

Introduced by

Senators Freborg, Andrist, Triplett

Representatives Dietrich, Thoreson, Vigesaa

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 filing fraudulent and harassing financing statement records; and to provide a
3 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:

- 8 1. "Authorized", when used with reference to a financing statement record, means
9 that the financing statement record was filed by a person authorized to do so as
10 provided in sections 41-09-80 and 41-09-130.
- 11 2. "Debtor" means a natural person whose name was provided in a financing
12 statement record as an individual debtor or one of the types of persons listed in
13 section 41-09-76.
- 14 3. "Filing office" or "filing officer" refers to the appropriate office or officer where 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 as such terms are used in chapter 41.

20 **Criminal penalty.**

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

a. Not to be authorized under section 41-09-80 or 41-09-130 by the natural person whose name was provided as an individual debtor in the financing statement; and

b. Was filed or presented for filing with the intent that:

(1) The financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or

(2) The financing statement record be use to defraud 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 on two or more occasions, in which event the offense is a class B felony.

Civil penalty. A person shall not knowingly cause to be presented for filing in a filing office or promote the filing of a financing statement record in a filing office that the person knows:

1. Not to be authorized under section 41-09-80 or 41-09-130 by the natural person whose name was provided as an individual debtor in the financing statement record; and

2. Was filed or presented for filing with the intent that:

a. The financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or

b. The financing statement record be used to defraud any person.

3. A person who violates subdivision a 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 1. The following persons may bring an action to enjoin violation of this chapter or to
2 recover civil damages under this chapter:

3 a. The natural person whose name was provided as an individual debtor in the
4 financing statement record filed without that person's authorization under
5 section 41-09-80, any person who owns an interest in the collateral described
6 or indicated in the financing statement record, or any person directly harmed
7 by the filing of the financing statement record;

8 b. The attorney general;

9 c. A state's attorney;

10 d. A municipal attorney; and

11 e. A person who has been damaged as a result of an action taken in reliance on
12 the filed financing statement record.

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

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

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