

**HOUSE BILL NO. 1035**

Introduced by

Legislative Council

(Judiciary Committee)

1 A BILL for an Act to create and enact a new chapter 41-01 of the North Dakota Century Code,  
2 relating to Uniform Commercial Code Article 1 - General Provisions; to amend and reenact  
3 subdivision b of subsection 2 of section 9-16-02, subsection 4 of section 9-16-15, subsection 51  
4 of section 10-19.1-01, subsection 56 of section 10-32-02, subsection 34 of section 10-33-01,  
5 subdivision b of subsection 1 of section 41-02-03, subsection 1 of section 41-02-09,  
6 subsection 3 of section 41-02.1-03, subsection 4 of section 41-02.1-49, subsection 2 of section  
7 41-02.1-66, subsection 1 of section 41-02.1-67, subsection 2 of section 41-02.1-75,  
8 subsection 1 of section 41-02.1-76, subdivisions d and j of subsection 1 of section 41-03-03,  
9 subsection 3 of section 41-04-04, subsection 1 of section 41-04.1-05, subsection 1 of section  
10 41-04.1-06, subsection 2 of section 41-04.1-12, subdivision g of subsection 1 of section  
11 41-05-02, subsection 3 of section 41-05-03, subdivision k of subsection 1 of section 41-08-02,  
12 subdivision ss of subsection 1 of section 41-09-02, subsection 40 of section 45-10.2-02,  
13 subsection 26 of section 45-13-01, subsection 24 of section 45-22-01, subsection 24 of section  
14 45-23-01, and section 47-15.1-02 of the North Dakota Century Code, relating to chapter 41-01  
15 and references to chapter 41-01; and to repeal chapter 41-01 and sections 41-02-15 and  
16 41-02.1-16 of the North Dakota Century Code, relating to Uniform Commercial Code general  
17 provisions, contracts, and leases.

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

19 **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 9-16-02 of the  
20 North Dakota Century Code is amended and reenacted as follows:

21 b. The Uniform Commercial Code other than ~~sections 41-01-07 and 41-01-16~~  
22 section 41-01-20 and chapters 41-02 and 41-02.1; and

23 **SECTION 2. AMENDMENT.** Subsection 4 of section 9-16-15 of the North Dakota  
24 Century Code is amended and reenacted as follows:

1           4. Except as otherwise agreed, a person having control of a transferable record is the  
2 holder, as defined in section ~~41-01-14~~ 41-01-09, of the transferable record and has  
3 the same rights and defenses as a holder of an equivalent record or writing under  
4 title 41, including, if the applicable statutory requirements under subsection 1 of  
5 section 41-03-28, section 41-07-30, or section 41-09-29 are satisfied, the rights  
6 and defenses of a holder in due course, a holder to which a negotiable document  
7 of title has been duly negotiated, or a purchaser, respectively. Delivery,  
8 possession, and endorsement are not required to obtain or exercise any of the  
9 rights under this subsection.

10           **SECTION 3. AMENDMENT.** Subsection 51 of section 10-19.1-01 of the North Dakota  
11 Century Code is amended and reenacted as follows:

- 12           51. "Signed" means:
- 13           a. That the signature of a person, which may be a facsimile affixed, engraved,  
14 printed, placed, stamped with indelible ink, transmitted by facsimile  
15 telecommunication or electronically, or in any other manner reproduced on the  
16 record, is placed on a record, as provided under section ~~41-01-14~~ 41-01-09;  
17 and
- 18           b. With respect to a record required by this chapter to be filed with the secretary  
19 of state, that:
- 20           (1) The record is signed by a person authorized to do so by this chapter,  
21 the articles or bylaws, or a resolution approved by the directors as  
22 required under section 10-19.1-46 or the shareholders as required  
23 under section 10-19.1-74; and
- 24           (2) The signature and the record are communicated by a method or  
25 medium of communication acceptable by the secretary of state.

26           **SECTION 4. AMENDMENT.** Subsection 56 of section 10-32-02 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28           56. "Signed" means:
- 29           a. That the signature of a person, which may be a facsimile affixed, engraved,  
30 printed, placed, stamped with indelible ink, transmitted by facsimile

1 telecommunication or electronically, or in any other manner reproduced on the  
2 record, is placed on a record, as provided under section ~~41-01-14~~ 41-01-09.

3 b. With respect to a record required by this chapter to be filed with the secretary  
4 of state, that:

5 (1) The record has been signed by a person authorized to do so by this  
6 chapter, the articles of organization, a member-control agreement, or  
7 the bylaws or a resolution approved by the governors as required by  
8 section 10-32-83 or the members as required by section 10-32-42; and

9 (2) The signature and the record are communicated by a method or  
10 medium acceptable by the secretary of state.

11 **SECTION 5. AMENDMENT.** Subsection 34 of section 10-33-01 of the North Dakota  
12 Century Code is amended and reenacted as follows:

13 34. "Signed" means:

14 a. That the signature of a person, which may be a facsimile affixed, engraved,  
15 printed, placed, stamped with indelible ink, transmitted by facsimile  
16 telecommunication or electronically, or in any other manner reproduced on the  
17 record, is placed on a record, as provided under section ~~41-01-14~~ 41-01-09;  
18 and

19 b. With respect to a record required by this chapter to be filed with the secretary  
20 of state, that:

21 (1) The record is signed by a person authorized to do so by this chapter,  
22 the articles, or bylaws, a resolution approved by the directors as  
23 required by section 10-33-42, or the members with voting rights, if any,  
24 as required by section 10-33-72; and

25 (2) The signature and the record are communicated by a method or  
26 medium of communication acceptable by the secretary of state.

