

**HOUSE BILL NO. 1415**

Introduced by

Representatives Vigesaa, Dietrich, Froseth

Senators Andrist, Klein

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

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

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

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

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

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

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

- 1           statement record is not an authorized filing under section 41-09-80 and therefore is  
2           not effective with respect to that individual under section 41-09-81. A motion under  
3           this subsection must be filed with the district court of the county in which the  
4           financing statement record was filed or of the county of principal residence of the  
5           movant. The motion must be supported by the affidavit of the movant setting forth  
6           a concise statement of the facts upon which the claim for relief is based. A motion  
7           under this subsection must be on a form or in substantially the same form as the  
8           form established by the secretary of state in consultation with the supreme court.
- 9           2. The clerk of the district court may not collect a filing fee for filing a motion as  
10           provided in this section.
- 11           3. The court's finding may be made solely on a review of the documentation attached  
12           to the motion; on a review of the responses, if any, of the person named as a  
13           secured party in the financing statement record; and without hearing any oral  
14           testimony if none is offered by the secured party. The district court's review may  
15           be made upon at least twenty days' notice to each person named as a secured  
16           party in the financing statement record. Notice must be given to each secured  
17           party. Notice may be given to each secured party at the address given in the  
18           financing statement record as an address of that secured party by mail or personal  
19           service as provided in the North Dakota Rules of Civil Procedure. Each party shall  
20           respond to discovery requests timely. Each person named as a secured party in  
21           the financing statement record may respond to the motion based on pleadings,  
22           depositions, admissions, and affidavits. The court shall review the pleadings,  
23           depositions, admissions, and affidavits on an expedited basis.
- 24           4. The court shall enter judgment in favor of the movant only if the pleadings,  
25           depositions, admissions, and affidavits on file show there is no genuine issue as to  
26           any material fact and that the moving party is entitled to a judgment as a matter of  
27           law.
- 28           5. After review, the district court shall enter an appropriate finding of fact and  
29           conclusion of law in a form as provided in subsection 4 regarding the financing  
30           statement record, an attested copy of which must be filed and indexed under the  
31           movant's name in the same filing office in which the original financing statement

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

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

14          **Civil and criminal penalties.**

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

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

21           b. Was filed or presented for filing with the intent that the financing statement  
22           record be used to harass or hinder the individual whose name was provided  
23           as an individual debtor in the financing statement record without that  
24           individual's authorization or that the financing statement record be used to  
25           defraud any person.

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

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

29           a. The greater of ten thousand dollars or the actual damages caused by the  
30           violation;

31           b. Court costs;

- 1           c. Reasonable attorney's fees;
- 2           d. Related expenses of bringing the action, including investigative expenses;
- 3           and
- 4           e. Exemplary damages in the amount determined by the court.

5           **Cause of action - Injunction.**

- 6           1. The following persons may bring an action to enjoin violation of this chapter or to
- 7           recover damages under this chapter:
- 8           a. The individual whose name was provided as an individual debtor in the
- 9           financing statement record filed without that person's authorization under
- 10           section 41-09-80 or 41-09-130, or any guardian, conservator, executor,
- 11           administrator or other legal representative of that person, any person who
- 12           owns an interest in the collateral described or indicated in the financing
- 13           statement record, or any person directly harmed by the filing of the financing
- 14           statement record;
- 15           b. The attorney general;
- 16           c. A state's attorney;
- 17           d. A city attorney; and
- 18           e. A person that has been damaged as a result of an action taken in reliance on
- 19           the filed financing statement record.
- 20           2. A filing officer may refer a matter to the attorney general or other appropriate
- 21           person for filing the legal action under this chapter.

22           **Venue.** An action under this chapter may be brought in a district court in the county in

23 which the financing statement record is presented for filing or in a county in which any of the

24 persons who may bring an action under this chapter reside.

25           **Other remedies.** This Act is cumulative of other law under which a person may obtain

26 judicial relief with respect to any filed or recorded document.