

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 70

Introduced by Hansen, M., 26.

Read first time January 10, 2019

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to certain financial transactions; to amend
2 sections 66-1509, 77-5211, and 81-15,119, Reissue Revised Statutes
3 of Nebraska; to adopt the Uniform Voidable Transactions Act; to
4 eliminate the Uniform Fraudulent Transfer Act; to harmonize
5 provisions; to repeal the original sections; and to outright repeal
6 sections 36-701, 36-702, 36-703, 36-704, 36-705, 36-706, 36-707,
7 36-708, 36-709, 36-710, 36-711, and 36-712, Reissue Revised Statutes
8 of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known and may be
2 cited as the Uniform Voidable Transactions Act.

3 Sec. 2. As used in the Uniform Voidable Transactions Act:

4 (1) Affiliate means:

5 (i) a person that directly or indirectly owns, controls, or holds
6 with power to vote, twenty percent or more of the outstanding voting
7 securities of the debtor, other than a person that holds the securities:

8 (A) as a fiduciary or agent without sole discretionary power to vote
9 the securities; or

10 (B) solely to secure a debt, if the person has not in fact exercised
11 the power to vote;

12 (ii) a corporation twenty percent or more of whose outstanding
13 voting securities are directly or indirectly owned, controlled, or held
14 with power to vote, by the debtor or a person that directly or indirectly
15 owns, controls, or holds, with power to vote, twenty percent or more of
16 the outstanding voting securities of the debtor, other than a person that
17 holds the securities:

18 (A) as a fiduciary or agent without sole discretionary power to vote
19 the securities; or

20 (B) solely to secure a debt, if the person has not in fact exercised
21 the power to vote;

22 (iii) a person whose business is operated by the debtor under a
23 lease or other agreement, or a person substantially all of whose assets
24 are controlled by the debtor; or

25 (iv) a person that operates the debtor's business under a lease or
26 other agreement or controls substantially all of the debtor's assets.

27 (2) Asset means property of a debtor, but the term does not include:

28 (i) property to the extent it is encumbered by a valid lien;

29 (ii) property to the extent it is generally exempt under
30 nonbankruptcy law; or

31 (iii) an interest in property held in tenancy by the entirety to

1 the extent it is not subject to process by a creditor holding a claim
2 against only one tenant.

3 (3) Claim, except as used in claim for relief, means a right to
4 payment, whether or not the right is reduced to judgment, liquidated,
5 unliquidated, fixed, contingent, matured, unmatured, disputed,
6 undisputed, legal, equitable, secured, or unsecured.

7 (4) Creditor means a person that has a claim.

8 (5) Debt means liability on a claim.

9 (6) Debtor means a person that is liable on a claim.

10 (7) Electronic means relating to technology having electrical,
11 digital, magnetic, wireless, optical, electromagnetic, or similar
12 capabilities.

13 (8) Insider includes:

14 (i) if the debtor is an individual:

15 (A) a relative of the debtor or of a general partner of the debtor;

16 (B) a partnership in which the debtor is a general partner;

17 (C) a general partner in a partnership described in subdivision (8)

18 (i)(B) of this section; or

19 (D) a corporation of which the debtor is a director, officer, or
20 person in control;

21 (ii) if the debtor is a corporation:

22 (A) a director of the debtor;

23 (B) an officer of the debtor;

24 (C) a person in control of the debtor;

25 (D) a partnership in which the debtor is a general partner;

26 (E) a general partner in a partnership described in subdivision (8)

27 (ii)(D) of this section; or

28 (F) a relative of a general partner, director, officer, or person in
29 control of the debtor;

30 (iii) if the debtor is a partnership:

31 (A) a general partner in the debtor;

1 (B) a relative of a general partner in, a general partner of, or a
2 person in control of the debtor;

3 (C) another partnership in which the debtor is a general partner;

4 (D) a general partner in a partnership described in subdivision (8)
5 (iii)(C) of this section; or

6 (E) a person in control of the debtor;

7 (iv) an affiliate, or an insider of an affiliate as if the affiliate
8 were the debtor; and

9 (v) a managing agent of the debtor.

