

# UNIFORM COMMERCIAL CODE

---

## CHAPTER 344

S. B. No. 309  
(Torgerson, Becker)

---

### NOTICES IN AUCTION SALES

#### AN ACT

To amend and reenact subsection 4 of section 41-06-08 of the North Dakota Century Code, relating to notices in auction sales and the corresponding provision of the North Dakota Uniform Commercial Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

**§ 1. Amendment.)** Subsection 4 of section 41-06-08 of the North Dakota Century Code, designated as subsection 4 of section 6-108 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

4. Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

Approved March 15, 1967.

## CHAPTER 345

H. B. No. 705

(R. Peterson)

SUBORDINATED OBLIGATIONS AND THIRD PARTY  
BENEFICIARIES

## AN ACT

To create and enact section 41-01-19 of the North Dakota Century Code, relating to subordinated obligations under the Uniform Commercial Code and to amend and reenact section 41-02-35, subsection 3 of section 41-02-75, subsection 3 of section 41-02-81, subdivision f of subsection 4 of section 41-03-34, subsection 3 of section 41-03-57, subdivision b of subsection 2 of section 41-04-33, subsection 3 of section 41-07-15, subdivision b of subsection 1 of section 41-09-05, section 41-09-06, and subsection 2 of section 41-09-16 of the North Dakota Century Code, relating to the North Dakota Uniform Commercial Code in the areas of third party beneficiaries, defaults, payments, notices of dishonor, signatures, warehousemen's liens, chattel paper, and definitions, which all relate to corresponding provisions of the Uniform Commercial Code.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1.) Section 41-01-19 of the North Dakota Century Code, designated as section 1-209 of the Uniform Commercial Code, is hereby created and enacted to read as follows:

**41-01-19. (1-209) Subordinated Obligations.)** An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

§ 2. **Amendment.)** Section 41-02-35 of the North Dakota Century Code, designated as section 2-318 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

**41-02-35. (2-318) Third-Party Beneficiaries of Warranties Express or Implied.)** A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

**§ 3. Amendment.)** Subsection 3 of section 41-02-75 of the North Dakota Century Code, designated as section 2-612 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

**§ 4. Amendment.)** Subsection 3 of section 41-02-81 of the North Dakota Century Code, designated as section 2-702 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

3. The seller's right to reclaim under subsection 2 is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (section 41-02-48). Successful reclamation of goods excludes all other remedies with respect to them.

**§ 5. Amendment.)** Subdivision f of subsection 4 of section 41-03-34 of the North Dakota Century Code, designated as section 3-304 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

- f. That there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

**§ 6. Amendment.)** Subsection 3 of section 41-03-57 of the North Dakota Century Code, designated as section 3-501 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

3. Unless excused (section 41-03-67) protest of any dishonor is necessary to charge the drawer and endorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

**§ 7. Amendment.)** Subdivision b of subsection 2 of section 41-04-33 of the North Dakota Century Code, designated as section 4-406 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

- b. an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

**§ 8. Amendment.)** Subsection 3 of section 41-07-15 of the North Dakota Century Code, designated as section 7-209 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

3. a. A warehouseman's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 41-07-32.
- b. A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

**§ 9. Amendment.)** Subdivision b of subsection 1 of section 41-09-05 of the North Dakota Century Code, designated as section 9-105 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

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

**§ 10. Amendment.)** Section 41-09-06 of the North Dakota Century Code, designated as section 9-106 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

**41-09-06. (9-106) Definitions—"Account"—"Contract Right" "General Intangibles".)** "Account" means any right to payment for goods sold or leased or for services rendered which

is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. All rights earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are contract rights and neither accounts nor general intangibles.

**§ 11. Amendment.)** Subsection 2 of section 41-09-16 of the North Dakota Century Code, designated as section 9-203 of the Uniform Commercial Code, is hereby amended and reenacted to read as follows:

2. A transaction, although subject to this chapter, is also subject to chapters 10-18.1, 13-03, 35-05, 49-09, and 51-13, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Approved March 13, 1967.