

SENATE BILL NO. 2142

Introduced by

Senators Watne, Andrist

Representatives Kretschmar, Maragos

1 A BILL for an Act to amend and reenact sections 41-09-05, 41-09-25, and 41-09-26 of the North
2 Dakota Century Code, relating to definition of certificate of deposit, perfection of security
3 interests by filing, and perfection of security interests in certificates of deposit by possession.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 41-09-05 of the 1995 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **41-09-05. (9-105) Definitions and index of definitions.**

8 1. In this chapter unless the context otherwise requires:

9 a. "Account debtor" means the person who is obligated on an account, chattel
10 paper, or general intangible.

11 b. "Certificate of deposit" means a written acknowledgement by a bank that a
12 sum of money has been received by the bank and a promise made by the
13 bank to repay the sum of money. A certificate of deposit may be either
14 negotiable or non-negotiable.

15 c. "Chattel paper" means a writing or writings which evidence both a monetary
16 obligation and a security interest in or a lease of specific goods; but a charter
17 or other contract involving the use or hire of a vessel is not a chattel paper.
18 When a transaction is evidenced both by such a security agreement or a
19 lease and by an instrument or a series of instruments, the group of writings
20 taken together constitutes chattel paper.

21 ~~e.~~ d. "Collateral" means the property subject to a security interest, and includes
22 accounts and chattel paper which have been sold.

23 ~~d.~~ e. "Debtor" means the person who owes payment or other performance of the
24 obligation secured, whether or not ~~he~~ that person owns or has rights in the

collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

~~e.~~ f. "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

~~f.~~ g. "Document" means document of title as defined in the general definitions of chapter 41-01 (section 41-01-11), and a receipt of the kind described in subsection 2 of section 41-07-07.

~~g.~~ h. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

~~h.~~ i. "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 41-09-34), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also ~~include~~ includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

~~i.~~ j. "Instrument" means a negotiable instrument (defined in section 41-03-04), a certificated security (defined in section 41-08-02), or any other writing that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

~~j.~~ k. "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

~~k.~~ l. An advance is made "pursuant to commitment" if the secured party ~~has~~ is bound ~~himself~~ to make it, whether or not a subsequent event of default or other event not within ~~his~~ the party's control has relieved or may relieve ~~him~~ the party from ~~his~~ the obligation.

- f. m. "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

- ~~m. n.~~ "Security agreement" means an agreement which creates or provides for a security interest.

- ~~Fr.~~ O. "Transmitting utility" means any person primarily engaged in the railroad, or street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this chapter and the sections in which they appear are:

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| a. | "Account". | Section 41-09-06. |
| b. | "Attach". | Section 41-09-16. |
| c. | "Construction mortgage". | Subsection 1 of section 41-09-34. |
| d. | "Consumer goods". | Subsection 1 of section 41-09-09. |
| e. | "Equipment". | Subsection 2 of section 41-09-09. |
| f. | "Farm products". | Subsection 3 of section 41-09-09. |
| g. | "Fixture filing". | Section 41-09-34. |
| h. | "Fixtures". | Section 41-09-34. |
| i. | "General intangibles". | Section 41-09-06. |
| j. | "Inventory". | Subsection 4 of section 41-09-09. |
| k. | "Lien creditor". | Subsection 3 of section 41-09-22. |
| l. | "Proceeds". | Subsection 1 of section 41-09-27. |
| m. | "Purchase money security interest". | Section 41-09-07. |
| n. | "Real estate interest". | Section 41-09-34. |
| o. | "United States". | Section 41-09-03. |

3. The following definitions in other chapters apply to this chapter:

- a. "Check". Section 41-03-04.

- 1 b. "Contract for sale". Section 41-02-06.
- 2 c. "Holder in due course". Section 41-03-28.
- 3 d. "Note". Section 41-03-04.
- 4 e. "Sale". Section 41-02-06.

5 4. In addition, chapter 41-01 contains general definitions and principles of
6 construction and interpretation applicable throughout this chapter.

7 **SECTION 2. AMENDMENT.** Section 41-09-25 of the 1995 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **41-09-25. (9-304) Perfection of security interest in instruments, documents, and**
10 **goods covered by documents - Perfection by permissive filing - Temporary perfection**
11 **without filing or transfer of possession.**

- 12 1. A security interest in chattel paper or negotiable documents may be perfected by
13 filing. A security interest in money or instruments, other than certificated securities
14 or instruments that constitute part of chattel paper, and certificates of deposit can
15 be perfected only by the secured party's taking possession, except as provided in
16 subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
- 17 2. During the period that goods are in the possession of the issuer of a negotiable
18 document therefor, a security interest in the goods is perfected by perfecting a
19 security interest in the document, and any security interest in the goods otherwise
20 perfected during that period is subject thereto.
- 21 3. A security interest in goods in the possession of a bailee other than one who has
22 issued a negotiable document therefor is perfected by issuance of a document in
23 the name of the secured party or by the bailee's receipt of notification of the
24 secured party's interest or by filing as to the goods.
- 25 4. A security interest in a negotiable document, certificate of deposit, or an instrument
26 other than a certificated security is perfected without filing or the taking of
27 possession for a period of twenty-one days after it attaches to the extent that it
28 arises for new value given under a written security agreement.
- 29 5. A security interest remains perfected for a period of twenty-one days without filing if
30 a secured party having a perfected security interest in a negotiable document,
31 certificate of deposit, an instrument other than a certificated security, or goods in

possession of a bailee other than one who has issued a negotiable document
therefor:

a. Makes available to the debtor the goods or documents representing the goods
for the purpose of ultimate sale or exchange or for the purpose of loading,
unloading, storing, shipping, transshipping, manufacturing, processing, or
otherwise dealing with them in a manner preliminary to their sale or exchange,
but priority between conflicting security interests in the goods is subject to
subsection 3 of section 41-09-33; or

b. Delivers the instrument to the debtor for the purpose of ultimate sale or
exchange or of presentation, collection, renewal, or registration of transfer.

6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon
compliance with applicable provisions of this chapter.

SECTION 3. AMENDMENT. Section 41-09-26 of the 1995 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

**41-09-26. (9-305) When possession by secured party perfects security interest
without filing.** A security interest in letters of credit and advices of credit (subdivision a of
subsection 2 of section 41-05-16), goods, certificates of deposit, instruments other than
certificated securities, money, negotiable documents, or chattel paper may be perfected by the
secured party's taking possession of the collateral. If the collateral other than goods covered by
a negotiable document is held by a bailee, the secured party is deemed to have possession
from the time the bailee receives notification of the secured party's interest. A security interest
is perfected by possession from the time possession is taken without relation back and
continues only so long as possession is retained, unless otherwise specified in this chapter.
The security interest may be otherwise perfected as provided in this chapter before or after the
period of possession by the secured party.