 interest in specific goods and license of software used in the goods, a
6 lease of specific goods, or a lease of specific goods and license of
7 software used in the goods. In this subdivision, "monetary obligation"
8 means a monetary obligation secured by the goods or owed under a lease of
9 the goods and includes a monetary obligation with respect to software
10 used in the goods. The term does not include (i) charters or other
11 contracts involving the use or hire of a vessel or (ii) records that
12 evidence a right to payment arising out of the use of a credit or charge
13 card or information contained on or for use with the card. If a
14 transaction is evidenced by records that include an instrument or series
15 of instruments, the group of records taken together constitutes chattel
16 paper.

17 (12) "Collateral" means the property subject to a security interest
18 or agricultural lien. The term includes:

19 (A) proceeds to which a security interest attaches;

20 (B) accounts, chattel paper, payment intangibles, and promissory
21 notes that have been sold; and

22 (C) goods that are the subject of a consignment.

23 (13) "Commercial tort claim" means a claim arising in tort with
24 respect to which:

25 (A) the claimant is an organization; or

26 (B) the claimant is an individual and the claim:

27 (i) arose in the course of the claimant's business or profession;

28 and

29 (ii) does not include damages arising out of personal injury to or
30 the death of an individual.

31 (14) "Commodity account" means an account maintained by a commodity

1 intermediary in which a commodity contract is carried for a commodity
2 customer.

3 (15) "Commodity contract" means a commodity futures contract, an
4 option on a commodity futures contract, a commodity option, or another
5 contract if the contract or option is:

6 (A) traded on or subject to the rules of a board of trade that has
7 been designated as a contract market for such a contract pursuant to
8 federal commodities laws; or

9 (B) traded on a foreign commodity board of trade, exchange, or
10 market, and is carried on the books of a commodity intermediary for a
11 commodity customer.

12 (16) "Commodity customer" means a person for which a commodity
13 intermediary carries a commodity contract on its books.

14 (17) "Commodity intermediary" means a person that:

15 (A) is registered as a futures commission merchant under federal
16 commodities law; or

17 (B) in the ordinary course of its business provides clearance or
18 settlement services for a board of trade that has been designated as a
19 contract market pursuant to federal commodities law.

20 (18) "Communicate" means:

21 (A) to send a written or other tangible record;

22 (B) to transmit a record by any means agreed upon by the persons
23 sending and receiving the record; or

24 (C) in the case of transmission of a record to or by a filing
25 office, to transmit a record by any means prescribed by filing-office
26 rule.

27 (19) "Consignee" means a merchant to which goods are delivered in a
28 consignment.

29 (20) "Consignment" means a transaction, regardless of its form, in
30 which a person delivers goods to a merchant for the purpose of sale and:

31 (A) the merchant:

1 (i) deals in goods of that kind under a name other than the name of
2 the person making delivery;

3 (ii) is not an auctioneer; and

4 (iii) is not generally known by its creditors to be substantially
5 engaged in selling the goods of others;

6 (B) with respect to each delivery, the aggregate value of the goods
7 is one thousand dollars or more at the time of delivery;

8 (C) the goods are not consumer goods immediately before delivery;
9 and

10 (D) the transaction does not create a security interest that secures
11 an obligation.

12 (21) "Consignor" means a person that delivers goods to a consignee
13 in a consignment.

14 (22) "Consumer debtor" means a debtor in a consumer transaction.

15 (23) "Consumer goods" means goods that are used or bought for use
16 primarily for personal, family, or household purposes.

17 (24) "Consumer-goods transaction" means a consumer transaction in
18 which:

19 (A) an individual incurs an obligation primarily for personal,
20 family, or household purposes; and

21 (B) a security interest in consumer goods secures the obligation.

22 (25) "Consumer obligor" means an obligor who is an individual and
23 who incurred the obligation as part of a transaction entered into
24 primarily for personal, family, or household purposes.

25 (26) "Consumer transaction" means a transaction in which (i) an
26 individual incurs an obligation primarily for personal, family, or
27 household purposes, (ii) a security interest secures the obligation, and
28 (iii) the collateral is held or acquired primarily for personal, family,
29 or household purposes. The term includes consumer-goods transactions.

30 (27) "Continuation statement" means an amendment of a financing
31 statement which:

1 (A) identifies, by its file number, the initial financing statement
2 to which it relates; and

3 (B) indicates that it is a continuation statement for, or that it is
4 filed to continue the effectiveness of, the identified financing
5 statement.

6 (28) "Debtor" means:

7 (A) a person having an interest, other than a security interest or
8 other lien, in the collateral, whether or not the person is an obligor;

9 (B) a seller of accounts, chattel paper, payment intangibles, or
10 promissory notes; or

11 (C) a consignee.

12 (29) "Deposit account" means a demand, time, savings, passbook, or
13 similar account maintained with a bank. The term does not include
14 investment property or accounts evidenced by an instrument.

15 (30) "Document" means a document of title or a receipt of the type
16 described in section 7-201(b).

17 (31) "Electronic chattel paper" means chattel paper evidenced by a
18 record or records consisting of information stored in an electronic
19 medium.

20 (32) "Encumbrance" means a right, other than an ownership interest,
21 in real property. The term includes mortgages and other liens on real
22 property.

23 (33) "Equipment" means goods other than inventory, farm products, or
24 consumer goods.

25 (34) "Farm products" means goods, other than standing timber, with
26 respect to which the debtor is engaged in a farming operation and which
27 are:

28 (A) crops grown, growing, or to be grown, including:

29 (i) crops produced on trees, vines, and bushes; and

30 (ii) aquatic goods produced in aquacultural operations;

31 (B) livestock, born or unborn, including aquatic goods produced in

1 aquacultural operations;

2 (C) supplies used or produced in a farming operation; or

3 (D) products of crops or livestock in their unmanufactured states.