10 (9) Lien means a charge against or an interest in property to secure
11 payment of a debt or performance of an obligation, and includes a
12 security interest created by agreement, a judicial lien obtained by legal
13 or equitable process or proceedings, a common-law lien, or a statutory
14 lien.

15 (10) Organization means a person other than an individual.

16 (11) Person means an individual, estate, partnership, association,
17 trust, business or nonprofit entity, public corporation, government or
18 governmental subdivision, agency, or instrumentality, or other legal or
19 commercial entity.

20 (12) Property means anything that may be the subject of ownership.

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

24 (14) Relative means an individual related by consanguinity within
25 the third degree as determined by the common law, a spouse, or an
26 individual related to a spouse within the third degree as so determined,
27 and includes an individual in an adoptive relationship within the third
28 degree.

29 (15) Sign means, with present intent to authenticate or adopt a
30 record:

31 (i) to execute or adopt a tangible symbol; or

1 (ii) to attach to or logically associate with the record an
2 electronic symbol, sound, or process.

3 (16) Transfer means every mode, direct or indirect, absolute or
4 conditional, voluntary or involuntary, of disposing of or parting with an
5 asset or an interest in an asset, and includes payment of money, release,
6 lease, license, and creation of a lien or other encumbrance.

7 (17) Valid lien means a lien that is effective against the holder of
8 a judicial lien subsequently obtained by legal or equitable process or
9 proceedings.

10 Sec. 3. (a) A debtor is insolvent if, at a fair valuation, the sum
11 of the debtor's debts is greater than the sum of the debtor's assets.

12 (b) A debtor that is generally not paying the debtor's debts as they
13 become due other than as a result of a bona fide dispute is presumed to
14 be insolvent. The presumption imposes on the party against which the
15 presumption is directed the burden of proving that the nonexistence of
16 insolvency is more probable than its existence.

17 (c) Assets under this section do not include property that has been
18 transferred, concealed, or removed with intent to hinder, delay, or
19 defraud creditors or that has been transferred in a manner making the
20 transfer voidable under the Uniform Voidable Transactions Act.

21 (d) Debts under this section do not include an obligation to the
22 extent it is secured by a valid lien on property of the debtor not
23 included as an asset.

24 Sec. 4. (a) Value is given for a transfer or an obligation if, in
25 exchange for the transfer or obligation, property is transferred or an
26 antecedent debt is secured or satisfied, but value does not include an
27 unperformed promise made otherwise than in the ordinary course of the
28 promisor's business to furnish support to the debtor or another person.

29 (b) For the purposes of subdivision (a)(2) of section 5 of this act
30 and section 6 of this act, a person gives a reasonably equivalent value
31 if the person acquires an interest of the debtor in an asset pursuant to

1 a regularly conducted, noncollusive foreclosure sale or execution of a
2 power of sale for the acquisition or disposition of the interest of the
3 debtor upon default under a mortgage, deed of trust, or security
4 agreement.

5 (c) A transfer is made for present value if the exchange between the
6 debtor and the transferee is intended by them to be contemporaneous and
7 is in fact substantially contemporaneous.

8 Sec. 5. (a) A transfer made or obligation incurred by a debtor is
9 voidable as to a creditor, whether the creditor's claim arose before or
10 after the transfer was made or the obligation was incurred, if the debtor
11 made the transfer or incurred the obligation:

12 (1) with actual intent to hinder, delay, or defraud any creditor of
13 the debtor; or

14 (2) without receiving a reasonably equivalent value in exchange for
15 the transfer or obligation, and the debtor:

16 (i) was engaged or was about to engage in a business or a
17 transaction for which the remaining assets of the debtor were
18 unreasonably small in relation to the business or transaction; or

19 (ii) intended to incur, or believed or reasonably should have
20 believed that the debtor would incur, debts beyond the debtor's ability
21 to pay as they became due.