27 **SECTION 6.** Chapter 41-01 of the North Dakota Century Code is created and enacted  
28 as follows:

29 Part 1

30 General Provisions

31 **41-01-01. (1-101) Short titles.**

1           1. This title may be cited as the Uniform Commercial Code.

2           2. This chapter may be cited as Uniform Commercial Code - General Provisions.

3           **41-01-02. (1-102) Scope of chapter.** This chapter applies to a transaction to the  
4 extent that the transaction is governed by another chapter of this title.

5           **41-01-03. (1-103) Construction of title to promote the title's purposes and**  
6 **policies - Applicability of supplemental principles of law.**

7           1. This title must be liberally construed and applied to promote the title's underlying  
8 purposes and policies, which are:

9           a. To simplify, clarify, and modernize the law governing commercial transactions;

10           b. To permit the continued expansion of commercial practices through custom,  
11 usage, and agreement of the parties; and

12           c. To make uniform the law among the various jurisdictions.

13           2. Unless displaced by the particular provisions of this title, the principles of law and  
14 equity, including the law merchant and the law relative to capacity to contract,  
15 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,  
16 bankruptcy, and other validating or invalidating cause supplement this title.

17           **41-01-04. (1-104) Construction against implied repeal.** This title is a general act  
18 intended as a unified coverage of its subject matter. A part of this title may not be deemed to  
19 be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

20           **41-01-05. (1-105) Severability.** If any provision or clause of this title or its application  
21 to any person or circumstance is held invalid, the invalidity does not affect other provisions or  
22 applications of this title which can be given effect without the invalid provision or application,  
23 and to this end the provisions of this title are severable.

24           **41-01-06. (1-106) Use of singular and plural - Gender.** In this title, unless the  
25 statutory context otherwise requires:

26           1. Words in the singular number include the plural, and those in the plural include the  
27 singular; and

28           2. Words of any gender also refer to any other gender.

29           **41-01-07. (1-107) Section captions.** Section captions are part of this title.

30           **41-01-08. (1-108) Relation to Electronic Signatures in Global and National**  
31 **Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic

1 Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C.  
2 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C.  
3 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that  
4 Act [15 U.S.C. 103(b)].

5 Part 2

6 General Definitions and Principles of Interpretation

7 **41-01-09. (1-201) General definitions.**

- 8 1. Unless the context otherwise requires, words or phrases defined in this section, or  
9 in additional definitions contained in other chapters of this title which apply to  
10 particular chapters or parts of chapters, have the meanings stated.
- 11 2. Subject to definitions contained in other chapters of this title which apply to  
12 particular chapters or parts of chapters:
- 13 a. "Action", in the sense of a judicial proceeding, includes recoupment,  
14 counterclaim, setoff, suit in equity, and any other proceeding in which rights  
15 are determined.
- 16 b. "Aggrieved party" means a party entitled to pursue a remedy.
- 17 c. "Agreement", as distinguished from "contract", means the bargain of the  
18 parties in fact, as found in their language or inferred from other  
19 circumstances, including course of performance, course of dealing, or usage  
20 of trade as provided under section 41-09-17.
- 21 d. "Bank" means a person engaged in the business of banking and includes a  
22 savings bank, savings and loan association, credit union, and trust company.
- 23 e. "Bearer" means a person in control of a negotiable electronic document of title  
24 or a person in possession of a negotiable instrument, negotiable tangible  
25 document of title, or certificated security that is payable to bearer or indorsed  
26 in blank.
- 27 f. "Bill of lading" means a document of title evidencing the receipt of goods for  
28 shipment issued by a person engaged in the business of directly or indirectly  
29 transporting or forwarding goods. The term does not include a warehouse  
30 receipt.
- 31 g. "Branch" includes a separately incorporated foreign branch of a bank.

- 1           h. "Burden of establishing" a fact means the burden of persuading the trier of  
2           fact that the existence of the fact is more probable than its nonexistence.
- 3           i. "Buyer in ordinary course of business" means a person that buys goods in  
4           good faith, without knowledge that the sale violates the rights of another  
5           person in the goods, and in the ordinary course from a person, other than a  
6           pawnbroker, in the business of selling goods of that kind. A person buys  
7           goods in the ordinary course if the sale to the person comports with the usual  
8           or customary practices in the kind of business in which the seller is engaged  
9           or with the seller's own usual or customary practices. A person that sells oil,  
10           gas, or other minerals at the wellhead or minehead is a person in the  
11           business of selling goods of that kind. A buyer in ordinary course of business  
12           may buy for cash, by exchange of other property, or on secured or unsecured  
13           credit, and may acquire goods or documents of title under a preexisting  
14           contract for sale. Only a buyer that takes possession of the goods or has a  
15           right to recover the goods from the seller under chapter 41-02 may be a buyer  
16           in ordinary course of business. "Buyer in ordinary course of business" does  
17           not include a person that acquires goods in a transfer in bulk or as security for  
18           or in total or partial satisfaction of a money debt.
- 19           j. "Conspicuous", with reference to a term, means so written, displayed, or  
20           presented that a reasonable person against which it is to operate ought to  
21           have noticed it. Whether a term is "conspicuous" or not is a decision for the  
22           court. Conspicuous terms include the following:
- 23           (1) A heading in capitals equal to or greater in size than the surrounding  
24           text, or in contrasting type, font, or color to the surrounding text of the  
25           same or lesser size; and
- 26           (2) Language in the body of a record or display in larger type than the  
27           surrounding text, or in contrasting type, font, or color to the surrounding  
28           text of the same size, or set off from surrounding text of the same size  
29           by symbols or other marks that call attention to the language.
- 30           k. "Consumer" means an individual who enters into a transaction primarily for  
31           personal, family, or household purposes.

