

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1415

Introduced by

Representatives Vigesaa, Dietrich, Froseth

Senators Andrist, Klein

1 A BILL for an Act to create and enact a new chapter to title 41 of the North Dakota Century
2 Code, relating to an expedited review of the legality of financing statement records filed under
3 the Uniform Commercial Code; and to provide a penalty.

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

5 **SECTION 1.** A new chapter to title 41 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.** As used in this chapter, unless the context requires otherwise:

- 8 1. "Authorized", when used with reference to a financing statement record, means the
9 financing statement record was filed by a person authorized to do so as provided in
10 sections 41-09-80 and 41-09-130.
- 11 2. "Debtor" means an individual whose name was provided in a financing statement
12 record as an individual debtor or one of the types of persons listed in section
13 41-09-76.
- 14 3. "Filing office" or "filing officer" means the appropriate office or officer with which a
15 financing statement record is to be filed as provided by section 41-09-72, including
16 the county recorder, the secretary of state, and other designated filing officers.
- 17 4. "Financing statement record" means an initial financing statement, an amendment
18 that adds collateral covered by a financing statement, and an amendment that
19 adds a debtor to a financing statement.

20 **Expedited process to review and determine authorization of filing of financing**
21 **statement records.**

- 22 1. Any individual who asserts the filing of a financing statement record that provides
23 that individual's name as a debtor is not an authorized filing may file, at any time
24 without any time limitation, a motion for a judicial declaration that the financing

statement record is not an authorized filing under section 41-09-80 and therefore is not effective with respect to that individual under section 41-09-81. A motion under this subsection must be filed with the district court of the county in which the financing statement record was filed or of the county of principal residence of the movant. The motion must be supported by the affidavit of the movant setting forth a concise statement of the facts upon which the claim for relief is based. A motion under this subsection must be on a form or in substantially the same form as the form established by the secretary of state in consultation with the supreme court.

2. The clerk of the district court may not collect a filing fee for filing a motion as provided in this section.
3. The court's finding may be made solely on a review of the documentation attached to the motion; on a review of the responses, if any, of the person named as a secured party in the financing statement record; and without hearing any oral testimony if none is offered by the secured party. The district court's review may be made upon at least twenty days' notice to each person named as a secured party in the financing statement record. Notice must be given to each secured party. Notice may be given to each secured party at the address given in the financing statement record as an address of that secured party by mail or personal service as provided in the North Dakota Rules of Civil Procedure. Each party shall respond to discovery requests timely. Each person named as a secured party in the financing statement record may respond to the motion based on pleadings, depositions, admissions, and affidavits. The court shall review the pleadings, depositions, admissions, and affidavits on an expedited basis.
4. The court shall enter judgment in favor of the movant only if the pleadings, depositions, admissions, and affidavits on file show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
5. After review, the district court shall enter an appropriate finding of fact and conclusion of law in a form as provided in subsection 4 regarding the financing statement record, an attested copy of which must be filed and indexed under the movant's name in the same filing office in which the original financing statement

record was filed. The filing officer may not collect a filing fee for filing a district court's finding of fact and conclusion of law as provided in this section. The court shall send a copy of the finding of fact and conclusion of law to the movant, to each person named as a secured party in the financing statement record at the address of each person set forth in the financing statement, and to the filing office. The court shall send the copy within seven days following the date the finding of fact and conclusion of law are issued by the district court. The secured party may appeal the finding of fact and conclusion of law. In addition to the notice requirements under this section, the secured party shall give notice of the appeal to the filing office.

6. The finding of fact and conclusion of law must be on a form or in substantially the same form as the form established by the secretary of state in consultation with the supreme court.

Civil and criminal penalties.

1. A person commits an offense under this section if the person knowingly causes to be presented for filing in a filing office, or promotes the filing in a filing office, of a financing statement record that the person knows:

- a. Not to be authorized under section 41-09-80 or 41-09-130 by the individual whose name was provided as an individual debtor in the financing statement; and
- b. Was filed or presented for filing with the intent that the financing statement record be used to harass or hinder the individual whose name was provided as an individual debtor in the financing statement record without that individual's authorization or that the financing statement record be used to defraud any person.

2. A person that violates subsection 1 is guilty of a class C felony for the first offense and a class B felony for a second or subsequent offense.

3. A person that violates subsection 1 is liable to each such debtor for:

- a. The greater of ten thousand dollars or 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.

Cause of action - Injunction.

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

- a. The individual whose name was provided as an individual debtor in the financing statement record filed without that person's authorization under section 41-09-80 or 41-09-130, or any guardian, conservator, executor, administrator or other legal representative of that person, any person who owns an interest in the collateral described or indicated in the financing statement record, or any person directly harmed by the filing of the financing statement record;
- b. The attorney general;
- c. A state's attorney;
- d. A city attorney; and
- e. A person that has been damaged as a result of an action taken in reliance on the filed financing statement record.

2. A filing officer may refer a matter to the attorney general or other appropriate person for filing the legal action under this chapter.

Venue. An action under this chapter may be brought in a district court in the county in which the financing statement record is presented for filing or in a county in which any of the persons who may bring an action under this chapter reside.

Other remedies. This Act is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.