4 (35) "Farming operation" means raising, cultivating, propagating,
5 fattening, grazing, or any other farming, livestock, or aquacultural
6 operation.

7 (36) "File number" means the number assigned to an initial financing
8 statement pursuant to section 9-519(a).

9 (37) "Filing office" means an office designated in section 9-501 as
10 the place to file a financing statement.

11 (38) "Filing-office rule" means a rule adopted pursuant to section
12 9-526.

13 (39) "Financing statement" means a record or records composed of an
14 initial financing statement and any filed record relating to the initial
15 financing statement.

16 (40) "Fixture filing" means the filing of a financing statement
17 covering goods that are or are to become fixtures and satisfying section
18 9-502(a) and (b). The term includes the filing of a financing statement
19 covering goods of a transmitting utility which are or are to become
20 fixtures.

21 (41) "Fixtures" means goods that have become so related to
22 particular real property that an interest in them arises under real
23 property law.

24 (42) "General intangible" means any personal property, including
25 things in action, other than accounts, chattel paper, commercial tort
26 claims, deposit accounts, documents, goods, instruments, investment
27 property, letter-of-credit rights, letters of credit, money, and oil,
28 gas, or other minerals before extraction. The term includes payment
29 intangibles and software.

30 (43) "Good faith" means honesty in fact and the observance of
31 reasonable commercial standards of fair dealing.

1 (44) "Goods" means all things that are movable when a security
2 interest attaches. The term includes (i) fixtures, (ii) standing timber
3 that is to be cut and removed under a conveyance or contract for sale,
4 (iii) the unborn young of animals, (iv) crops grown, growing, or to be
5 grown, even if the crops are produced on trees, vines, or bushes, and (v)
6 manufactured homes. The term also includes a computer program embedded in
7 goods and any supporting information provided in connection with a
8 transaction relating to the program if (i) the program is associated with
9 the goods in such a manner that it customarily is considered part of the
10 goods, or (ii) by becoming the owner of the goods, a person acquires a
11 right to use the program in connection with the goods. The term does not
12 include a computer program embedded in goods that consist solely of the
13 medium in which the program is embedded. The term also does not include
14 accounts, chattel paper, commercial tort claims, deposit accounts,
15 documents, general intangibles, instruments, investment property, letter-
16 of-credit rights, letters of credit, money, or oil, gas, or other
17 minerals before extraction.

18 (45) "Governmental unit" means a subdivision, agency, department,
19 county, parish, municipality, or other unit of the government of the
20 United States, a state, or a foreign country. The term includes an
21 organization having a separate corporate existence if the organization is
22 eligible to issue debt on which interest is exempt from income taxation
23 under the laws of the United States.

24 (46) "Health-care-insurance receivable" means an interest in or
25 claim under a policy of insurance which is a right to payment of a
26 monetary obligation for health-care goods or services provided or to be
27 provided.

28 (47) "Instrument" means a negotiable instrument or any other writing
29 that evidences a right to the payment of a monetary obligation, is not
30 itself a security agreement or lease, and is of a type that in ordinary
31 course of business is transferred by delivery with any necessary

1 indorsement or assignment including, but not limited to, a writing that
2 would otherwise qualify as a certificate of deposit (defined in section
3 3-104(j)) but for the fact that the writing contains a limitation on
4 transfer. The term does not include (i) investment property, (ii) letters
5 of credit, or (iii) writings that evidence a right to payment arising out
6 of the use of a credit or charge card or information contained on or for
7 use with the card.

8 (48) "Inventory" means goods, other than farm products, which:

9 (A) are leased by a person as lessor;

10 (B) are held by a person for sale or lease or to be furnished under
11 a contract of service;

12 (C) are furnished by a person under a contract of service; or

13 (D) consist of raw materials, work in process, or materials used or
14 consumed in a business.

15 (49) "Investment property" means a security, whether certificated or
16 uncertificated, security entitlement, securities account, commodity
17 contract, or commodity account.

18 (50) "Jurisdiction of organization", with respect to a registered
19 organization, means the jurisdiction under whose law the organization is
20 formed or organized.

21 (51) "Letter-of-credit right" means a right to payment or
22 performance under a letter of credit, whether or not the beneficiary has
23 demanded or is at the time entitled to demand payment or performance. The
24 term does not include the right of a beneficiary to demand payment or
25 performance under a letter of credit.

26 (52) "Lien creditor" means:

27 (A) a creditor that has acquired a lien on the property involved by
28 attachment, levy, or the like;

29 (B) an assignee for benefit of creditors from the time of
30 assignment;

31 (C) a trustee in bankruptcy from the date of the filing of the

1 petition; or

2 (D) a receiver in equity from the time of appointment.

3 (53) "Manufactured home" means a structure, transportable in one or
4 more sections, which, in the traveling mode, is eight body feet or more
5 in width or forty body feet or more in length, or, when erected on site,
6 is three hundred twenty or more square feet, and which is built on a
7 permanent chassis and designed to be used as a dwelling with or without a
8 permanent foundation when connected to the required utilities, and
9 includes the plumbing, heating, air-conditioning, and electrical systems
10 contained therein. The term includes any structure that meets all of the
11 requirements of this subdivision except the size requirements and with
12 respect to which the manufacturer voluntarily files a certification
13 required by the United States Secretary of Housing and Urban Development
14 and complies with the standards established under Title 42 of the United
15 States Code.