- 1            l. "Contract", as distinguished from "agreement", means the total legal  
2            obligation that results from the parties' agreement as determined by this title  
3            as supplemented by any other applicable laws.
- 4            m. "Creditor" includes a general creditor, a secured creditor, a lien creditor, and  
5            any representative of creditors, including an assignee for the benefit of  
6            creditors, a trustee in bankruptcy, a receiver in equity, and an executor or  
7            administrator of an insolvent debtor's or assignor's estate.
- 8            n. "Defendant" includes a person in the position of defendant in a counterclaim,  
9            cross-claim, or third-party claim.
- 10           o. "Delivery", with respect to an electronic document of title means voluntary  
11           transfer of control and with respect to an instrument, a tangible document of  
12           title, or chattel paper, means voluntary transfer of possession.
- 13           p. "Document of title" means a record (i) that in the regular course of business or  
14           financing is treated as adequately evidencing that the person in possession or  
15           control of the record is entitled to receive, control, hold, and dispose of the  
16           record and the goods the record covers and (ii) that purports to be issued by  
17           or addressed to a bailee and to cover goods in the bailee's possession which  
18           are either identified or are fungible portions of an identified mass. The term  
19           includes a bill of lading, transport document, dock warrant, dock receipt,  
20           warehouse receipt, and order for delivery of goods. An electronic document  
21           of title means a document of title evidenced by a record consisting of  
22           information stored in an electronic medium. A tangible document of title  
23           means a document of title evidenced by a record consisting of information that  
24           is inscribed on a tangible medium.
- 25           q. "Fault" means a default, breach, or wrongful act or omission.
- 26           r. "Fungible goods" means:
- 27           (1) Goods of which any unit, by nature or usage of trade, is the equivalent  
28           of any other like unit; or
- 29           (2) Goods that by agreement are treated as equivalent.
- 30           s. "Genuine" means free of forgery or counterfeiting.

- 1           t.   "Good faith", except as otherwise provided in chapter 41-05, means honesty  
2                   in fact and the observance of reasonable commercial standards of fair  
3                   dealing.
- 4           u.   "Holder" means:
- 5                   (1)   The person in possession of a negotiable instrument that is payable  
6                           either to bearer or to an identified person that is the person in  
7                           possession;
- 8                   (2)   The person in possession of a document of title if the goods are  
9                           deliverable either to bearer or to the order of the person in possession;  
10                           or
- 11                  (3)   The person in control of a negotiable electronic document of title.
- 12          v.   "Insolvency proceeding" includes an assignment for the benefit of creditors or  
13                   other proceeding intended to liquidate or rehabilitate the estate of the person  
14                   involved.
- 15          w.   "Insolvent" means:
- 16                   (1)   Having generally ceased to pay debts in the ordinary course of  
17                           business other than as a result of bona fide dispute;
- 18                   (2)   Being unable to pay debts as they become due; or
- 19                   (3)   Being insolvent within the meaning of federal bankruptcy law.
- 20          x.   "Money" means a medium of exchange currently authorized or adopted by a  
21                   domestic or foreign government. The term includes a monetary unit of  
22                   account established by an intergovernmental organization or by agreement  
23                   between two or more countries.
- 24          y.   "Organization" means a person other than an individual.
- 25          z.   "Party", as distinguished from "third party", means a person that has engaged  
26                   in a transaction or made an agreement subject to this title.
- 27          aa. "Person" means an individual, a corporation, a business trust, an estate, a  
28                   trust, a partnership, a limited liability company, an association, a joint venture,  
29                   a government, a governmental subdivision, an agency, or an instrumentality,  
30                   a public corporation, or any other legal or commercial entity.



