

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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  
16 the record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
17 present intention to authenticate that record; 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  
31 telecommunication or electronically, or in any other manner reproduced on

1 the record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
2 present intention to authenticate that record.

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  
17 the record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
18 present intention to authenticate that record; 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  
10 transactions;

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

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

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

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20 be impliedly repealed by subsequent legislation if such construction can reasonably be  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

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

26           **41-01-06. (1-106) Use of singular and plural - Gender.** In this title, unless the  
27 statutory context otherwise requires:

28           1.   Words in the singular number include the plural, and those in the plural include the  
29 singular; and

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

31           **41-01-07. (1-107) Section captions.** Section captions are part of this title.



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

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

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



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

1                   41-02.1 to retain or acquire possession of the goods is not a "security  
2                   interest", but a seller or lessor may also acquire a "security interest" by  
3                   complying with chapter 41-09. The retention or reservation of title by a seller  
4                   of goods notwithstanding shipment or delivery to the buyer under section  
5                   41-02-46 is limited in effect to a reservation of a "security interest". Whether  
6                   a transaction in the form of a lease creates a "security interest" is determined  
7                   under section 41-01-11.

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

- 9                   (1)   To deposit in the mail or deliver for transmission by any other usual  
10                  means of communication with postage or cost of transmission provided  
11                  for and properly addressed and, in the case of an instrument, to an  
12                  address specified on the instrument or otherwise agreed, or if there be  
13                  none to any address reasonable under the circumstances; or  
14                  (2)   In any other way to cause to be received any record or notice within the  
15                  time it would have arrived if properly sent.

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

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

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

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

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

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

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

29                  **41-01-10. (1-202) Notice - Knowledge.**

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

- 31                  a.   Has actual knowledge of that fact;

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

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



1           **41-01-15. Territorial applicability - Parties' power to choose applicable law.**

- 2           1. Except as provided hereafter in this section, when a transaction bears a  
3           reasonable relation to this state and also to another state or nation the parties may  
4           agree that the law either of this state or of such other state or nation shall govern  
5           their rights and duties. Failing such agreement, this title applies to transactions  
6           bearing an appropriate relation to this state.
- 7           2. Where one of the following provisions of this title specifies the applicable law, that  
8           provision governs and a contrary agreement is effective only to the extent  
9           permitted by the law, including the conflict of laws rules, so specified:
- 10          a. Rights of creditors against sold goods. Section 41-02-47.  
11          b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.  
12          c. Applicability of the chapter on bank deposits and collections. Section  
13             41-04-02.  
14          d. Governing law in the chapter on funds transfers. Section 41-04.1-38.  
15          e. Letters of credit. Section 41-05-16.  
16          f. Applicability of the chapter on investment securities. Section 41-08-10.  
17          g. Law governing perfection, the effect of perfection or nonperfection, and the  
18             priority of security interests and agricultural liens. Sections 41-09-21 through  
19             41-09-27.

20           **41-01-16. (1-302) Variation by agreement.**

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

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

1. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
  - a. The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
  - b. The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in the performance without objection.
2. A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
3. A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
4. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which the parties are engaged or of which the parties are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
5. Except as otherwise provided in subsection 6, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
  - a. Express terms prevail over course of performance, course of dealing, and usage of trade;

1           b. Course of performance prevails over course of dealing and usage of trade;  
2                     and

3           c. Course of dealing prevails over usage of trade.

4           6. Subject to section 41-02-16, a course of performance is relevant to show a waiver  
5                     or modification of any term inconsistent with the course of performance.

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

9           **41-01-18. (1-304) Obligation of good faith.** Every contract or duty within this title  
10 imposes an obligation of good faith in its performance and enforcement. This section does not  
11 support an independent claim for relief for failure to perform or enforce in good faith and does  
12 not create a separate duty of fairness and reasonableness which can be independently  
13 breached.

14           **41-01-19. (1-305) Remedies to be liberally administered.**

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

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

21           **41-01-20. (1-306) Waiver or renunciation of claim or right after breach.** A claim or  
22 right arising out of an alleged breach may be discharged in whole or in part without  
23 consideration by agreement of the aggrieved party in an authenticated record.

24           **41-01-21. (1-307) Prima facie evidence by third-party documents.** A document in  
25 due form purporting to be a bill of lading, a policy or certificate of insurance, an official weigher's  
26 or inspector's certificate, a consular invoice, or any other document authorized or required by  
27 the contract to be issued by a third party is prima facie evidence of the document's own  
28 authenticity and genuineness and of the facts stated in the document by the third party.