16 (54) "Manufactured-home transaction" means a secured transaction:

17 (A) that creates a purchase-money security interest in a
18 manufactured home, other than a manufactured home held as inventory; or

19 (B) in which a manufactured home, other than a manufactured home
20 held as inventory, is the primary collateral.

21 (55) "Mortgage" means a consensual interest in real property,
22 including fixtures, which secures payment or performance of an
23 obligation.

24 (56) "New debtor" means a person that becomes bound as debtor under
25 section 9-203(d) by a security agreement previously entered into by
26 another person.

27 (57) "New value" means (i) money, (ii) money's worth in property,
28 services, or new credit, or (iii) release by a transferee of an interest
29 in property previously transferred to the transferee. The term does not
30 include an obligation substituted for another obligation.

31 (58) "Noncash proceeds" means proceeds other than cash proceeds.

1 (59) "Obligor" means a person that, with respect to an obligation
2 secured by a security interest in or an agricultural lien on the
3 collateral, (i) owes payment or other performance of the obligation, (ii)
4 has provided property other than the collateral to secure payment or
5 other performance of the obligation, or (iii) is otherwise accountable in
6 whole or in part for payment or other performance of the obligation. The
7 term does not include issuers or nominated persons under a letter of
8 credit.

9 (60) "Original debtor", except as used in section 9-310(c), means a
10 person that, as debtor, entered into a security agreement to which a new
11 debtor has become bound under section 9-203(d).

12 (61) "Payment intangible" means a general intangible under which the
13 account debtor's principal obligation is a monetary obligation.

14 (62) "Person related to", with respect to an individual, means:

15 (A) the spouse of the individual;

16 (B) a brother, brother-in-law, sister, or sister-in-law of the
17 individual;

18 (C) an ancestor or lineal descendant of the individual or the
19 individual's spouse; or

20 (D) any other relative, by blood or marriage, of the individual or
21 the individual's spouse who shares the same home with the individual.

22 (63) "Person related to", with respect to an organization, means:

23 (A) a person directly or indirectly controlling, controlled by, or
24 under common control with the organization;

25 (B) an officer or director of, or a person performing similar
26 functions with respect to, the organization;

27 (C) an officer or director of, or a person performing similar
28 functions with respect to, a person described in subdivision (A);

29 (D) the spouse of an individual described in subdivision (A), (B),
30 or (C); or

31 (E) an individual who is related by blood or marriage to an

1 individual described in subdivision (A), (B), (C), or (D) and shares the
2 same home with the individual.

3 (64) "Proceeds", except as used in section 9-609(b), means the
4 following property:

5 (A) whatever is acquired upon the sale, lease, license, exchange, or
6 other disposition of collateral;

7 (B) whatever is collected on, or distributed on account of,
8 collateral;

9 (C) rights arising out of collateral;

10 (D) to the extent of the value of collateral, claims arising out of
11 the loss, nonconformity, or interference with the use of, defects or
12 infringement of rights in, or damage to, the collateral; or

13 (E) to the extent of the value of collateral and to the extent
14 payable to the debtor or the secured party, insurance payable by reason
15 of the loss or nonconformity of, defects or infringement of rights in, or
16 damage to, the collateral.

17 (65) "Promissory note" means an instrument that evidences a promise
18 to pay a monetary obligation, does not evidence an order to pay, and does
19 not contain an acknowledgment by a bank that the bank has received for
20 deposit a sum of money or funds.

21 (66) "Proposal" means a record authenticated by a secured party
22 which includes the terms on which the secured party is willing to accept
23 collateral in full or partial satisfaction of the obligation it secures
24 pursuant to sections 9-620, 9-621, and 9-622.

25 (67) "Public-finance transaction" means a secured transaction in
26 connection with which:

27 (A) debt securities are issued;

28 (B) all or a portion of the securities issued have an initial stated
29 maturity of at least twenty years; and

30 (C) the debtor, obligor, secured party, account debtor or other
31 person obligated on collateral, assignor or assignee of a secured

1 obligation, or assignor or assignee of a security interest is a state or
2 a governmental unit of a state.

3 (68) "Public organic record" means a record that is available to the
4 public for inspection and is:

5 (A) a record consisting of the record initially filed with or issued
6 by a state or the United States to form or organize an organization and
7 any record filed with or issued by the state or the United States which
8 amends or restates the initial record;

9 (B) an organic record of a business trust consisting of the record
10 initially filed with a state and any record filed with the state which
11 amends or restates the initial record, if a statute of the state
12 governing business trusts requires that the record be filed with the
13 state; or

14 (C) a record consisting of legislation enacted by the legislature of
15 a state or the Congress of the United States which forms or organizes an
16 organization, any record amending the legislation, and any record filed
17 with or issued by the state or United States which amends or restates the
18 name of the organization.

19 (69) "Pursuant to commitment", with respect to an advance made or
20 other value given by a secured party, means pursuant to the secured
21 party's obligation, whether or not a subsequent event of default or other
22 event not within the secured party's control has relieved or may relieve
23 the secured party from its obligation.

24 (70) "Record", except as used in "for record", "of record", "record
25 or legal title", and "record owner", means information that is inscribed
26 on a tangible medium or which is stored in an electronic or other medium
27 and is retrievable in perceivable form.

28 (71) "Registered organization" means an organization formed or
29 organized solely under the law of a single state or the United States by
30 the filing of a public organic record with, the issuance of a public
31 organic record by, or the enactment of legislation by the state or the

1 United States. The term includes a business trust that is formed or
2 organized under the law of a single state if a statute of the state
3 governing business trusts requires that the business trust's organic
4 record be filed with the state.

5 (72) "Secondary obligor" means an obligor to the extent that:

6 (A) the obligor's obligation is secondary; or

7 (B) the obligor has a right of recourse with respect to an
8 obligation secured by collateral against the debtor, another obligor, or
9 property of either.