- 1           **bb.** "Present value" means the amount as of a date certain of one or more sums  
2                     payable in the future, discounted to the date certain by use of either an  
3                     interest rate specified by the parties if that rate is not manifestly unreasonable  
4                     at the time the transaction is entered or, if an interest rate is not so specified,  
5                     a commercially reasonable rate that takes into account the facts and  
6                     circumstances at the time the transaction is entered.
- 7           **cc.** "Purchase" means taking by sale, lease, discount, negotiation, mortgage,  
8                     pledge, lien, security interest, issue or reissue, gift, or any other voluntary  
9                     transaction creating an interest in property.
- 10           **dd.** "Purchaser" means a person that takes by purchase.
- 11           **ee.** "Record" means information that is inscribed on a tangible medium or that is  
12                     stored in an electronic or other medium and is retrievable in perceivable form.
- 13           **ff.** "Remedy" means any remedial right to which an aggrieved party is entitled  
14                     with or without resort to a tribunal.
- 15           **gg.** "Representative" means a person empowered to act for another, including an  
16                     agent, an officer of a corporation or association, and a trustee, executor, or  
17                     administrator of an estate.
- 18           **hh.** "Right" includes remedy.
- 19           **ii.** "Security interest" means an interest in personal property or fixtures which  
20                     secures payment or performance of an obligation. "Security interest" includes  
21                     any interest of a consignor and a buyer of accounts, chattel paper, a payment  
22                     intangible, or a promissory note in a transaction that is subject to chapter  
23                     41-09. "Security interest" does not include the special property interest of a  
24                     buyer of goods on identification of those goods to a contract for sale under  
25                     section 41-02-46, but a buyer may also acquire a "security interest" by  
26                     complying with chapter 41-09. Except as otherwise provided in section  
27                     41-02-53, the right of a seller or lessor of goods under chapter 41-02 or  
28                     41-02.1 to retain or acquire possession of the goods is not a "security  
29                     interest", but a seller or lessor may also acquire a "security interest" by  
30                     complying with chapter 41-09. The retention or reservation of title by a seller  
31                     of goods notwithstanding shipment or delivery to the buyer under section

1                   41-02-46 is limited in effect to a reservation of a "security interest". Whether a  
2                   transaction in the form of a lease creates a "security interest" is determined  
3                   under section 41-01-11.

4                   jj.   "Send" in connection with a writing, record, or notice means:

5                   (1)   To deposit in the mail or deliver for transmission by any other usual  
6                   means of communication with postage or cost of transmission provided  
7                   for and properly addressed and, in the case of an instrument, to an  
8                   address specified on the instrument or otherwise agreed, or if there be  
9                   none to any address reasonable under the circumstances; or

10                  (2)   In any other way to cause to be received any record or notice within the  
11                  time it would have arrived if properly sent.

12                  kk.   "Signed" includes using any symbol executed or adopted with present  
13                  intention to adopt or accept a writing.

14                  ll.    "State" means a state of the United States, the District of Columbia, Puerto  
15                  Rico, the United States Virgin Islands, or any territory or insular possession  
16                  subject to the jurisdiction of the United States.

17                  mm.   "Surety" includes a guarantor or other secondary obligor.

18                  nn.    "Term" means a portion of an agreement that relates to a particular matter.

19                  oo.    "Unauthorized signature" means a signature made without actual, implied, or  
20                  apparent authority. The term includes a forgery.

21                  pp.    "Warehouse receipt" means a document of title issued by a person engaged  
22                  in the business of storing goods for hire.

23                  qq.    "Writing" includes printing, typewriting, or any other intentional reduction to  
24                  tangible form. "Written" has a corresponding meaning.

25                  **41-01-10. (1-202) Notice - Knowledge.**

26                  1.    Subject to subsection 6, a person has "notice" of a fact if the person:

27                   a.    Has actual knowledge of that fact;

28                   b.    Has received a notice or notification of that fact; or

29                   c.    From all the facts and circumstances known to the person at the time in  
30                   question, has reason to know that that fact exists.

31                  2.    "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

- 1           3. "Discover", "learn", or words of similar import refer to knowledge rather than to  
2           reason to know.
- 3           4. A person "notifies" or "gives" a notice or notification to another person by taking  
4           such steps as may be reasonably required to inform the other person in ordinary  
5           course, whether or not the other person actually comes to know of it.
- 6           5. Subject to subsection 6, a person "receives" a notice or notification when:  
7           a. It comes to that person's attention; or  
8           b. It is duly delivered in a form reasonable under the circumstances at the place  
9           of business through which the contract was made or at another location held  
10          out by that person as the place for receipt of such communications.
- 11          6. Notice, knowledge, or a notice or notification received by an organization is  
12          effective for a particular transaction from the time it is brought to the attention of the  
13          individual conducting that transaction and, in any event, from the time it would have  
14          been brought to the individual's attention if the organization had exercised due  
15          diligence. An organization exercises due diligence if the organization maintains  
16          reasonable routines for communicating significant information to the person  
17          conducting the transaction and there is reasonable compliance with the routines.  
18          Due diligence does not require an individual acting for the organization to  
19          communicate information unless the communication is part of the individual's  
20          regular duties or the individual has reason to know of the transaction and that the  
21          transaction would be materially affected by the information.
- 22          **41-01-11. (1-203) Lease distinguished from security interest.**
- 23          1. Whether a transaction in the form of a lease creates a lease or security interest is  
24          determined by the facts of each case.
- 25          2. A transaction in the form of a lease creates a security interest if the consideration  
26          that the lessee is to pay the lessor for the right to possession and use of the goods  
27          is an obligation for the term of the lease and is not subject to termination by the  
28          lessee, and:
- 29          a. The original term of the lease is equal to or greater than the remaining  
30          economic life of the goods;