22 (b) In determining actual intent under subdivision (a)(1) of this
23 section, consideration may be given, among other factors, to whether:

24 (1) the transfer or obligation was to an insider;

25 (2) the debtor retained possession or control of the property
26 transferred after the transfer;

27 (3) the transfer or obligation was disclosed or concealed;

28 (4) before the transfer was made or obligation was incurred, the
29 debtor had been sued or threatened with suit;

30 (5) the transfer was of substantially all the debtor's assets;

31 (6) the debtor absconded;

1 (7) the debtor removed or concealed assets;

2 (8) the value of the consideration received by the debtor was
3 reasonably equivalent to the value of the asset transferred or the amount
4 of the obligation incurred;

5 (9) the debtor was insolvent or became insolvent shortly after the
6 transfer was made or the obligation was incurred;

7 (10) the transfer occurred shortly before or shortly after a
8 substantial debt was incurred; and

9 (11) the debtor transferred the essential assets of the business to
10 a lienor that transferred the assets to an insider of the debtor.

11 (c) A creditor making a claim for relief under subsection (a) of
12 this section has the burden of proving the elements of the claim for
13 relief by a preponderance of the evidence.

14 Sec. 6. (a) A transfer made or obligation incurred by a debtor is
15 voidable as to a creditor whose claim arose before the transfer was made
16 or the obligation was incurred if the debtor made the transfer or
17 incurred the obligation without receiving a reasonably equivalent value
18 in exchange for the transfer or obligation and the debtor was insolvent
19 at that time or the debtor became insolvent as a result of the transfer
20 or obligation.

21 (b) A transfer made by a debtor is voidable as to a creditor whose
22 claim arose before the transfer was made if the transfer was made to an
23 insider for an antecedent debt, the debtor was insolvent at that time,
24 and the insider had reasonable cause to believe that the debtor was
25 insolvent.

26 (c) Subject to subsection (b) of section 3 of this act, a creditor
27 making a claim for relief under subsection (a) or (b) of this section has
28 the burden of proving the elements of the claim for relief by a
29 preponderance of the evidence.

30 Sec. 7. For the purposes of the Uniform Voidable Transactions Act:

31 (1) a transfer is made:

1 (i) with respect to an asset that is real property other than a
2 fixture, but including the interest of a seller or purchaser under a
3 contract for the sale of the asset, when the transfer is so far perfected
4 that a good-faith purchaser of the asset from the debtor against which
5 applicable law permits the transfer to be perfected cannot acquire an
6 interest in the asset that is superior to the interest of the transferee;
7 and

8 (ii) with respect to an asset that is not real property or that is a
9 fixture, when the transfer is so far perfected that a creditor on a
10 simple contract cannot acquire a judicial lien otherwise than under the
11 Uniform Voidable Transactions Act that is superior to the interest of the
12 transferee;

13 (2) if applicable law permits the transfer to be perfected as
14 provided in subdivision (1) of this section and the transfer is not so
15 perfected before the commencement of an action for relief under the act,
16 the transfer is deemed made immediately before the commencement of the
17 action;

18 (3) if applicable law does not permit the transfer to be perfected
19 as provided in subdivision (1) of this section, the transfer is made when
20 it becomes effective between the debtor and the transferee;

21 (4) a transfer is not made until the debtor has acquired rights in
22 the asset transferred; and

23 (5) an obligation is incurred:

24 (i) if oral, when it becomes effective between the parties; or

25 (ii) if evidenced by a record, when the record signed by the obligor
26 is delivered to or for the benefit of the obligee.

27 Sec. 8. (a) In an action for relief against a transfer or
28 obligation under the Uniform Voidable Transactions Act, a creditor,
29 subject to the limitations in section 9, may obtain:

30 (1) avoidance of the transfer or obligation to the extent necessary
31 to satisfy the creditor's claim;

1 (2) an attachment or other provisional remedy against the asset
2 transferred or other property of the transferee if available under
3 applicable law; and

4 (3) subject to applicable principles of equity and in accordance
5 with applicable rules of civil procedure:

6 (i) an injunction against further disposition by the debtor or a
7 transferee, or both, of the asset transferred or of other property;

8 (ii) appointment of a receiver to take charge of the asset
9 transferred or of other property of the transferee; or

10 (iii) any other relief the circumstances may require.

11 (b) If a creditor has obtained a judgment on a claim against the
12 debtor, the creditor, if the court so orders, may levy execution on the
13 asset transferred or its proceeds.

14 Sec. 9. (a) A transfer or obligation is not voidable under
15 subdivision (a)(1) of section 5 of this act against a person that took in
16 good faith and for a reasonably equivalent value or against any
17 subsequent transferee or obligee.