10 (73) "Secured party" means:

11 (A) a person in whose favor a security interest is created or
12 provided for under a security agreement, whether or not any obligation to
13 be secured is outstanding;

14 (B) a person that holds an agricultural lien;

15 (C) a consignor;

16 (D) a person to which accounts, chattel paper, payment intangibles,
17 or promissory notes have been sold;

18 (E) a trustee, indenture trustee, agent, collateral agent, or other
19 representative in whose favor a security interest or agricultural lien is
20 created or provided for; or

21 (F) a person that holds a security interest arising under section
22 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

23 (74) "Security agreement" means an agreement that creates or
24 provides for a security interest.

25 (75) "Send", in connection with a record or notification, means:

26 (A) to deposit in the mail, deliver for transmission, or transmit by
27 any other usual means of communication, with postage or cost of
28 transmission provided for, addressed to any address reasonable under the
29 circumstances; or

30 (B) to cause the record or notification to be received within the
31 time that it would have been received if properly sent under subdivision

1 (A).

2 (76) "Software" means a computer program and any supporting
3 information provided in connection with a transaction relating to the
4 program. The term does not include a computer program that is included in
5 the definition of goods.

6 (77) "State" means a state of the United States, the District of
7 Columbia, Puerto Rico, the United States Virgin Islands, or any territory
8 or insular possession subject to the jurisdiction of the United States.

9 (78) "Supporting obligation" means a letter-of-credit right or
10 secondary obligation that supports the payment or performance of an
11 account, chattel paper, a document, a general intangible, an instrument,
12 or investment property.

13 (79) "Tangible chattel paper" means chattel paper evidenced by a
14 record or records consisting of information that is inscribed on a
15 tangible medium.

16 (80) "Termination statement" means an amendment of a financing
17 statement which:

18 (A) identifies, by its file number, the initial financing statement
19 to which it relates; and

20 (B) indicates either that it is a termination statement or that the
21 identified financing statement is no longer effective.

22 (81) "Transmitting utility" means a person primarily engaged in the
23 business of:

24 (A) operating a railroad, subway, street railway, or trolley bus;

25 (B) transmitting communications electrically, electromagnetically,
26 or by light;

27 (C) transmitting goods by pipeline or sewer; or

28 (D) transmitting or producing and transmitting electricity, steam,
29 gas, or water.

30 (b) "Control" as provided in section 7-106 and the following
31 definitions in other articles apply to this article:

1	"Applicant".	Section 5-102.
2	"Beneficiary".	Section 5-102.
3	"Broker".	Section 8-102.
4	"Certificated security".	Section 8-102.
5	"Check".	Section 3-104.
6	"Clearing corporation".	Section 8-102.
7	"Contract for sale".	Section 2-106.
8	"Controllable electronic record".	Section 12-102.
9	"Customer".	Section 4-104.
10	"Entitlement holder".	Section 8-102.
11	"Financial asset".	Section 8-102.
12	"Holder in due course".	Section 3-302.
13	"Issuer" (with respect to	
14	a letter of credit or	
15	letter-of-credit right).	Section 5-102.
16	"Issuer" (with respect to	
17	a security).	Section 8-201.
18	"Issuer" (with respect to	
19	a document of title).	Section 7-102.
20	"Lease".	Section 2A-103.
21	"Lease agreement".	Section 2A-103.
22	"Lease contract".	Section 2A-103.
23	"Leasehold interest".	Section 2A-103.
24	"Lessee".	Section 2A-103.
25	"Lessee in ordinary course	
26	of business".	Section 2A-103.
27	"Lessor".	Section 2A-103.
28	"Lessor's residual interest".	Section 2A-103.
29	"Letter of credit".	Section 5-102.
30	"Merchant".	Section 2-104.

1	"Negotiable instrument".	Section 3-104.
2	"Nominated person".	Section 5-102.
3	"Note".	Section 3-104.
4	"Proceeds of a letter of credit".	Section 5-114.
5	"Prove".	Section 3-103.
6	"Sale".	Section 2-106.
7	"Securities account".	Section 8-501.
8	"Securities intermediary".	Section 8-102.
9	"Security".	Section 8-102.
10	"Security certificate".	Section 8-102.
11	"Security entitlement".	Section 8-102.
12	"Uncertificated security".	Section 8-102.

13 (c) Article 1 contains general definitions and principles of
14 construction and interpretation applicable throughout this article.

15 Sec. 3. Section 9-107A, Uniform Commercial Code, Reissue Revised
16 Statutes of Nebraska, is amended to read:

17 9-107A Control of account, payment intangible, or controllable
18 electronic record.

19 (a) A secured party has "control" of an account or payment
20 intangible if:

21 (1) the account or payment intangible is included in the benefit
22 that can be derived from a controllable electronic record; and

23 (2) the secured party has control of the controllable electronic
24 record.

25 (b) A secured party has "control" of a controllable electronic
26 record as provided in section 12-105.

27 Sec. 4. Section 9-301, Uniform Commercial Code, Revised Statutes
28 Supplement, 2021, is amended to read:

29 9-301 Law governing perfection and priority of security interests.

30 Except as otherwise provided in sections 9-303 to 9-306, the
31 following rules determine the law governing perfection, the effect of

1 perfection or nonperfection, and the priority of a security interest in
2 collateral:

3 (1) Except as otherwise provided in this section, while a debtor is
4 located in a jurisdiction, the local law of that jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and the priority
6 of a security interest in collateral.

7 (2) While collateral is located in a jurisdiction, the local law of
8 that jurisdiction governs perfection, the effect of perfection or
9 nonperfection, and the priority of a possessory security interest in that
10 collateral.