- 1            b. The lessee is bound to renew the lease for the remaining economic life of the  
2            goods or is bound to become the owner of the goods;
- 3            c. The lessee has an option to renew the lease for the remaining economic life  
4            of the goods for no additional consideration or for nominal additional  
5            consideration upon compliance with the lease agreement; or
- 6            d. The lessee has an option to become the owner of the goods for no additional  
7            consideration or for nominal additional consideration upon compliance with  
8            the lease agreement.
- 9            3. A transaction in the form of a lease does not create a security interest merely  
10           because:
- 11           a. The present value of the consideration the lessee is obligated to pay the  
12           lessor for the right to possession and use of the goods is substantially equal  
13           to or is greater than the fair market value of the goods at the time the lease is  
14           entered;
- 15           b. The lessee assumes risk of loss of the goods;
- 16           c. The lessee agrees to pay, with respect to the goods, taxes, insurance, filing,  
17           recording, or registration fees, or service or maintenance costs;
- 18           d. The lessee has an option to renew the lease or to become the owner of the  
19           goods;
- 20           e. The lessee has an option to renew the lease for a fixed rent that is equal to or  
21           greater than the reasonably predictable fair market rent for the use of the  
22           goods for the term of the renewal at the time the option is to be performed; or
- 23           f. The lessee has an option to become the owner of the goods for a fixed price  
24           that is equal to or greater than the reasonably predictable fair market value of  
25           the goods at the time the option is to be performed.
- 26           4. Additional consideration is nominal if that consideration is less than the lessee's  
27           reasonably predictable cost of performing under the lease agreement if the option  
28           is not exercised. Additional consideration is not nominal if:
- 29           a. When the option to renew the lease is granted to the lessee, the rent is stated  
30           to be the fair market rent for the use of the goods for the term of the renewal  
31           determined at the time the option is to be performed; or



- 1           2. Where one of the following provisions of this title specifies the applicable law, that  
2           provision governs and a contrary agreement is effective only to the extent  
3           permitted by the law, including the conflict of laws rules, so specified:
- 4           a. Rights of creditors against sold goods. Section 41-02-47.  
5           b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.  
6           c. Applicability of the chapter on bank deposits and collections. Section  
7           41-04-02.  
8           d. Governing law in the chapter on funds transfers. Section 41-04.1-38.  
9           e. Letters of credit. Section 41-05-16.  
10          f. Applicability of the chapter on investment securities. Section 41-08-10.  
11          g. Law governing perfection, the effect of perfection or nonperfection, and the  
12          priority of security interests and agricultural liens. Sections 41-09-21 through  
13          41-09-27.

14           **41-01-16. (1-302) Variation by agreement.**

- 15          1. Except as otherwise provided in subsection 2 or elsewhere under this title, the  
16          effect of provisions of this title may be varied by agreement.
- 17          2. The obligations of good faith, diligence, reasonableness, and care prescribed  
18          under this title may not be disclaimed by agreement. The parties, by agreement,  
19          may determine the standards by which the performance of those obligations is to  
20          be measured if those standards are not manifestly unreasonable. If this title  
21          requires an action to be taken within a reasonable time, a time that is not  
22          manifestly unreasonable may be fixed by agreement.
- 23          3. The presence in certain provisions of this title of the phrase "unless otherwise  
24          agreed", or words of similar import, does not imply that the effect of other  
25          provisions may not be varied by agreement under this section.

26           **41-01-17. (1-303) Course of performance - Course of dealing - Usage of trade.**

- 27          1. A "course of performance" is a sequence of conduct between the parties to a  
28          particular transaction that exists if:
- 29          a. The agreement of the parties with respect to the transaction involves repeated  
30          occasions for performance by a party; and



1           7. Evidence of a relevant usage of trade offered by one party is not admissible unless  
2           that party has given the other party notice that the court finds sufficient to prevent  
3           unfair surprise to the other party.

4           **41-01-18. (1-304) Obligation of good faith.** Every contract or duty within this title  
5           imposes an obligation of good faith in its performance and enforcement. This section does not  
6           support an independent claim for relief for failure to perform or enforce in good faith and does  
7           not create a separate duty of fairness and reasonableness which can be independently  
8           breached.

9           **41-01-19. (1-305) Remedies to be liberally administered.**

10          1. The remedies provided under this title must be liberally administered to the end  
11          that the aggrieved party may be put in as good a position as if the other party had  
12          fully performed but neither consequential or special damages nor penal damages  
13          may be had except as specifically provided under this title or by other rule of law.

14          2. Any right or obligation declared under this title is enforceable by action unless the  
15          provision declaring the right or obligation specifies a different and limited effect.

16          **41-01-20. (1-306) Waiver or renunciation of claim or right after breach.** A claim or  
17          right arising out of an alleged breach may be discharged in whole or in part without  
18          consideration by agreement of the aggrieved party in an authenticated record.

19          **41-01-21. (1-307) Prima facie evidence by third-party documents.** A document in  
20          due form purporting to be a bill of lading, a policy or certificate of insurance, an official weigher's  
21          or inspector's certificate, a consular invoice, or any other document authorized or required by  
22          the contract to be issued by a third party is prima facie evidence of the document's own  
23          authenticity and genuineness and of the facts stated in the document by the third party.

24          **41-01-22. (1-308) Performance or acceptance under reservation of rights.**

25          1. A party that with explicit reservation of rights performs or promises performance or  
26          assents to performance in a manner demanded or offered by the other party does  
27          not thereby prejudice the rights reserved. Such words as "without prejudice",  
28          "under protest", or the like are sufficient.

29          2. Subsection 1 does not apply to an accord and satisfaction.

30          **41-01-23. (1-309) Option to accelerate at will.** A term providing that one party or that  
31          party's successor in interest may accelerate payment or performance or require collateral or



1 additional collateral "at will" or when the party "deems itself insecure", or words of similar  
2 import, means that the party has power to do so only if that party in good faith believes that the  
3 prospect of payment or performance is impaired. The burden of establishing lack of good faith  
4 is on the party against which the power has been exercised.