18 (b) To the extent a transfer is avoidable in an action by a creditor
19 under subdivision (a)(1) of section 8 of this act, the following rules
20 apply:

21 (1) Except as otherwise provided in this section, the creditor may
22 recover judgment for the value of the asset transferred, as adjusted
23 under subsection (c) of this section, or the amount necessary to satisfy
24 the creditor's claim, whichever is less. The judgment may be entered
25 against:

26 (i) the first transferee of the asset or the person for whose
27 benefit the transfer was made; or

28 (ii) an immediate or mediate transferee of the first transferee,
29 other than:

30 (A) a good-faith transferee that took for value; or

31 (B) an immediate or mediate good-faith transferee of a person

1 described in subdivision (b)(1)(ii)(A) of this section.

2 (2) Recovery pursuant to subdivision (a)(1) or (b) of section 8 of
3 this act of or from the asset transferred or its proceeds, by levy or
4 otherwise, is available only against a person described in subdivision
5 (b)(1)(i) or (ii) of this section.

6 (c) If the judgment under subsection (b) of this section is based
7 upon the value of the asset transferred, the judgment must be for an
8 amount equal to the value of the asset at the time of the transfer,
9 subject to adjustment as the equities may require.

10 (d) Notwithstanding voidability of a transfer or an obligation under
11 the Uniform Voidable Transactions Act, a good faith transferee or obligee
12 is entitled, to the extent of the value given the debtor for the transfer
13 or obligation, to:

14 (1) a lien on or a right to retain an interest in the asset
15 transferred;

16 (2) enforcement of an obligation incurred; or

17 (3) a reduction in the amount of the liability on the judgment.

18 (e) A transfer is not voidable under subdivision (a)(2) of section 5
19 or section 6 of this act if the transfer results from:

20 (1) termination of a lease upon default by the debtor when the
21 termination is pursuant to the lease and applicable law; or

22 (2) enforcement of a security interest in compliance with article 9,
23 Uniform Commercial Code, other than acceptance of collateral in full or
24 partial satisfaction of the obligation it secures.

25 (f) A transfer is not voidable under subsection (b) of section 6 of
26 this act:

27 (1) to the extent the insider gave new value to or for the benefit
28 of the debtor after the transfer was made, except to the extent the new
29 value was secured by a valid lien;

30 (2) if made in the ordinary course of business or financial affairs
31 of the debtor and the insider; or

1 (3) if made pursuant to a good-faith effort to rehabilitate the
2 debtor and the transfer secured present value given for that purpose as
3 well as an antecedent debt of the debtor.

4 (g) The following rules determine the burden of proving matters
5 referred to in this section:

6 (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of
7 this section has the burden of proving the applicability of that
8 subsection.

9 (2) Except as otherwise provided in subdivisions (g)(3) and (4) of
10 this section, the creditor has the burden of proving each applicable
11 element of subsection (b) or (c) of this section.

12 (3) The transferee has the burden of proving the applicability to
13 the transferee of subdivision (b)(1)(ii)(A) or (B) of this section.

14 (4) A party that seeks adjustment under subsection (c) of this
15 section has the burden of proving the adjustment.

16 (h) The standard of proof required to establish matters referred to
17 in this section is preponderance of the evidence.

18 Sec. 10. A claim for relief with respect to a transfer or
19 obligation under the Uniform Voidable Transactions Act is extinguished
20 unless action is brought:

21 (1) under subdivision (a)(1) of section 5 of this act, not later
22 than four years after the transfer was made or the obligation was
23 incurred or, if later, not later than one year after the transfer or
24 obligation was or could reasonably have been discovered by the claimant;

25 (2) under subdivision (a)(2) of section 5 or subsection (a) of
26 section 6 of this act, not later than four years after the transfer was
27 made or the obligation was incurred; or

28 (3) under subsection (b) of section 6 of this act, not later than
29 one year after the transfer was made.

30 Sec. 11. (a) In this section, the following rules determine a
31 debtor's location:

1 (1) A debtor who is an individual is located at the individual's
2 principal residence.

