

Introduced by

Judiciary Committee

(At the request of the Secretary of State)

1 A BILL for an Act relating to judicial review and correction of false or fraudulent financing  
2 statements, liens, mortgages, or other interests in property; and to provide a penalty.

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

4 **SECTION 1. Expedited process to review and determine the effectiveness of**  
5 **financing statements, liens, mortgages, or other interests in real or personal property.**

6 1. a. Any obligor, person named as a debtor, or owner of collateral described or  
7 indicated in a financing statement or other record filed under chapter 41-09 or  
8 indicated in any lien, mortgage, or other interest in real or personal property  
9 allowed by law, who has reason to believe that the financing statement or  
10 other record is fraudulent or otherwise improper as defined in subsection 4  
11 may complete and file, at any time without any time limitations, a motion for  
12 judicial review of the effectiveness of such financing statement or other  
13 record. Such motion shall be supported by the affidavit of the movant or the  
14 movant's attorney setting forth a concise statement of the facts upon which  
15 the claim for relief is based.

16 b. The clerk of district court shall not collect a filing fee for filing a motion as  
17 provided in this section.

18 2. The court's findings may be made solely on a review of the documentation  
19 attached to the motion and without hearing any testimonial evidence. The court's  
20 review may be made ex parte without delay or notice of any kind. The court does  
21 not make any finding as to any underlying claims of the parties involved and must  
22 expressly limit its finding of fact and conclusion of law to the review of the  
23 ministerial act. The court's review shall be made on an expedited basis.

- 1           3.   a.   After review, the court shall enter an appropriate finding of fact, conclusion of  
2                   law, and order regarding the financing statement or other record filed under  
3                   chapter 41-09 or the lien, mortgage, or other interest in real or personal  
4                   property allowed by law. The court shall cause a copy of the finding of fact,  
5                   conclusion of law, and order to be sent to the movant and the person who  
6                   filed the financing statement, other record, or the lien, mortgage, or other  
7                   interest in real or personal property, at the last-known address of each person  
8                   within seven days of the date that the finding fact, conclusion of law, and  
9                   order is issued by the court.
- 10           b.   The movant shall provide an attested copy of the finding of fact, conclusion of  
11                   law, and order to the filing officer, and it shall be filed or recorded and indexed  
12                   in the same filing office in the appropriate class of records in which the original  
13                   financing statement, other record, or lien, mortgage, or other interest in real or  
14                   personal property was filed or recorded. The filing officer shall not collect a  
15                   filing fee for filing a court's finding of fact, conclusion of law, and order as  
16                   provided in this section. Upon receipt of this finding of fact, conclusion of law,  
17                   and order, the filing officer shall remove the subject financing statement  
18                   record from the records and any index so that the records are not reflected in  
19                   or obtained as a result of any search, standard or otherwise, conducted of  
20                   those records, but shall retain them and this finding of fact, conclusion of law,  
21                   and order in the filing office for the duration of the period for which they would  
22                   have otherwise been filed.
- 23           4.   As used in this section, a financing statement or other record, or lien, mortgage, or  
24                   other interest in real or personal property allowed by law, is fraudulent or otherwise  
25                   improper if it is filed without the implied or express authorization or agreement of  
26                   the obligor, person named as debtor, or owner of collateral described or indicated  
27                   in such financing statement other record, or lien, mortgage, or other interest in real  
28                   or personal property allowed by law, or by consent of an agent, fiduciary, or other  
29                   representative of that person.

30           **SECTION 2. Fraudulent filing offense.**

1. A person commits an offense if the person knowingly causes to be presented for recording or filing, or promotes the recording or filing of, a record as defined in section 41-09-02 or any lien, mortgage, or other interest in real or personal property allowed by law, that the person knows:
  - a. Contains a material false statement;
  - b. Is neither:
    - (1) Related to a valid security agreement or related to any valid lien, mortgage, or other interest in real or personal property allowed by law;
    - nor
    - (2) Filed pursuant to section 41-09-73;
  - c. Contains a forged signature or is based upon a document containing a forged signature; or
  - d. Is presented for recording or filing or caused to be presented for recording or filing with the intent that it be used for an improper purpose or purposes, such as to harass, hinder, defraud, or otherwise interfere with any person.
2. An offense under this section is a class C felony unless it is alleged and shown at the trial of the offense that the person had previously been convicted under this provision, in which event the offense is a class B felony.
3. A person who violates subsection 1 is liable for civil damages to each injured person for:
  - a. The greater of:
    - (1) Ten thousand dollars; or
    - (2) The actual damages caused by the violation;
  - b. Court costs;
  - c. Reasonable attorney's fees;
  - d. Related expenses of bringing the action, including investigative expenses; and
  - e. Exemplary damages in the amount determined by the court.

### **SECTION 3. Enforcement.**

1. The following persons may bring an action to enjoin violation of this chapter or to recover civil damages under this chapter:

- 1           a.    The obligor, the person named as the debtor, any person who owns an  
2                    interest in the collateral described or indicated in the record or financing  
3                    statement, or any person harmed by the filing of the record or financing  
4                    statement;
- 5           b.    The attorney general, if the violation or damages concerns the state or a state  
6                    agency; or
- 7           c.    The state's attorney having jurisdiction in any county in which an action may  
8                    be brought under this chapter.
- 9        2.    An action for a criminal penalty may be brought by any state's attorney having  
10               jurisdiction in any county in which an action may be brought under this chapter.
- 11       3.    A filing officer may refer a matter to the state's attorney or any other appropriate  
12               person for filing the legal actions under this chapter.
- 13       4.    An action under this chapter may be brought in any district court in the county in  
14               which the record or financing statement is presented for filing or in a county where  
15               any of the persons named in subdivision a of subsection 1 resides.
- 16       5.    Any person entitled to bring an action under this chapter also may request specific  
17               relief, including terminating the record or financing statement, or the lien, mortgage,  
18               or other interest in real or personal property allowed by law, and removing the  
19               debtor from the index such that it will not appear in a search under that debtor  
20               name.
- 21       6.    As used in this chapter, filing office or filing officers refers to the office or officer  
22               with which a financing statement or other record, or a lien, mortgage, or other  
23               interest in real or personal property, is appropriately filed or recorded as provided  
24               by law, including the county recorder, the secretary of state, and other filing officers  
25               related thereto.
- 26       7.    This chapter is cumulative of other law under which a person may obtain judicial  
27               relief with respect to any filed or recorded document.