

HOUSE BILL NO. 1137

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact sections 41-09-132, 41-09-133, 41-09-134, 41-09-135,
2 41-09-136, 41-09-137, 41-09-138, and 41-09-139 of the North Dakota Century Code, relating to
3 transition provision for revision of secured transaction laws; to amend and reenact sections
4 41-09-02 and 41-09-05, subdivision b of subsection 6 of section 41-09-27, subsection 1 of
5 section 41-09-31, sections 41-09-36, 41-09-37, and 41-09-46, subsection 5 of section 41-09-68,
6 subsection 2 of section 41-09-70, subdivision c of subsection 3 of section 41-09-73, section
7 41-09-74, subsection 3 of section 41-09-78, subsection 6 of section 41-09-86, subsection 2 of
8 section 41-09-87, section 41-09-89, and paragraph 1 of subdivision b of subsection 2 of section
9 41-09-104 of the North Dakota Century Code, relating to a revision to Uniform Commercial
10 Code Article 9 relating to secured transactions; and to provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 41-09-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **41-09-02. (9-102) Definitions and index of definitions.**

15 1. In this chapter:

16 a. "Accession" means goods that are physically united with other goods in such a
17 manner that the identity of the original goods is not lost.

18 b. "Account", except as used in "account for", means:

19 (1) A right to payment of a monetary obligation, regardless of whether earned
20 by performance:

21 (a) For property that has been or is to be sold, leased, licensed,
22 assigned, or otherwise disposed of;

23 (b) For services rendered or to be rendered;

24 (c) For a policy of insurance issued or to be issued;

- 1 (d) For a secondary obligation incurred or to be incurred;
- 2 (e) For energy provided or to be provided;
- 3 (f) For the use or hire of a vessel under a charter or other contract;
- 4 (g) Arising out of the use of a credit or charge card or information
- 5 contained on or for use with the card; or
- 6 (h) As winnings in a lottery or other game of chance operated or
- 7 sponsored by a state, governmental unit of a state, or person licensed
- 8 or authorized to operate the game by a state or governmental unit of a
- 9 state.
- 10 (2) The term includes a health care insurance receivable. The term does not
- 11 include:
- 12 (a) Right to payment evidenced by chattel paper or an instrument;
- 13 (b) Commercial tort claim;
- 14 (c) Deposit account;
- 15 (d) Investment property;
- 16 (e) Letter-of-credit right or letters of credit;
- 17 (f) Right to payment for any money or fund advanced or sold, other than
- 18 a right arising out of the use of a credit or charge card or information
- 19 contained on or for use with the card; or
- 20 (g) Certificate of deposit.
- 21 c. "Account debtor" means a person obligated on an account, chattel paper, or
- 22 general intangible. The term does not include a person obligated to pay a
- 23 negotiable instrument, even if the instrument constitutes part of chattel paper.
- 24 d. "Accounting", except as used in "accounting for", means a record:
- 25 (1) Authenticated by a secured party;
- 26 (2) Indicating the aggregate unpaid secured obligations as of a date not more
- 27 than thirty-five days earlier or thirty-five days later than the date of the
- 28 record; and
- 29 (3) Identifying the components of the obligations in reasonable detail.
- 30 e. "Agricultural lien" means an interest in farm products:
- 31 (1) That secures payment or performance of an obligation for:

- 1 (a) Goods or services furnished in connection with a debtor's farming
2 operation or in connection with processing, production, or entrustment
3 of the farm products; or
4 (b) Rent on real property leased by a debtor in connection with the
5 debtor's farming operation;
- 6 (2) That is created by statute in favor of a person that:
- 7 (a) Furnished goods or services in connection with processing,
8 production, or entrustment of the farm product or in the ordinary
9 course of that person's business furnished goods or services to a
10 debtor in connection with a debtor's farming operation; or
11 (b) Leased real property to a debtor in connection with the debtor's
12 farming operation; and
- 13 (3) Of which the effectiveness does not depend on the person's possession of
14 the personal property.
- 15 f. "As-extracted collateral" means:
- 16 (1) Oil, gas, or other mineral that is subject to a security interest that:
- 17 (a) Is created by a debtor having an interest in the mineral before
18 extraction; and
19 (b) Attaches to the mineral as extracted; or
- 20 (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or
21 other mineral in which the debtor had an interest before extraction.
- 22 g. "Authenticate" means:
- 23 (1) To sign; or
24 (2) ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a~~
25 ~~record in whole or in part, with the present intent of the authenticating~~
26 ~~person to identify the person and adopt or accept a record.~~ With present
27 intent to adopt or accept a record, to attach to or logically associate with the
28 record an electronic sound, symbol, or process.
- 29 h. "Bank" means an organization engaged in the business of banking. The term
30 includes a savings bank, savings and loan association, credit union, and trust
31 company.