11 (3) Except as otherwise provided in subdivision (4), while tangible
12 negotiable documents, goods, instruments, money, or tangible chattel
13 paper is located in a jurisdiction, the local law of that jurisdiction
14 governs:

15 (A) perfection of a security interest in the goods by filing a
16 fixture filing;

17 (B) perfection of a security interest in timber to be cut; and

18 (C) the effect of perfection or nonperfection and the priority of a
19 nonpossessory security interest in the collateral.

20 (4) The local law of the jurisdiction in which the wellhead or
21 minehead is located governs perfection, the effect of perfection or
22 nonperfection, and the priority of a security interest in as-extracted
23 collateral.

24 (5) While a debtor is located in a jurisdiction that is not a state,
25 the local law of the State of Nebraska governs:

26 (A) perfection by control of a security interest in an account,
27 controllable electronic record, or payment intangible; and

28 (B) the effect of perfection or nonperfection and the priority of a
29 security interest in an account, controllable electronic record, or
30 payment intangible perfected by control.

31 Sec. 5. Section 9-310, Uniform Commercial Code, Revised Statutes

1 Supplement, 2021, is amended to read:

2 9-310 When filing required to perfect security interest or
3 agricultural lien; security interests and agricultural liens to which
4 filing provisions do not apply.

5 (a) Except as otherwise provided in subsection (b) and section
6 9-312(b), a financing statement must be filed to perfect all security
7 interests and agricultural liens.

8 (b) The filing of a financing statement is not necessary to perfect
9 a security interest:

10 (1) that is perfected under section 9-308(d), (e), (f), or (g);

11 (2) that is perfected under section 9-309 when it attaches;

12 (3) in property subject to a statute, regulation, or treaty
13 described in section 9-311(a);

14 (4) in goods in possession of a bailee which is perfected under
15 section 9-312(d)(1) or (2);

16 (5) in certificated securities, documents, goods, or instruments
17 which is perfected without filing, control, or possession under section
18 9-312(e), (f), or (g);

19 (6) in collateral in the secured party's possession under section
20 9-313;

21 (7) in a certificated security which is perfected by delivery of the
22 security certificate to the secured party under section 9-313;

23 (8) in deposit accounts, electronic chattel paper, electronic
24 documents, investment property, accounts, payment intangibles,
25 controllable electronic records, or letter-of-credit rights which is
26 perfected by control under section 9-314;

27 (9) in proceeds which is perfected under section 9-315; or

28 (10) that is perfected under section 9-316.

29 (c) If a secured party assigns a perfected security interest or
30 agricultural lien, a filing under this article is not required to
31 continue the perfected status of the security interest against creditors

1 of and transferees from the original debtor.

2 Sec. 6. Section 9-312, Uniform Commercial Code, Revised Statutes
3 Supplement, 2021, is amended to read:

4 9-312 Perfection of security interests in chattel paper, deposit
5 accounts, documents, goods covered by documents, instruments, investment
6 property, controllable electronic records, certain accounts and payment
7 intangibles, letter-of-credit rights, and money; perfection by permissive
8 filing; temporary perfection without filing or transfer of possession.

9 (a) A security interest in chattel paper, negotiable documents,
10 instruments, investment property, controllable electronic records, and
11 accounts or payment intangibles that are included in the benefit that can
12 be derived from a controllable electronic record may be perfected by
13 filing.

14 (b) Except as otherwise provided in section 9-315(c) and (d) for
15 proceeds:

16 (1) a security interest in a deposit account may be perfected only
17 by control under section 9-314;

18 (2) and except as otherwise provided in section 9-308(d), a security
19 interest in a letter-of-credit right may be perfected only by control
20 under section 9-314; and

21 (3) a security interest in money may be perfected only by the
22 secured party's taking possession under section 9-313.

23 (c) While goods are in the possession of a bailee that has issued a
24 negotiable document covering the goods:

25 (1) a security interest in the goods may be perfected by perfecting
26 a security interest in the document; and

27 (2) a security interest perfected in the document has priority over
28 any security interest that becomes perfected in the goods by another
29 method during that time.

30 (d) While goods are in the possession of a bailee that has issued a
31 nonnegotiable document covering the goods, a security interest in the

1 goods may be perfected by:

2 (1) issuance of a document in the name of the secured party;

3 (2) the bailee's receipt of notification of the secured party's
4 interest; or

5 (3) filing as to the goods.

6 (e) A security interest in certificated securities, negotiable
7 documents, or instruments is perfected without filing or the taking of
8 possession or control for a period of twenty days from the time it
9 attaches to the extent that it arises for new value given under an
10 authenticated security agreement.

11 (f) A perfected security interest in a negotiable document or goods
12 in possession of a bailee, other than one that has issued a negotiable
13 document for the goods, remains perfected for twenty days without filing
14 if the secured party makes available to the debtor the goods or documents
15 representing the goods for the purpose of:

16 (1) ultimate sale or exchange; or

17 (2) loading, unloading, storing, shipping, transshipping,
18 manufacturing, processing, or otherwise dealing with them in a manner
19 preliminary to their sale or exchange.

20 (g) A perfected security interest in a certificated security or
21 instrument remains perfected for twenty days without filing if the
22 secured party delivers the security certificate or instrument to the
23 debtor for the purpose of:

24 (1) ultimate sale or exchange; or

25 (2) presentation, collection, enforcement, renewal, or registration
26 of transfer.

27 (h) After the twenty-day period specified in subsection (e), (f), or
28 (g) expires, perfection depends upon compliance with this article.