5 **41-01-24. (1-310) Subordinated obligations.** An obligation may be issued as  
6 subordinated to performance of another obligation of the person obligated, or a creditor may  
7 subordinate the creditor's right to performance of an obligation by agreement with either the  
8 person obligated or another creditor of the person obligated. Subordination does not create a  
9 security interest as against either the common debtor or a subordinated creditor.

10 **SECTION 7. AMENDMENT.** Subdivision b of subsection 1 of section 41-02-03 of the  
11 North Dakota Century Code is amended and reenacted as follows:

12 b. ~~"Good faith" in the case of a merchant means honesty in fact and the~~  
13 ~~observance of reasonable commercial standards of fair dealing in the trade.~~  
14 (Reserved).

15 **SECTION 8. AMENDMENT.** Subsection 1 of section 41-02-09 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17 1. By course of performance, course of dealing, or usage of trade (section ~~41-01-15~~)  
18 ~~or by course of performance (section 41-02-15 41-01-17); and~~

19 **SECTION 9. AMENDMENT.** Subsection 3 of section 41-02.1-03 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 3. The following definitions also apply to this chapter:

- 22 a. "Account". Section 41-09-02.  
23 b. "Between merchants". Subsection 1 of section 41-02-04.  
24 c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.  
25 d. "Chattel paper". Section 41-09-02.  
26 e. "Consumer goods". Section 41-09-02.  
27 f. "Document". Section 41-09-02.  
28 g. "Entrusting". Subsection 3 of section 41-02-48.  
29 h. "General intangible". Section 41-09-02.  
30 i. ~~"Good faith". Subdivision b of subsection 1 of section 41-02-03.~~  
31 j. "Instrument". Section 41-09-02.

- 1           ~~k.~~ j. "Merchant". Subsection 3 of section 41-02-04.  
2           ~~l.~~ k. "Mortgage". Section 41-09-02.  
3           ~~m.~~ l. "Pursuant to commitment". Section 41-09-02.  
4           ~~n.~~ m. "Receipt". Subdivision c of subsection 1 of section 41-02-03.  
5           ~~o.~~ n. "Sale". Subdivision d of subsection 1 of section 41-02-06.  
6           ~~p.~~ o. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.  
7           ~~q.~~ p. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.  
8           ~~r.~~ q. "Seller". Subdivision d of subsection 1 of section 41-02-03.

9           **SECTION 10. AMENDMENT.** Subsection 4 of section 41-02.1-49 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11           4. Except as otherwise provided ~~in~~ under subsection 1 of section ~~41-01-06~~ 41-01-19,  
12           this chapter, or the lease agreement, the rights and remedies referred to in  
13           subsections 2 and 3 are cumulative.

14           **SECTION 11. AMENDMENT.** Subsection 2 of section 41-02.1-66 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16           2. Except as otherwise provided with respect to damages liquidated in the lease  
17           agreement (section 41-02.1-52) or determined by agreement of the parties  
18           (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
19           if a lessee's cover is by lease agreement substantially similar to the original lease  
20           agreement and the new lease agreement is made in good faith and in a  
21           commercially reasonable manner, the lessee may recover from the lessor as  
22           damages the present value, as of the date of the commencement of the term of the  
23           new lease agreement, of the rent under the new lease agreement applicable to that  
24           period of the new lease term which is comparable to the then remaining term of the  
25           original lease agreement minus the present value as of the same date of the total  
26           rent for the then remaining lease term of the original lease agreement, and any  
27           incidental or consequential damages, less expenses saved in consequence of the  
28           lessor's default.

29           **SECTION 12. AMENDMENT.** Subsection 1 of section 41-02.1-67 of the North Dakota  
30 Century Code is amended and reenacted as follows:

1           1. Except as otherwise provided with respect to damages liquidated in the lease  
2 agreement (section 41-02.1-52) or determined by agreement of the parties  
3 (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
4 if a lessee elects not to cover or a lessee elects to cover and the cover is by lease  
5 agreement that for any reason does not qualify for treatment under subsection 2 of  
6 section 41-02.1-66, or is by purchase or otherwise, the measure of damages for  
7 nondelivery or repudiation by the lessor or for rejection or revocation of acceptance  
8 by the lessee is the present value, as of the date of the default, of the then market  
9 rent minus the present value as of the same date of the original rent, computed for  
10 the remaining lease term of the original lease agreement together with incidental  
11 and consequential damages, less expenses saved in consequence of the lessor's  
12 default.

13           **SECTION 13. AMENDMENT.** Subsection 2 of section 41-02.1-75 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15           2. Except as otherwise provided with respect to damages liquidated in the lease  
16 agreement (section 41-02.1-52) or determined by agreement of the parties  
17 (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
18 if the disposition is by lease agreement substantially similar to the original lease  
19 agreement and the lease agreement is made in good faith and in a commercially  
20 reasonable manner, the lessor may recover from the lessee as damages accrued  
21 and unpaid rent as of the date of the commencement of the new term of the new  
22 lease agreement, the present value, as of the same date, of the total rent for the  
23 remaining lease term of the original lease agreement minus the present value, as  
24 of the same date, of the rent under the new lease agreement applicable to that  
25 period of the new lease term which is comparable to the then remaining term of the  
26 original lease agreement, and any incidental damages allowed under section  
27 41-02.1-78, less expenses saved in consequence of the lessee's default.