- 1 i. "Cash proceeds" means proceeds that are money, checks, deposit accounts,
2 certificates of deposit, or the like.
- 3 j. "Certificate of deposit" means a bank record of a sum of money which has been
4 received by the bank and a promise made by the bank to repay the sum of
5 money. The term does not include a deposit account. A certificate of deposit may
6 be negotiable, nonnegotiable, nontransferable, certificated, or uncertificated.
- 7 k. "Certificate of title" means a certificate of title with respect to which a statute
8 provides for the security interest in question to be indicated on the certificate as a
9 condition or result of the security interest's obtaining priority over the rights of a
10 lien creditor with respect to the collateral. The term includes another record
11 maintained as an alternative to a certificate of title by the governmental unit that
12 issues certificates of title if a statute permits the security interest in question to be
13 indicated on the record as a condition or result of the security interest's obtaining
14 priority over the rights of a lien creditor with respect to the collateral.
- 15 l. "Certificated certificate of deposit" means a certificate of deposit that is
16 represented by a certificate.
- 17 m. "Chattel paper" means a record or records that evidence both a monetary
18 obligation and a security interest in specific goods, a security interest in specific
19 goods and software used in the goods, a security interest in specific goods and
20 license of software used in the goods, a lease of specific goods, or a lease of
21 specific goods and license of software used in the goods. In this subdivision,
22 "monetary obligation" means a monetary obligation secured by the goods or
23 owed under a lease of the goods and includes a monetary obligation with respect
24 to software used in the goods. The term does not include charters or other
25 contracts involving the use or hire of a vessel or records that evidence a right to
26 payment arising out of the use of a credit or charge card or information contained
27 on or for use with the card. If a transaction is evidenced by records that include
28 an instrument or series of instruments, the group of records taken together
29 constitutes chattel paper.
- 30 n. "Collateral" means the property subject to a security interest or agricultural lien.
31 The term includes:

- 1 (1) Proceeds to which a security interest attaches;
- 2 (2) Accounts, chattel paper, payment intangibles, and promissory notes that
- 3 have been sold; and
- 4 (3) Goods that are the subject of a consignment.
- 5 o. "Commercial tort claim" means a claim arising in tort with respect to which:
- 6 (1) The claimant is an organization; or
- 7 (2) The claimant is an individual and the claim:
- 8 (a) Arose in the course of the claimant's business or profession; and
- 9 (b) Does not include damages arising out of personal injury to or the
- 10 death of an individual.
- 11 p. "Commodity account" means an account maintained by a commodity
- 12 intermediary in which a commodity contract is carried for a commodity customer.
- 13 q. "Commodity contract" means a commodity futures contract, an option on a
- 14 commodity futures contract, a commodity option, or another contract if the
- 15 contract or option is:
- 16 (1) Traded on or subject to the rules of a board of trade that has been
- 17 designated as a contract market for such a contract pursuant to federal
- 18 commodities laws; or
- 19 (2) Traded on a foreign commodity board of trade, exchange, or market and is
- 20 carried on the books of a commodity intermediary for a commodity
- 21 customer.
- 22 r. "Commodity customer" means a person for which a commodity intermediary
- 23 carries a commodity contract on the intermediary's books.
- 24 s. "Commodity intermediary" means a person that:
- 25 (1) Is registered as a futures commission merchant under federal commodities
- 26 law; or
- 27 (2) In the ordinary course of the person's business provides clearance or
- 28 settlement services for a board of trade that has been designated as a
- 29 contract market pursuant to federal commodities law.
- 30 t. "Communicate" means:
- 31 (1) To send a written or other tangible record;