29 Sec. 7. Section 9-314, Uniform Commercial Code, Revised Statutes
30 Supplement, 2021, is amended to read:

31 9-314 Perfection by control.

1 (a) A security interest in investment property, deposit accounts,
2 accounts, payment intangibles, controllable electronic records, letter-
3 of-credit rights, electronic chattel paper, or electronic documents may
4 be perfected by control of the collateral under section 7-106, 9-104,
5 9-105, 9-106, 9-107, or 9-107A.

6 (b) A security interest in deposit accounts, electronic chattel
7 paper, accounts, payment intangibles, controllable electronic records,
8 letter-of-credit rights, or electronic documents is perfected by control
9 under section 7-106, 9-104, 9-105, 9-107, or 9-107A when the secured
10 party obtains control and remains perfected by control only while the
11 secured party retains control.

12 (c) A security interest in investment property is perfected by
13 control under section 9-106 from the time the secured party obtains
14 control and remains perfected by control until:

15 (1) the secured party does not have control; and

16 (2) one of the following occurs:

17 (A) if the collateral is a certificated security, the debtor has or
18 acquires possession of the security certificate;

19 (B) if the collateral is an uncertificated security, the issuer has
20 registered or registers the debtor as the registered owner; or

21 (C) if the collateral is a security entitlement, the debtor is or
22 becomes the entitlement holder.

23 Sec. 8. Section 9-331, Uniform Commercial Code, Revised Statutes
24 Supplement, 2021, is amended to read:

25 9-331 Priority of rights of purchasers of instruments, documents,
26 securities, and controllable electronic records under other articles;
27 priority of interests in financial assets and security entitlements under
28 article 8 and controllable electronic records under article 12.

29 (a) This article does not limit the rights of a holder in due course
30 of a negotiable instrument, a holder to which a negotiable document of
31 title has been duly negotiated, a protected purchaser of a security, or a

1 qualified purchaser of a controllable electronic record. These holders or
2 purchasers take priority over an earlier security interest, even if
3 perfected, to the extent provided in articles 3, 7, 8, and 12.

4 (b) This article does not limit the rights of or impose liability on
5 a person to the extent that the person is protected against the assertion
6 of a claim under article 8 or 12.

7 (c) Filing under this article does not constitute notice of a claim
8 or defense to the holders, or purchasers, or persons described in
9 subsections (a) and (b).

10 Sec. 9. Section 9-406, Uniform Commercial Code, Revised Statutes
11 Supplement, 2021, is amended to read:

12 9-406 Discharge of account debtor; notification of assignment;
13 identification and proof of assignment; restrictions on assignment of
14 accounts, chattel paper, payment intangibles, and promissory notes
15 ineffective.

16 (a) Subject to subsections (b) through (i) and (k), an account
17 debtor on an account, chattel paper, or a payment intangible may
18 discharge its obligation by paying the assignor until, but not after, the
19 account debtor receives a notification, authenticated by the assignor or
20 the assignee, that the amount due or to become due has been assigned and
21 that payment is to be made to the assignee. After receipt of the
22 notification, the account debtor may discharge its obligation by paying
23 the assignee and may not discharge the obligation by paying the assignor.

24 (b) Subject to subsections (h) and (k), notification is ineffective
25 under subsection (a):

26 (1) if it does not reasonably identify the rights assigned;

27 (2) to the extent that an agreement between an account debtor and a
28 seller of a payment intangible limits the account debtor's duty to pay a
29 person other than the seller and the limitation is effective under law
30 other than this article; or

31 (3) at the option of an account debtor, if the notification notifies

1 the account debtor to make less than the full amount of any installment
2 or other periodic payment to the assignee, even if:

3 (A) only a portion of the account, chattel paper, or payment
4 intangible has been assigned to that assignee;

5 (B) a portion has been assigned to another assignee; or

6 (C) the account debtor knows that the assignment to that assignee is
7 limited.

8 (c) Subject to subsections (h) and (k), if requested by the account
9 debtor, an assignee shall seasonably furnish reasonable proof that the
10 assignment has been made. Unless the assignee complies, the account
11 debtor may discharge its obligation by paying the assignor, even if the
12 account debtor has received a notification under subsection (a).

13 (d) Except as otherwise provided in subsection (e) and sections
14 2A-303 and 9-407, and subject to subsection (h), a term in an agreement
15 between an account debtor and an assignor or in a promissory note is
16 ineffective to the extent that it:

17 (1) prohibits, restricts, or requires the consent of the account
18 debtor or person obligated on the promissory note to the assignment or
19 transfer of, or the creation, attachment, perfection, or enforcement of a
20 security interest in, the account, chattel paper, payment intangible, or
21 promissory note; or

22 (2) provides that the assignment or transfer or the creation,
23 attachment, perfection, or enforcement of the security interest may give
24 rise to a default, breach, right of recoupment, claim, defense,
25 termination, right of termination, or remedy under the account, chattel
26 paper, payment intangible, or promissory note.

27 (e) Subsection (d) does not apply to the sale of a payment
28 intangible or promissory note, other than a sale pursuant to a
29 disposition under section 9-610 or an acceptance of collateral under
30 section 9-620.

31 (f) Except as otherwise provided in sections 2A-303 and 9-407, and

1 subject to subsections (h) and (i), a rule of law, statute, or regulation
2 that prohibits, restricts, or requires the consent of a government,
3 governmental body or official, or account debtor to the assignment or
4 transfer of, or creation of a security interest in, an account or chattel
5 paper is ineffective to the extent that the rule of law, statute, or
6 regulation:

7 (1) prohibits, restricts, or requires the consent of the government,
8 governmental body or official, or account debtor to the assignment or
9 transfer of, or the creation, attachment, perfection, or enforcement of a
10 security interest in the account or chattel paper; or

11 (2) provides that the assignment or transfer or the creation,
12 attachment, perfection, or enforcement of the security interest may give
13 rise to a default, breach, right of recoupment, claim, defense,
14 termination, right of termination, or remedy under the account or chattel
15 paper.