29           **41-01-22. (1-308) Performance or acceptance under reservation of rights.**

30           1. A party that with explicit reservation of rights performs or promises performance or  
31                     assents to performance in a manner demanded or offered by the other party does



1           not thereby prejudice the rights reserved. Such words as "without prejudice",  
2           "under protest", or the like are sufficient.

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

4           **41-01-23. (1-309) Option to accelerate at will.** A term providing that one party or that  
5 party's successor in interest may accelerate payment or performance or require collateral or  
6 additional collateral "at will" or when the party "deems itself insecure", or words of similar  
7 import, means that the party has power to do so only if that party in good faith believes that the  
8 prospect of payment or performance is impaired. The burden of establishing lack of good faith  
9 is on the party against which the power has been exercised.

10          **41-01-24. (1-310) Subordinated obligations.** An obligation may be issued as  
11 subordinated to performance of another obligation of the person obligated, or a creditor may  
12 subordinate the creditor's right to performance of an obligation by agreement with either the  
13 person obligated or another creditor of the person obligated. Subordination does not create a  
14 security interest as against either the common debtor or a subordinated creditor.

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

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

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

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

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

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

- 27           a. "Account". Section 41-09-02.  
28           b. "Between merchants". Subsection 1 of section 41-02-04.  
29           c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.  
30           d. "Chattel paper". Section 41-09-02.  
31           e. "Consumer goods". Section 41-09-02.

- 1 f. "Document". Section 41-09-02.  
2 g. "Entrusting". Subsection 3 of section 41-02-48.  
3 h. "General intangible". Section 41-09-02.  
4 i. ~~"Good faith". Subdivision b of subsection 1 of section 41-02-03.~~  
5 j. "Instrument". Section 41-09-02.  
6 ~~k.~~ j. "Merchant". Subsection 3 of section 41-02-04.  
7 ~~l.~~ k. "Mortgage". Section 41-09-02.  
8 ~~m.~~ l. "Pursuant to commitment". Section 41-09-02.  
9 ~~n.~~ m. "Receipt". Subdivision c of subsection 1 of section 41-02-03.  
10 ~~o.~~ n. "Sale". Subdivision d of subsection 1 of section 41-02-06.  
11 ~~p.~~ o. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.  
12 ~~q.~~ p. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.  
13 ~~r.~~ q. "Seller". Subdivision d of subsection 1 of section 41-02-03.

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

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

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

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

1           any incidental or consequential damages, less expenses saved in consequence of  
2           the lessor's default.

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

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

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

19          2. Except as otherwise provided with respect to damages liquidated in the lease  
20          agreement (section 41-02.1-52) or determined by agreement of the parties  
21          (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
22          if the disposition is by lease agreement substantially similar to the original lease  
23          agreement and the lease agreement is made in good faith and in a commercially  
24          reasonable manner, the lessor may recover from the lessee as damages accrued  
25          and unpaid rent as of the date of the commencement of the new term of the new  
26          lease agreement, the present value, as of the same date, of the total rent for the  
27          remaining lease term of the original lease agreement minus the present value, as  
28          of the same date, of the rent under the new lease agreement applicable to that  
29          period of the new lease term which is comparable to the then remaining term of the  
30          original lease agreement, and any incidental damages allowed under section  
31          41-02.1-78, less expenses saved in consequence of the lessee's default.

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

3           1. Except as otherwise provided with respect to damages liquidated in the lease  
4 agreement (section 41-02.1-52) or determined by agreement of the parties  
5 (~~subsection 3 of section 41-01-02 and section~~ sections 41-01-16 and 41-02.1-51),  
6 if a lessor elects to retain the goods or a lessor elects to dispose of the goods and  
7 disposition is by lease agreement that for any reason does not qualify for treatment  
8 under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor  
9 may recover from the lessee as damages for a default described in subsection 1 of  
10 section 41-02.1-71 or in subdivision a of subsection 3 of section 41-02.1-71, or, if  
11 agreed, for other default of the lessee accrued and unpaid rent as of the date of  
12 default if the lessee has never taken possession of the goods, or if the lessee has  
13 taken possession of the goods, as of the date the lessor repossesses the goods or  
14 an earlier date on which the lessee makes a tender of the goods to the lessor; the  
15 present value, as of the same date, of the total rent for the then remaining lease  
16 term of the original lease agreement minus the present value, as of the same date,  
17 of the rent under the new lease agreement applicable to that period of the new  
18 lease term which is comparable to the then remaining term of the original lease  
19 agreement; and any incidental damages allowed under section 41-02.1-78, less  
20 expenses saved in consequence of the lessee's default.

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

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

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

29           3. "Control" as provided under section 41-07-06 and the following definitions in other  
30 chapters apply to this chapter:  
31           a. "Acceptance". Section 41-03-46.