- 1 (2) To transmit a record by any means agreed upon by the persons sending
2 and receiving the record; or
- 3 (3) In the case of transmission of a record to or by a filing office, to transmit a
4 record by any means prescribed by filing-office rule.
- 5 u. "Consignee" means a merchant to which goods are delivered in a consignment.
- 6 v. "Consignment" means a transaction, regardless of form, in which a person
7 delivers goods to a merchant for the purpose of sale and:
- 8 (1) The merchant:
- 9 (a) Deals in goods of that kind under a name other than the name of the
10 person making delivery;
- 11 (b) Is not an auctioneer; and
- 12 (c) Is not generally known by its creditors to be substantially engaged in
13 selling the goods of others;
- 14 (2) With respect to each delivery, the aggregate value of the goods is one
15 thousand dollars or more at the time of delivery;
- 16 (3) The goods are not consumer goods immediately before delivery; and
- 17 (4) The transaction does not create a security interest that secures an
18 obligation.
- 19 w. "Consignor" means a person that delivers goods to a consignee in a
20 consignment.
- 21 x. "Consumer debtor" means a debtor in a consumer transaction.
- 22 y. "Consumer goods" means goods that are used or bought for use primarily for
23 personal, family, or household purposes.
- 24 z. "Consumer-goods transaction" means a consumer transaction in which:
- 25 (1) An individual incurs an obligation primarily for personal, family, or household
26 purposes; and
- 27 (2) A security interest in consumer goods secures the obligation.
- 28 aa. "Consumer obligor" means an obligor who is an individual and who incurred the
29 obligation as part of a transaction entered into primarily for personal, family, or
30 household purposes.
- 31 bb. "Consumer transaction" means a transaction in which:

- 1 (1) An individual incurs an obligation primarily for personal, family, or household
2 purposes;
- 3 (2) A security interest secures the obligation; and
- 4 (3) The collateral is held or acquired primarily for personal, family, or household
5 purposes. The term includes consumer-goods transactions.
- 6 cc. "Continuation statement" means an amendment of a financing statement which:
7 (1) Identifies, by its file number, the initial financing statement to which it
8 relates; and
9 (2) Indicates that it is a continuation statement for, or that it is filed to continue
10 the effectiveness of, the identified financing statement.
- 11 dd. "Debtor" means:
12 (1) A person having an interest, other than a security interest or other lien, in
13 the collateral, regardless of whether the person is an obligor;
14 (2) A seller of accounts, chattel paper, payment intangibles, or promissory
15 notes; or
16 (3) A consignee.
- 17 ee. "Deposit account" means a demand, time, savings, passbook, or similar account
18 maintained with a bank. The term does not include investment property or an
19 account evidenced by a certificate of deposit or an instrument.
- 20 ff. "Document" means a document of title or a receipt of the type described in
21 subsection 2 of section 41-07-07.
- 22 gg. "Electronic chattel paper" means chattel paper evidenced by a record consisting
23 of information stored in an electronic medium.
- 24 hh. "Encumbrance" means a right, other than an ownership interest, in real property.
25 The term includes mortgages and other liens on real property.
- 26 ii. "Equipment" means goods other than inventory, farm products, or consumer
27 goods.
- 28 jj. "Farm products" means goods, other than standing timber, subject to a lien
29 created under chapter 35-17, 35-30, or 35-31, or with respect to which the debtor
30 is engaged in a farming operation and which are:
31 (1) Crops grown, growing, or to be grown, including:

- 1 (a) Crops produced on trees, vines, and bushes; and
2 (b) Aquatic goods produced in aquacultural operations;
3 (2) Livestock, born or unborn, including aquatic goods produced in aquacultural
4 operations;
5 (3) Supplies used or produced in a farming operation; or
6 (4) Products of crops or livestock in their unmanufactured states.
- 7 kk. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or
8 any other farming, livestock, or aquacultural operation.
- 9 ll. "File number" means the number assigned to an initial financing statement
10 pursuant to subsection 1 of section 41-09-90.
- 11 mm. "Filing office" means an office designated in section 41-09-72 as the place to file
12 a financing statement.
- 13 nn. "Filing-office rule" means a rule adopted under section 41-09-97.
- 14 oo. "Financing statement" means a record composed of an initial financing statement
15 and any filed record relating to the initial financing statement.
- 16 pp. "Fixture filing" means the filing of a financing statement covering goods that are
17 or are to become fixtures and satisfying subsections 1 and 2 of section 41-09-73.
18 The term includes the filing of a financing statement covering goods of a
19 transmitting utility which are or are to become fixtures.
- 20 qq. "Fixtures" means goods that have become so related to particular real property
21 that an interest in them arises under real property law.
- 22 rr. "General intangible" means any personal property, including things in action,
23 other than accounts, certificates of deposit, chattel paper, commercial tort claims,
24 deposit accounts, documents, goods, instruments, investment property,
25 letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals
26 before extraction. The term includes payment intangibles and software.
- 27 ss. Reserved.
- 28 tt. "Goods" means all things that are movable when a security interest attaches.
29 (1) The term includes:
30 (a) Fixtures;

- 1 (b) Standing timber that is to be cut and removed under a conveyance or
2 contract for sale;
- 3 (c) The unborn young of animals;
- 4 (d) Crops grown, growing, or to be grown, even if the crops are produced
5 on trees, vines, or bushes; and
- 6 (e) Manufactured homes.
- 7 (2) The term also includes a computer program embedded in goods and any
8 supporting information provided in connection with a transaction relating to
9 the program if:
- 10 (a) The program is associated with the goods in such a manner that the
11 program is customarily considered part of the goods; or
- 12 (b) By becoming the owner of the goods, a person acquires a right to use
13 the program in connection with the goods.
- 14 (3) The term does not include a computer program embedded in goods that
15 consist solely of the medium in which the program is embedded. The term
16 also does not include accounts, certificates of deposit, chattel paper,
17 commercial tort claims, deposit accounts, documents, general intangibles,
18 instruments, investment property, letter-of-credit rights, letters of credit,
19 money, or oil, gas, or other minerals before extraction.
- 20 uu. "Governmental unit" means a subdivision, agency, department, county, parish,
21 municipality, or other unit of the government of the United States, a state, or a
22 foreign country. The term includes an organization having a separate corporate
23 existence if the organization is eligible to issue debt on which interest is exempt
24 from income taxation under the laws of the United States.
- 25 vv. "Health care insurance receivable" means an interest in or claim under a policy of
26 insurance which is a right to payment of a monetary obligation for health care
27 goods or services provided or to be provided.
- 28 ww. "Instrument" means a negotiable instrument or any other writing that evidences a
29 right to the payment of a monetary obligation, is not itself a security agreement or
30 lease, and is of a type that in ordinary course of business is transferred by

- 1 delivery with any necessary indorsement or assignment. The term does not
2 include:
- 3 (1) Certificates of deposit;
4 (2) Investment property;
5 (3) Letters of credit; or
6 (4) Writings that evidence a right to payment arising out of the use of a credit or
7 charge card or information contained on or for use with the card.
- 8 xx. "Inventory" means goods, other than farm products, that:
- 9 (1) Are leased by a person as lessor;
10 (2) Are held by a person for sale or lease or to be furnished under a contract of
11 service;
12 (3) Are furnished by a person under a contract of service; or
13 (4) Consist of raw materials, work in process, or materials used or consumed in
14 a business.
- 15 yy. "Investment property" means a security, whether certificated or uncertificated,
16 security entitlement, securities account, commodity contract, or commodity
17 account.
- 18 zz. "Jurisdiction of organization", with respect to a registered organization, means
19 the jurisdiction under whose law the organization is organized.
- 20 aaa. "Letter-of-credit right" means a right to payment or performance under a letter of
21 credit, regardless of whether the beneficiary has demanded or is at the time
22 entitled to demand payment or performance. The term does not include the right
23 of a beneficiary to demand payment or performance under a letter of credit.
- 24 bbb. "Lien creditor" means:
- 25 (1) A creditor that has acquired a lien on the property involved by attachment,
26 levy, or the like;
27 (2) An assignee for benefit of creditors from the time of assignment;
28 (3) A trustee in bankruptcy from the date of the filing of the petition; or
29 (4) A receiver in equity from the time of appointment.
- 30 ccc. "Manufactured home" means a structure, transportable in one or more sections,
31 that, in the traveling mode, is eight body feet [2.44 meters] or more in width or