3 (2) A debtor that is an organization and has only one place of
4 business is located at its place of business.

5 (3) A debtor that is an organization and has more than one place of
6 business is located at its chief executive office.

7 (b) A claim for relief in the nature of a claim for relief under the
8 Uniform Voidable Transactions Act is governed by the local law of the
9 jurisdiction in which the debtor is located when the transfer is made or
10 the obligation is incurred.

11 Sec. 12. (a) In this section:

12 (1) Protected series means an arrangement, however denominated,
13 created by a series organization that, pursuant to the law under which
14 the series organization is organized, has the characteristics set forth
15 in subdivision (2) of this subsection.

16 (2) Series organization means an organization that, pursuant to the
17 law under which it is organized, has the following characteristics:

18 (i) The organic record of the organization provides for creation by
19 the organization of one or more protected series, however denominated,
20 with respect to specified property of the organization, and for records
21 to be maintained for each protected series that identify the property of
22 or associated with the protected series;

23 (ii) Debt incurred or existing with respect to the activities of, or
24 property of or associated with, a particular protected series is
25 enforceable against the property of or associated with the protected
26 series only, and not against the property of or associated with the
27 organization or other protected series of the organization; and

28 (iii) Debt incurred or existing with respect to the activities or
29 property of the organization is enforceable against the property of the
30 organization only, and not against the property of or associated with a
31 protected series of the organization.

1 (b) A series organization and each protected series of the
2 organization is a separate person for purposes of the Uniform Voidable
3 Transactions Act, even if for other purposes a protected series is not a
4 person separate from the organization or other protected series of the
5 organization.

6 Sec. 13. Unless displaced by the provisions of the Uniform Voidable
7 Transactions Act, the principles of law and equity, including the law
8 merchant and the law relating to principal and agent, estoppel, laches,
9 fraud, misrepresentation, duress, coercion, mistake, insolvency, or other
10 validating or invalidating cause, supplement its provisions.

11 Sec. 14. The Uniform Voidable Transactions Act shall be applied and
12 construed to effectuate its general purpose to make uniform the law with
13 respect to the subject of the act among states enacting it.

14 Sec. 15. The Uniform Voidable Transactions Act modifies, limits, or
15 supersedes the Electronic Signatures in Global and National Commerce Act,
16 15 U.S.C. 7001 et seq., as the act existed on the effective date of this
17 act, but does not modify, limit, or supersede section 101(c) of that act,
18 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices
19 described in section 103(b) of that act, 15 U.S.C. 7003(b).

20 Sec. 16. Section 66-1509, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 66-1509 (1) Owner shall mean:

23 (a) In the case of a tank in use on or after November 8, 1984, or
24 brought into use after such date, any person who owns a tank used for the
25 storage, use, or dispensing of petroleum; and

26 (b) In the case of a tank in use before November 8, 1984, but no
27 longer in use on such date, any person who owned such tank immediately
28 before the discontinuation of its use.

29 (2) Owner shall not include a person who, without participating in
30 the management of a tank and otherwise not engaged in petroleum
31 production, refining, and marketing:

1 (a) Holds indicia of ownership primarily to protect his or her
2 security interest in a tank or a lienhold interest in the property on or
3 within which a tank is or was located; or

4 (b) Acquires ownership of a tank or the property on or within which
5 a tank is or was located:

6 (i) Pursuant to a foreclosure of a security interest in the tank or
7 of a lienhold interest in the property; or

8 (ii) If the tank or the property was security for an extension of
9 credit previously contracted, pursuant to a sale under judgment or
10 decree, pursuant to a conveyance under a power of sale contained within a
11 trust deed or from a trustee, or pursuant to an assignment or deed in
12 lieu of foreclosure.

13 (3) Ownership of a tank or the property on or within which a tank is
14 or was located shall not be acquired by a voidable ~~fraudulent~~ transfer,
15 as provided in the Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act.

16 Sec. 17. Section 77-5211, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-5211 (1) Except as otherwise disallowed under subsection (5) of
19 this section, an owner of agricultural assets shall be allowed a credit
20 to be applied against the state income tax liability of such owner for
21 agricultural assets rented on a rental agreement basis, including cash
22 rent of agricultural assets or cash equivalent of a share-rent rental, to
23 qualified beginning farmers or livestock producers. Such asset shall be
24 rented at prevailing community rates as determined by the board.