28           **SECTION 14. AMENDMENT.** Subsection 1 of section 41-02.1-76 of the North Dakota  
29 Century Code is amended and reenacted as follows:

30           1. Except as otherwise provided with respect to damages liquidated in the lease  
31 agreement (section 41-02.1-52) or determined by agreement of the parties

1           (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
2           if a lessor elects to retain the goods or a lessor elects to dispose of the goods and  
3           disposition is by lease agreement that for any reason does not qualify for treatment  
4           under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor may  
5           recover from the lessee as damages for a default described in subsection 1 of  
6           section 41-02.1-71 or in subdivision a of subsection 3 of section 41-02.1-71, or, if  
7           agreed, for other default of the lessee accrued and unpaid rent as of the date of  
8           default if the lessee has never taken possession of the goods, or if the lessee has  
9           taken possession of the goods, as of the date the lessor repossesses the goods or  
10          an earlier date on which the lessee makes a tender of the goods to the lessor; the  
11          present value, as of the same date, of the total rent for the then remaining lease  
12          term of the original lease agreement minus the present value, as of the same date,  
13          of the rent under the new lease agreement applicable to that period of the new  
14          lease term which is comparable to the then remaining term of the original lease  
15          agreement; and any incidental damages allowed under section 41-02.1-78, less  
16          expenses saved in consequence of the lessee's default.

17           **SECTION 15. AMENDMENT.** Subdivisions d and j of subsection 1 of section 41-03-03  
18 of the North Dakota Century Code are amended and reenacted as follows:

- 19           d. ~~"Good faith" means honesty in fact and the observance of reasonable~~  
20           ~~commercial standards of fair dealing.~~ (Reserved).  
21           j. "Prove" with respect to a fact means to meet the burden of establishing the  
22           fact (subdivision h of subsection 8 2 of section 41-01-14 41-01-09).

23           **SECTION 16. AMENDMENT.** Subsection 3 of section 41-04-04 of the North Dakota  
24 Century Code is amended and reenacted as follows:

- 25           3. "Control" as provided under section 41-07-06 and the following definitions in other  
26           chapters apply to this chapter:  
27           a. "Acceptance". Section 41-03-46.  
28           b. "Alteration". Section 41-03-44.  
29           c. "Cashier's check". Section 41-03-04.  
30           d. "Certificate of deposit". Section 41-03-04.  
31           e. "Certified check". Section 41-03-45.

- 1 f. "Check". Section 41-03-04.
- 2 g. ~~"Good faith". Section 41-03-03.~~
- 3 ~~h.~~ "Holder in due course". Section 41-03-28.
- 4 ~~i.~~ h. "Instrument". Section 41-03-04.
- 5 ~~j.~~ i. "Notice of dishonor". Section 41-03-60.
- 6 ~~k.~~ j. "Order". Section 41-03-03.
- 7 ~~l.~~ k. "Ordinary care". Section 41-03-03.
- 8 ~~m.~~ l. "Person entitled to enforce". Section 41-03-27.
- 9 ~~n.~~ m. "Presentment". Section 41-03-58.
- 10 ~~o.~~ n. "Promise". Section 41-03-03.
- 11 ~~p.~~ o. "Prove". Section 41-03-03.
- 12 ~~q.~~ p. "Teller's check". Section 41-03-04.
- 13 ~~r.~~ q. "Unauthorized signature". Section 41-03-40.

14 **SECTION 17. AMENDMENT.** Subsection 1 of section 41-04.1-05 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 1. In this chapter:
  - 17 a. "Authorized account" means a deposit account of a customer in a bank  
18 designated by the customer as a source of payment of payment orders issued  
19 by the customer to the bank. If a customer does not so designate an account,  
20 any account of the customer is an authorized account if payment of a  
21 payment order from that account is not inconsistent with a restriction on the  
22 use of that account.
  - 23 b. "Bank" means a person engaged in the business of banking and includes a  
24 savings bank, savings and loan association, credit union, and trust company.  
25 A branch or separate office of a bank is a separate bank for purposes of this  
26 chapter.
  - 27 c. "Customer" means a person, including a bank, having an account with a bank  
28 or from whom a bank has agreed to receive payment orders.
  - 29 d. "Funds-transfer business day" of a receiving bank means the part of a day  
30 during which the receiving bank is open for the receipt, processing, and

1 transmittal of payment orders and cancellations and amendments of payment  
2 orders.

3 e. "Funds-transfer system" means a wire transfer network, automated  
4 clearinghouse, or other communication system of a clearinghouse or other  
5 association of banks through which a payment order by a bank may be  
6 transmitted to the bank to which the order is addressed.

7 f. ~~"Good faith" means honesty in fact and the observance of reasonable~~  
8 ~~commercial standards of fair dealing.~~ (Reserved).

9 g. "Prove" with respect to a fact means to meet the burden of establishing the  
10 fact. ~~Subsection 8~~ Subdivision h of subsection 2 of section 41-01-11  
11 41-01-09.