1 forty body feet [12.19 meters] or more in length, or, when erected on site, is three
2 hundred twenty square feet [29.73 square meters] or more, and which is built on
3 a permanent chassis and designed to be used as a dwelling with or without a
4 permanent foundation when connected to the required utilities, and includes the
5 plumbing, heating, air-conditioning, and electrical systems contained therein. The
6 term includes any structure that meets all of the requirements of this subdivision
7 except the size requirements and with respect to which the manufacturer
8 voluntarily files a certification required by the United States secretary of housing
9 and urban development and complies with the standards established under
10 title 42 of the United States Code.

11 ddd. "Manufactured-home transaction" means a secured transaction:

12 (1) Which creates a purchase-money security interest in a manufactured home,
13 other than a manufactured home held as inventory; or

14 (2) In which a manufactured home, other than a manufactured home held as
15 inventory, is the primary collateral.

16 eee. "Mortgage" means a consensual interest in real property, including fixtures, that
17 secures payment or performance of an obligation.

18 fff. "New debtor" means a person that becomes bound as debtor under subsection 4
19 of section 41-09-13 by a security agreement previously entered into by another
20 person.

21 ggg. "New value" means:

22 (1) Money;

23 (2) Money's worth in property, services, or new credit; or

24 (3) Release by a transferee of an interest in property previously transferred to
25 the transferee.

26 The term does not include an obligation substituted for another obligation.

27 hhh. "Noncash proceeds" means proceeds other than cash proceeds.

28 iii. "Nonnegotiable certificate of deposit" means a bank record that contains an
29 acknowledgment that a sum of money has been received by the issuer and a
30 promise by the issuer to repay the sum of money other than a deposit account or
31 negotiable instrument.

- 1 jjj. "Nontransferable certificate of deposit" means a nonnegotiable certificate of
2 deposit which may be transferred only on the books of the issuer, with the
3 consent of the issuer, or subject to other restrictions or considerations of the
4 issuer on transfer. The term does not include a deposit account.
- 5 kkk. "Obligor" means a person that, with respect to an obligation secured by a security
6 interest in or an agricultural lien on the collateral:
7 (1) Owes payment or other performance of the obligation;
8 (2) Has provided property other than the collateral to secure payment or other
9 performance of the obligation; or
10 (3) Is otherwise accountable in whole or in part for payment or other
11 performance of the obligation.
- 12 The term does not include issuers or nominated persons under a letter of credit.
- 13 lll. "Original debtor", except as used in subsection 3 of section 41-09-30, means a
14 person that, as debtor, entered into a security agreement to which a new debtor
15 has become bound under subsection 4 of section 41-09-13.
- 16 mmm. "Payment intangible" means a general intangible under which the account
17 debtor's principal obligation is a monetary obligation.
- 18 nnn. "Person related to", with respect to an individual, means:
19 (1) The spouse of the individual;
20 (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
21 (3) An ancestor or lineal descendant of the individual or the individual's spouse;
22 or
23 (4) Any other relative, by blood or marriage, of the individual or the individual's
24 spouse who shares the same home with the individual.
- 25 ooo. "Person related to", with respect to an organization, means:
26 (1) A person directly or indirectly controlling, controlled by, or under common
27 control with the organization;
28 (2) An officer or director of, or a person performing similar functions with
29 respect to, the organization;
30 (3) An officer or director of, or a person performing similar functions with
31 respect to, a person described in paragraph 1;

- 1 (4) The spouse of an individual described in paragraph 1, 2, or 3; or
2 (5) An individual who is related by blood or marriage to an individual described
3 in paragraph 1, 2, 3, or 4 and shares the same home with the individual.