16 (g) Subject to subsections (h) and (k), an account debtor may not
17 waive or vary its option under subdivision (b)(3).

18 (h) This section is subject to law other than this article which
19 establishes a different rule for an account debtor who is an individual
20 and who incurred the obligation primarily for personal, family, or
21 household purposes.

22 (i) This section does not apply to an assignment of a health-care-
23 insurance receivable.

24 (j) This section prevails over any inconsistent provisions of the
25 law of this state.

26 (k) Subsections (a) through (c) and (g) do not apply to an account
27 or payment intangible that is included in the benefit that can be derived
28 from a controllable electronic record.

29 Sec. 10. Section 12-101, Uniform Commercial Code, Revised Statutes
30 Supplement, 2021, is amended to read:

31 12-101 Short title.

1 This article may be cited as Uniform Commercial Code–Controllable
2 Electronic Records.

3 Sec. 11. Section 12-101A, Uniform Commercial Code, Revised Statutes
4 Supplement, 2021, is amended to read:

5 12-101A Intent.

6 (a) The Joint Committee on the Uniform Commercial Code and Emerging
7 Technologies of the Uniform Law Commission has developed draft Uniform
8 Commercial Code provisions governing certain digital assets, specifically
9 those that fall within the definition of "controllable electronic
10 records". The current draft has been extensively vetted by those who
11 understand and participate in digital transactions.

12 (b) Adoption of the Uniform Law Commission's draft by the 2021
13 Nebraska Legislature will create a considerable and necessary advantage
14 for Nebraska to lead in emerging industries utilizing blockchain, digital
15 ledger technology, virtual currencies, and other digital assets and would
16 provide a sensible framework and legal certainty for transactions of
17 controllable electronic records. In subsequent sessions, if necessary,
18 the Nebraska Legislature will review and adopt conforming amendments to
19 the provisions of the Uniform Commercial Code on controllable electronic
20 records to remain consistent with the language and intent of the final
21 proposal of the Joint Committee on the Uniform Commercial Code and
22 Emerging Technologies of the Uniform Law Commission.

23 Sec. 12. Section 12-102, Uniform Commercial Code, Revised Statutes
24 Supplement, 2021, is amended to read:

25 12-102 Definitions.

26 (a) In this article, "controllable electronic record" means an
27 electronic record that can be subjected to control (section 12-105). The
28 term does not include electronic chattel paper, electronic documents,
29 investment property, and transferable records under the Uniform
30 Electronic Transactions Act.

31 (b) The definitions of "account," "account debtor," "authenticate,"

1 "electronic chattel paper," "investment property," and "payment
2 intangible" in article 9 apply to this article.

3 Sec. 13. Section 12-103, Uniform Commercial Code, Revised Statutes
4 Supplement, 2021, is amended to read:

5 12-103 Scope.

6 This article applies to controllable electronic records.

7 Sec. 14. Section 12-104, Uniform Commercial Code, Revised Statutes
8 Supplement, 2021, is amended to read:

9 12-104 Rights in controllable electronic records and certain
10 accounts and payment intangibles.

11 (a) In this section:

12 (1) "Adverse claim" means a claim that a claimant has a property
13 interest in a controllable electronic record and that it is a violation
14 of the rights of the claimant for another person to hold, transfer, or
15 deal with the controllable electronic record.

16 (2) "Qualified purchaser" means a purchaser of a controllable
17 electronic record or an interest therein that obtains control of a
18 controllable electronic record for value and without notice of any
19 adverse claim. The term includes a person that acquires rights in a
20 controllable electronic record by a transfer of control under subsection
21 (d).

22 (b) Subject to subsections (c) through (i), law other than this
23 article 12 determines whether a person acquires rights in a controllable
24 electronic record and the rights that the person acquires.

25 (c) A purchaser of a controllable electronic record acquires all
26 rights in the controllable electronic record that the transferor had or
27 had power to transfer.

28 (d) A person having control of, but no rights in, a controllable
29 electronic record has power to transfer rights in the controllable
30 electronic record by voluntarily transferring control to a person that
31 obtains control for value and without notice of any adverse claim.

1 (e) A purchaser of a limited interest acquires rights only to the
2 extent of the interest purchased.

3 (f) In addition to acquiring the rights of a purchaser, a qualified
4 purchaser acquires its rights in the controllable electronic record and
5 any account or payment intangible that is included in the benefit that
6 can be derived from the controllable electronic record free of any
7 adverse claim.

8 (g) An action based on an adverse claim to a controllable electronic
9 record or an account or payment intangible that is included in the
10 benefit that can be derived from a controllable electronic record,
11 whether framed in conversion, replevin, constructive trust, equitable
12 lien, or other theory, may not be asserted against a qualified purchaser
13 that acquires its interest in, and obtains control of, a controllable
14 electronic record for value and without notice of the adverse claim.

15 (h) A person has notice of an adverse claim if:

16 (1) the person knows of the adverse claim; or

17 (2) the person is aware of facts sufficient to indicate that there
18 is a significant probability that the adverse claim exists and
19 deliberately avoids information that would establish the existence of the
20 adverse claim.

21 (i) Filing of a financing statement under article 9 is not notice of
22 an adverse claim to a controllable electronic record.

23 Sec. 15. Section 12-105, Uniform Commercial Code, Revised Statutes
24 Supplement, 2021, is amended to read:

25 12-105 Control of controllable electronic record.