12 **SECTION 18. AMENDMENT.** Subsection 1 of section 41-04.1-06 of the North Dakota  
13 Century Code is amended and reenacted as follows:

14 1. The time of receipt of a payment order or communication canceling or amending a  
15 payment order is determined by the rules applicable to receipt of a notice stated ~~in~~  
16 ~~subsection 27 of~~ under section 41-01-11 41-01-10. A receiving bank may fix a  
17 cutoff time or times on a funds-transfer business day for the receipt and processing  
18 of payment orders and communications canceling or amending payment orders.  
19 Different cutoff times may apply to payment orders, cancellations, or amendments,  
20 or to different categories of payment orders, cancellations, or amendments. A  
21 cutoff time may apply to senders generally or different cutoff times may apply to  
22 different senders or categories of payment orders. If a payment order or  
23 communication canceling or amending a payment order is received after the close  
24 of a funds-transfer business day or after the appropriate cutoff time on a  
25 funds-transfer business day, the receiving bank may treat the payment order or  
26 communication as received at the opening of the next funds-transfer business day.

27 **SECTION 19. AMENDMENT.** Subsection 2 of section 41-04.1-12 of the North Dakota  
28 Century Code is amended and reenacted as follows:

29 2. Reasonable time under subsection 1 may be fixed by agreement under  
30 subsection 1 of section ~~41-01-14~~ 41-01-16, but the obligation of a receiving bank to

1 refund payment as stated in subsection 1 may not otherwise be varied by  
2 agreement.

3 **SECTION 20. AMENDMENT.** Subdivision g of subsection 1 of section 41-05-02 of the  
4 North Dakota Century Code is amended and reenacted as follows:

5 g. "Good faith" means honesty in fact in the conduct or transaction concerned.  
6 The definition of "good faith" in section 41-01-09 does not apply to this  
7 chapter.

8 **SECTION 21. AMENDMENT.** Subsection 3 of section 41-05-03 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 3. With the exception of this subsection, subsections 1 and 4 of this section,  
11 subdivisions i and j of subsection 1 of section 41-05-02, subsection 4 of section  
12 41-05-06, and subsection 4 of section 41-05-14, and except to the extent  
13 prohibited ~~in subsection 3 of~~ under section ~~41-01-02~~ 41-01-16 and subsection 4 of  
14 section 41-05-17, the effect of this chapter may be varied by agreement or by a  
15 provision stated or incorporated by reference in an undertaking. A term in an  
16 agreement or undertaking generally excusing liability or generally limiting remedies  
17 for failure to perform obligations is not sufficient to vary obligations prescribed by  
18 this chapter.

19 **SECTION 22. AMENDMENT.** Subdivision k of subsection 1 of section 41-08-02 of the  
20 North Dakota Century Code is amended and reenacted as follows:

21 k. ~~"Good faith", for purposes of the obligation of good faith in the performance or~~  
22 ~~enforcement of contracts or duties within this chapter, means honesty in fact~~  
23 ~~and the observance of reasonable commercial standards of fair dealing.~~  
24 (Reserved).

25 **SECTION 23. AMENDMENT.** Subdivision ss of subsection 1 of section 41-09-02 of the  
26 North Dakota Century Code is amended and reenacted as follows:

27 ss. ~~"Good faith" means honesty in fact and the observance of reasonable~~  
28 ~~commercial standards of fair dealing. (Reserved).~~

29 **SECTION 24. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North Dakota  
30 Century Code is amended and reenacted as follows:

31 40. "Signed" means:





- 1           a. That the signature of a person which may be a facsimile affixed, engraved,  
2                    printed, placed, stamped with indelible ink, transmitted by telecommunication  
3                    or electronically, or in any other manner reproduced on the record, is placed  
4                    on a record, as provided under section ~~41-01-14~~ 41-01-09; and
- 5           b. With respect to a record required by this chapter to be filed with the secretary  
6                    of state means that:
- 7                    (1) The record is signed by a person authorized to do so by this chapter, or  
8                            by or pursuant to an agreement among the partners, or by a resolution  
9                            approved by the affirmative vote of the required proportion or number of  
10                           partners; and
- 11                   (2) The signature and the record are communicated by a method or  
12                           medium of communication acceptable by the secretary of state.

13           **SECTION 27. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15           24. "Signed" means:

- 16           a. That the signature of a person, which may be a facsimile affixed, engraved,  
17                    printed, placed, stamped with indelible ink, transmitted by facsimile or  
18                    electronically, or in any other manner reproduced on the record, is placed on  
19                    a record, as provided under section ~~41-01-14~~ 41-01-09; and
- 20           b. With respect to a record required by this chapter to be filed with the secretary  
21                    of state, that:
- 22                    (1) The record is signed by a person authorized to sign by this chapter, or  
23                            pursuant to an agreement among the partners, or by a resolution  
24                            approved by the affirmative vote of the required proportion or number of  
25                            partners; and
- 26                    (2) The signature and the record are communicated by a method or  
27                           medium acceptable by the secretary of state.

28           **SECTION 28. AMENDMENT.** Section 47-15.1-02 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30           **47-15.1-02. Inapplicability of other laws.** Consumer rental purchase agreements  
31 under this chapter are not governed by the laws relating to a retail installment contract or a

Sixtieth  
Legislative Assembly

1 retail installment sale as defined in section 51-13-01 or security interest as defined in section  
2 ~~41-01-11~~ 41-01-09.

3 **SECTION 29. REPEAL.** Chapter 41-01 and sections 41-02-15 and 41-02.1-16 of the  
4 North Dakota Century Code are repealed.