4 ppp. "Proceeds", except as used in subsection 2 of section 41-09-106, means the
5 following property:

- 6 (1) Whatever is acquired upon the sale, lease, license, exchange, or other
7 disposition of collateral;
8 (2) Whatever is collected on, or distributed on account of, collateral;
9 (3) Rights arising out of collateral;
10 (4) To the extent of the value of collateral, claims arising out of the loss,
11 nonconformity, or interference with the use of, defects or infringement of
12 rights in, or damage to, the collateral; or
13 (5) To the extent of the value of collateral and to the extent payable to the
14 debtor or the secured party, insurance payable by reason of the loss or
15 nonconformity of, defects or infringement of rights in, or damage to, the
16 collateral.

17 qqq. "Promissory note" means an instrument that evidences a promise to pay a
18 monetary obligation, does not evidence an order to pay, and does not contain an
19 acknowledgment by a bank that the bank has received for deposit a sum of
20 money or funds.

21 rrr. "Proposal" means a record authenticated by a secured party which includes the
22 terms on which the secured party is willing to accept collateral in full or partial
23 satisfaction of the obligation it secures under sections 41-09-115 through
24 41-09-117.

25 sss. "Public organic record" means a record that is available to the public for
26 inspection and which is:

- 27 (1) A record consisting of the record initially filed with or issued by a state or the
28 United States to form or organize an organization and any record filed with
29 or issued by the state or the United States which amends or restates the
30 initial record;

1 (2) An organic record of a business trust consisting of the record initially filed
2 with a state and any record filed with the state which amends or restates the
3 initial record, if a statute of the state governing business trusts requires that
4 the record be filed with the state; or

5 (3) A record consisting of legislation enacted by the legislature of a state or the
6 congress of the United States which forms or organizes an organization,
7 any record amending the legislation, and any record filed with or issued by
8 the state or United States which amends or restates the name of the
9 organization.

10 ttt. "Pursuant to commitment", with respect to an advance made or other value given
11 by a secured party, means pursuant to the secured party's obligation, regardless
12 of whether a subsequent event of default or other event not within the secured
13 party's control has relieved or may relieve the secured party from the secured
14 party's obligation.

15 ~~ttt-uuu.~~ "Record", except as used in "for record", "of record", "record or legal title", and
16 "record owner", means information that is inscribed on a tangible medium or
17 which is stored in an electronic or other medium and is retrievable in perceivable
18 form.

19 ~~uuu-vvv.~~ "Registered organization" means an organization formed or organized
20 solely under the law of a single state or the United States and as to which the
21 ~~state or the United States must maintain a public record showing the organization~~
22 ~~to have been organized by the filing of a public organic record with, the issuance~~
23 of a public organic record by, or the enactment of legislation by the state or
24 United States. The term includes a business trust that is formed or organized
25 under the law of a single state if a statute of the state governing business trusts
26 requires that the business trust's organic record be filed with the state.

27 ~~vvv-www.~~ "Secondary obligor" means an obligor to the extent that:

- 28 (1) The obligor's obligation is secondary; or
29 (2) The obligor has a right of recourse with respect to an obligation secured by
30 collateral against the debtor, another obligor, or property of either.

31 ~~www-xxx.~~ "Secured party" means:

- 1 (1) A person in whose favor a security interest is created or provided for under
2 a security agreement, regardless of whether any obligation to be secured is
3 outstanding;
- 4 (2) A person that holds an agricultural lien;
- 5 (3) A consignor;
- 6 (4) A person to which accounts, chattel paper, payment intangibles, or
7 promissory notes have been sold;
- 8 (5) A trustee, indenture trustee, agent, collateral agent, or other representative
9 in whose favor a security interest or agricultural lien is created or provided
10 for; or
- 11 (6) A person that holds a security interest arising under section 41-02-46,
12 section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of section
13 41-02.1-56, section 41-04-22, or section 41-05-18.

14 ~~xxx-yyy.~~ "Security agreement" means an agreement that creates or provides for a security
15 interest.

16 ~~yyy-zzz.~~ "Send", in connection with a record or notification, means:

- 17 (1) To deposit in the mail, deliver for transmission, or transmit by any other
18 usual means of communication, with postage or cost of transmission
19 provided for, addressed to any address reasonable under the
20 circumstances; or
- 21 (2) To cause the record or notification to be received within the time that it
22 would have been received if properly sent under paragraph 1.