25 (2) The credit allowed shall be for renting agricultural assets used
26 for farming or livestock production. Such credit shall be granted by the
27 Department of Revenue only after approval and certification by the board
28 and a written three-year rental agreement for such assets is entered into
29 between an owner of agricultural assets and a qualified beginning farmer
30 or livestock producer. An owner of agricultural assets or qualified
31 beginning farmer or livestock producer may terminate such agreement for

1 reasonable cause upon approval by the board. If an agreement is
2 terminated without fault on the part of the owner of agricultural assets
3 as determined by the board, the tax credit shall not be retroactively
4 disallowed. If an agreement is terminated with fault on the part of the
5 owner of agricultural assets as determined by the board, any prior tax
6 credits claimed by such owner shall be disallowed and recaptured and
7 shall be immediately due and payable to the State of Nebraska.

8 (3) A credit may be granted to an owner of agricultural assets for
9 renting agricultural assets, including cash rent of agricultural assets
10 or cash equivalent of a share-rent agreement, to any qualified beginning
11 farmer or livestock producer for a period of three years. An owner of
12 agricultural assets shall not be eligible for further credits under the
13 Beginning Farmer Tax Credit Act unless the rental agreement is terminated
14 prior to the end of the three-year period through no fault of the owner
15 of agricultural assets. If the board finds that such a termination was
16 not the fault of the owner of agricultural assets, it may approve the
17 owner for credits arising from a subsequent qualifying rental agreement
18 with a different qualified beginning farmer or livestock producer.

19 (4) Any credit allowable to a partnership, a corporation, a limited
20 liability company, or an estate or trust may be distributed to the
21 partners, members, shareholders, or beneficiaries. Any credit distributed
22 shall be distributed in the same manner as income is distributed.

23 (5) The credit allowed under this section shall not be allowed to an
24 owner of agricultural assets for a rental agreement with a beginning
25 farmer or livestock producer who is a relative, as defined in section 2
26 of this act 36-702, of the owner of agricultural assets or of a partner,
27 member, shareholder, or trustee of the owner of agricultural assets
28 unless the rental agreement is included in a written succession plan.
29 Such succession plan shall be in the form of a written contract or other
30 instrument legally binding the parties to a process and timetable for the
31 transfer of agricultural assets from the owner of agricultural assets to

1 the beginning farmer or livestock producer. The succession plan shall
2 provide for the transfer of assets to be completed within a period of no
3 longer than thirty years, except that when the asset to be transferred is
4 land owned by an individual, the period of transfer may be for a period
5 up to the date of death of the owner. The owner of agricultural assets
6 shall be allowed the credit provided for qualified rental agreements
7 under this section if the board certifies the plan as providing a
8 reasonable manner and probability of successful transfer.

9 Sec. 18. Section 81-15,119, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 81-15,119 For purposes of the Petroleum Products and Hazardous
12 Substances Storage and Handling Act, unless the context otherwise
13 requires:

14 (1) Operator shall mean any person in control of, or having
15 responsibility for, the daily operation of a tank but shall not include a
16 person described in subdivision (2)(b) of this section;

17 (2)(a) Owner shall mean:

18 (i) In the case of a tank in use on July 17, 1986, or brought into
19 use after such date, any person who owns a tank used for the storage or
20 dispensing of regulated substances; and

21 (ii) In the case of any tank in use before July 17, 1986, but no
22 longer in use on such date, any person who owned such tank immediately
23 before the discontinuation of its use.

24 (b) Owner shall not include a person who, without participating in
25 the management of a tank and otherwise not engaged in petroleum
26 production, refining, and marketing:

27 (i) Holds indicia of ownership primarily to protect his or her
28 security interest in a tank or a lienhold interest in the property on or
29 within which a tank is or was located; or

30 (ii) Acquires ownership of a tank or the property on or within which
31 a tank is or was located:

1 (A) Pursuant to a foreclosure of a security interest in the tank or
2 of a lienhold interest in the property; or

3 (B) If the tank or the property was security for an extension of
4 credit previously contracted, pursuant to a sale under judgment or
5 decree, pursuant to a conveyance under a power of sale contained within a
6 trust deed or from a trustee, or pursuant to an assignment or deed in
7 lieu of foreclosure.