26 (a) A person has "control" of a controllable electronic record if:

27 (1) the following conditions are met:

28 (A) the controllable electronic record or the system in which it is
29 recorded, if any, gives the person:

30 (i) the power to derive substantially all the benefit from the
31 controllable electronic record;

1 (ii) subject to subsection (b), the exclusive power to prevent
2 others from deriving substantially all the benefit from the controllable
3 electronic record; and

4 (iii) subject to subsection (b), the exclusive power to transfer
5 control of the controllable electronic record to another person or cause
6 another person to obtain control of a controllable electronic record that
7 derives from the controllable electronic record; and

8 (B) the controllable electronic record, a record attached to or
9 logically associated with the controllable electronic record, or the
10 system in which the controllable electronic record is recorded, if any,
11 enables the person to readily identify itself as having the powers
12 specified in subparagraph (A); or

13 (2) another person obtains control of the controllable electronic
14 record on behalf of the person, or having previously obtained control of
15 the controllable electronic record, acknowledges that it has control on
16 behalf of the person.

17 (b) A power specified in subparagraph (a)(1)(A)(ii) or (a)(1)(A)
18 (iii) can be "exclusive," even if:

19 (1) the controllable electronic record or the system in which it is
20 recorded, if any, limits the use to which the controllable electronic
21 record may be put or has protocols that are programmed to result in a
22 transfer of control; and

23 (2) the person has agreed to share the power with another person.

24 (c) For the purposes of subparagraph (a)(1)(B), a person may be
25 identified in any way, including by name, identifying number,
26 cryptographic key, office, or account number.

27 Sec. 16. Section 12-106, Uniform Commercial Code, Revised Statutes
28 Supplement, 2021, is amended to read:

29 12-106 Discharge of account debtor on account or payment intangible
30 included in controllable electronic record.

31 (a) Subject to subsections (b) through (f), if an account or payment

1 intangible is included in the benefit that can be derived from a
2 controllable electronic record, the account debtor may discharge its
3 obligation on the account or payment intangible:

4 (1) by paying the person having control of the controllable
5 electronic record; or

6 (2) by paying a person that formerly had control of the controllable
7 electronic record.

8 (b) Subject to subsection (f), an account debtor may not discharge
9 its obligation by paying a person that formerly had control if, before
10 the payment, the account debtor receives a notification, authenticated by
11 the person having control, that notifies the account debtor that the
12 person has control of the controllable electronic record, reasonably
13 identifies the controllable electronic record, and provides a reasonable
14 method by which the account debtor is to make payments. After receipt of
15 the notification, the account debtor may discharge its obligation by
16 paying in accordance with the notification and may not discharge the
17 obligation by paying a person that formerly had control.

18 (c) Subject to subsection (f), notification is ineffective under
19 subsection (b):

20 (1) to the extent that an agreement between an account debtor and a
21 seller of a payment intangible limits the account debtor's duty to pay a
22 person other than the seller and the limitation is effective under law
23 other than this article; or

24 (2) at the option of the account debtor, if the notification
25 notifies the account debtor to divide a payment and send portions by more
26 than one method.

27 (d) Subject to subsection (f), if requested by the account debtor,
28 the person giving the notification shall seasonably furnish reasonable
29 proof that the person has control of the controllable electronic record.
30 Unless the person complies, the account debtor may discharge its
31 obligation by paying a person that formerly had control, even if the

1 account debtor has received a notification under subsection (b).

2 (e) Subject to subsection (f), an account debtor may not waive or
3 vary its option under subsection (c)(2).

4 (f) This section is subject to law other than this article which
5 establishes a different rule for an account debtor who is an individual
6 and who incurred the obligation primarily for personal, family, or
7 household purposes.

8 Sec. 17. Section 12-107, Uniform Commercial Code, Revised Statutes
9 Supplement, 2021, is amended to read:

10 12-107 Governing law.

11 Unless otherwise agreed to by the parties, the laws of the State of
12 Nebraska shall govern any actions taken pursuant to this article.

13 Sec. 18. Section 12-108, Uniform Commercial Code, Revised Statutes
14 Supplement, 2021, is amended to read:

15 12-108 Applicability.

16 This article applies to any transaction involving a controllable
17 electronic record that arises on or after July 1, 2023 ~~2022~~. This article
18 does not apply to any transaction involving a controllable electronic
19 record that arises before July 1, 2023 ~~2022~~, even if the transaction
20 would be subject to this article if the transaction had arisen on or
21 after July 1, 2023 ~~2022~~. This article does not apply to a right of action
22 with regard to any transaction involving a controllable electronic record
23 that has accrued before July 1, 2023 ~~2022~~.

24 Sec. 19. Section 12-109, Uniform Commercial Code, Revised Statutes
25 Supplement, 2021, is amended to read:

26 12-109 Savings clause.

27 Any transaction involving a controllable electronic record that
28 arose before July 1, 2023 ~~2022~~, and the rights, obligations, and
29 interests flowing from that transaction are governed by any statute or
30 other rule amended or repealed by Laws 2021, LB649, as if such amendment
31 or repeal had not occurred and may be terminated, completed, consummated,

1 or enforced under that statute or other rule.

2 Sec. 20. Original sections 1-201, 9-102, 9-107A, 9-301, 9-310,
3 9-312, 9-314, 9-331, 9-406, 12-101, 12-101A, 12-102, 12-103, 12-104,
4 12-105, 12-106, 12-107, 12-108, and 12-109, Uniform Commercial Code,
5 Revised Statutes Supplement, 2021, are repealed.

6 Sec. 21. Since an emergency exists, this act takes effect when
7 passed and approved according to law.