- 1           b. "Alteration". Section 41-03-44.
- 2           c. "Cashier's check". Section 41-03-04.
- 3           d. "Certificate of deposit". Section 41-03-04.
- 4           e. "Certified check". Section 41-03-45.
- 5           f. "Check". Section 41-03-04.
- 6           g. ~~"Good faith". Section 41-03-03.~~
- 7           ~~h.~~ "Holder in due course". Section 41-03-28.
- 8           i. h. "Instrument". Section 41-03-04.
- 9           j. i. "Notice of dishonor". Section 41-03-60.
- 10          k. j. "Order". Section 41-03-03.
- 11          l. k. "Ordinary care". Section 41-03-03.
- 12          m. l. "Person entitled to enforce". Section 41-03-27.
- 13          n. m. "Presentment". Section 41-03-58.
- 14          o. n. "Promise". Section 41-03-03.
- 15          p. o. "Prove". Section 41-03-03.
- 16          q. p. "Teller's check". Section 41-03-04.
- 17          r. q. "Unauthorized signature". Section 41-03-40.

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

- 20           1. In this chapter:
  - 21           a. "Authorized account" means a deposit account of a customer in a bank  
22           designated by the customer as a source of payment of payment orders issued  
23           by the customer to the bank. If a customer does not so designate an account,  
24           any account of the customer is an authorized account if payment of a  
25           payment order from that account is not inconsistent with a restriction on the  
26           use of that account.
  - 27           b. "Bank" means a person engaged in the business of banking and includes a  
28           savings bank, savings and loan association, credit union, and trust company.  
29           A branch or separate office of a bank is a separate bank for purposes of this  
30           chapter.

- 1 c. "Customer" means a person, including a bank, having an account with a bank  
2 or from whom a bank has agreed to receive payment orders.
- 3 d. "Funds-transfer business day" of a receiving bank means the part of a day  
4 during which the receiving bank is open for the receipt, processing, and  
5 transmittal of payment orders and cancellations and amendments of payment  
6 orders.
- 7 e. "Funds-transfer system" means a wire transfer network, automated  
8 clearinghouse, or other communication system of a clearinghouse or other  
9 association of banks through which a payment order by a bank may be  
10 transmitted to the bank to which the order is addressed.
- 11 f. ~~"Good faith" means honesty in fact and the observance of reasonable~~  
12 ~~commercial standards of fair dealing. (Reserved).~~
- 13 g. "Prove" with respect to a fact means to meet the burden of establishing the  
14 fact. ~~Subsection 8~~ Subdivision h of subsection 2 of section 41-01-11  
15 41-01-09.

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

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

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

3           2. Reasonable time under subsection 1 may be fixed by agreement under  
4 subsection 1 of section ~~41-01-14~~ 41-01-16, but the obligation of a receiving bank  
5 to refund payment as stated in subsection 1 may not otherwise be varied by  
6 agreement.

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

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

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

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

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

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

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

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

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

5           40. "Signed" means:

- 6           a. That the signature of a person, which may be a facsimile affixed, engraved,  
7                       printed, placed, stamped with indelible ink, transmitted by facsimile or  
8                       electronically, or in any other manner reproduced on the record, is placed on  
9                       a record ~~as provided under section 41-01-14~~ with the present intention to  
10                      authenticate that record; and  
11           b. With respect to a record required by this chapter to be filed with the secretary  
12                      of state that:  
13                      (1) The record is signed by a person authorized to sign the record by this  
14                               chapter, by the partnership agreement, or by a resolution approved by  
15                               the affirmative vote of the required proportion or number of partners;  
16                               and  
17                      (2) The signature and the record are communicated by a method or  
18                               medium of communication acceptable by the secretary of state.

19           **SECTION 25. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21           26. "Signed" means:

- 22           a. That the signature of a person, which may be a facsimile affixed, engraved,  
23                       printed, placed, stamped with indelible ink, transmitted by facsimile  
24                       telecommunication or electronically or in any other manner reproduced on the  
25                       record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
26                      present intention to authenticate that record; and  
27           b. With respect to a record required by this chapter to be filed with the secretary  
28                      of state, that:  
29                      (1) The record is signed by a person authorized to do so by this chapter or  
30                               by a resolution approved by the affirmative vote of the required  
31                               proportion or number of partners; and





1 approved by the affirmative vote of the required proportion or number of  
2 partners; and

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

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

7 **47-15.1-02. Inapplicability of other laws.** Consumer rental purchase agreements  
8 under this chapter are not governed by the laws relating to a retail installment contract or a  
9 retail installment sale as defined in section 51-13-01 or security interest as defined in section  
10 ~~41-01-11~~ 41-01-09.

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