8 (c) Ownership of a tank or the property on or within which a tank is
9 or was located shall not be acquired by a voidable ~~fraudulent~~ transfer,
10 as provided in the Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act;

11 (3) Permanent abandonment shall mean that a tank has been taken
12 permanently out of service as a storage vessel for any reason or has not
13 been used for active storage for more than one year;

14 (4) Person shall mean any individual, firm, joint venture,
15 partnership, limited liability company, corporation, association,
16 political subdivision, cooperative association, or joint-stock
17 association and includes any trustee, receiver, assignee, or personal
18 representative thereof owning or operating a tank;

19 (5) Petroleum product shall mean any petroleum product, including,
20 but not limited to, petroleum-based motor or vehicle fuels, gasoline,
21 kerosene, and other products used for the purposes of generating power,
22 lubrication, illumination, heating, or cleaning, but shall not include
23 propane or liquefied natural gas;

24 (6) Regulated substance shall mean any petroleum product and any
25 substance defined in section 101(14) of the Comprehensive Environmental
26 Response, Compensation, and Liability Act of 1980, as such act existed on
27 May 31, 2001, but not including any substance regulated as a hazardous
28 waste under subtitle C of such act;

29 (7) Release shall mean any spilling, leaking, emitting, discharging,
30 escaping, leaching, or disposing from a tank or any overfilling of a tank
31 into ground water, surface water, or subsurface soils;

1 (8) Remedial action shall mean any immediate or long-term response
2 to a release or suspected release in accordance with rules and
3 regulations adopted and promulgated by the department or the State Fire
4 Marshal, including tank testing only in conjunction with a release or
5 suspected release, site investigation, site assessment, cleanup,
6 restoration, mitigation, and any other action which is reasonable and
7 necessary;

8 (9) Risk-based corrective action shall mean an approach to petroleum
9 release corrective actions in which exposure and risk assessment
10 practices, including appropriate consideration of natural attenuation,
11 are integrated with traditional corrective actions to ensure that
12 appropriate and cost-effective remedies are selected that are protective
13 of human health and the environment;

14 (10) Tank shall mean any tank or combination of tanks, including
15 underground pipes connected to such tank or tanks, which is used to
16 contain an accumulation of regulated substances and the volume of which
17 is ten percent or more beneath the surface of the ground. Tank shall not
18 include any:

19 (a) Farm or residential tank of one thousand one hundred gallons or
20 less capacity used for storing motor fuel for consumptive use on the
21 premises where stored, subject to a one-time fee;

22 (b) Tank with a storage capacity of one thousand one hundred gallons
23 or less used for storing heating oil for consumptive use on the premises
24 where stored, subject to a one-time fee;

25 (c) Septic tank;

26 (d) Tank situated in an underground area such as a basement, cellar,
27 mineworking, drift, shaft, or tunnel if the tank is situated on or above
28 the surface of the floor;

29 (e) Pipeline facility, including gathering lines:

30 (i) Defined under 49 U.S.C. 60101, as such section existed on May
31 31, 2001; or

1 (ii) Which is an intrastate pipeline regulated under state law
2 comparable to the law prescribed in subdivision (e)(i) of this
3 subdivision;

4 (f) Surface impoundment, pit, pond, or lagoon;

5 (g) Flow-through process tank;

6 (h) Liquid trap or associated gathering lines directly related to
7 oil or gas production and gathering operations; or

8 (i) Storm water or wastewater collection system; and

9 (11) Temporary abandonment shall mean that a tank will be or has
10 been out of service for at least one hundred eighty days but not more
11 than one year.

12 Sec. 19. Original sections 66-1509, 77-5211, and 81-15,119, Reissue
13 Revised Statutes of Nebraska, are repealed.

14 Sec. 20. The following sections are outright repealed: Sections
15 36-701, 36-702, 36-703, 36-704, 36-705, 36-706, 36-707, 36-708, 36-709,
16 36-710, 36-711, and 36-712, Reissue Revised Statutes of Nebraska.