23 ~~zzz-aaaa.~~ "Software" means a computer program and any supporting information
24 provided in connection with a transaction relating to the program. The term does
25 not include a computer program that is included in the definition of goods.

26 ~~aaaa-bbbb.~~ "State" means a state of the United States, the District of Columbia, the
27 Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory
28 or insular possession subject to the jurisdiction of the United States.

29 ~~bbbb-cccc.~~ "Supporting obligation" means a letter-of-credit right or secondary
30 obligation that supports the payment or performance of an account, chattel paper,
31 a document, a general intangible, an instrument, or investment property.

Sixty-second
Legislative Assembly

- 1 l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section
2 41-05-02.
- 3 m. "Issuer" (with respect to a security). Section 41-08-17.
- 4 n. "Issuer" (with respect to documents of title). Section 41-07-02.
- 5 o. "Lease". Section 41-02.1-03.
- 6 p. "Lease agreement". Section 41-02.1-03.
- 7 q. "Lease contract". Section 41-02.1-03.
- 8 r. "Leasehold interest". Section 41-02.1-03.
- 9 s. "Lessee". Section 41-02.1-03.
- 10 t. "Lessee in ordinary course of business". Section 41-02.1-03.
- 11 u. "Lessor". Section 41-02.1-03.
- 12 v. "Lessor's residual interest". Section 41-02.1-03.
- 13 w. "Letter of credit". Section 41-05-02.
- 14 x. "Merchant". Section 41-02-04.
- 15 y. "Negotiable instrument". Section 41-03-04.
- 16 z. "Nominated person". Section 41-05-02.
- 17 aa. "Note". Section 41-03-04.
- 18 bb. "Proceeds of a letter of credit". Section 41-05-14.
- 19 cc. "Prove". Section 41-03-03.
- 20 dd. "Sale". Section 41-02-06.
- 21 ee. "Securities account". Section 41-08-41.
- 22 ff. "Securities intermediary". Section 41-08-02.
- 23 gg. "Security". Section 41-08-02.
- 24 hh. "Security certificate". Section 41-08-02.
- 25 ii. "Security entitlement". Section 41-08-02.
- 26 jj. "Uncertificated security". Section 41-08-02.
- 27 3. Chapter 41-01 contains general definitions and principles of construction and
28 interpretation applicable throughout this chapter.
- 29 **SECTION 2. AMENDMENT.** Section 41-09-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **41-09-05. (9-105) Control of electronic chattel paper.**

2 1. A secured party has control of electronic chattel paper if a system employed for
3 evidencing the transfer of interests in the chattel paper reliably establishes the secured
4 party as the person to which the chattel paper was assigned.

5 2. A system satisfies subsection 1, and a secured party has control of electronic chattel
6 paper, if the record or records comprising the chattel paper are created, stored, and
7 assigned in such a manner that:

8 4. a. A single authoritative copy of the record or records exists which is unique,
9 identifiable, and, except as otherwise provided in ~~subsections 4 through~~
10 ~~6~~subdivisions d, e, and f, unalterable;

11 2. b. The authoritative copy identifies the secured party as the assignee of the record
12 or records;

13 3. c. The authoritative copy is communicated to and maintained by the secured party
14 or the secured party's designated custodian;

15 4. d. Copies or ~~revisions~~amendments that add or change an identified assignee of the
16 authoritative copy can be made only with the ~~participation~~consent of the secured
17 party;

18 5. e. Each copy of the authoritative copy and any copy of a copy is readily identifiable
19 as a copy that is not the authoritative copy; and

20 6. f. Any ~~revision~~amendment of the authoritative copy is readily identifiable as an
21 authorized or unauthorized revision.

22 **SECTION 3. AMENDMENT.** Subdivision b of subsection 6 of section 41-09-27 of the North
23 Dakota Century Code is amended and reenacted as follows:

24 b. In the state that the registered organization, branch, or agency designates, if the
25 law of the United States authorizes the registered organization, branch, or
26 agency to designate its state of location, including by designation its main office,
27 home office, or other comparable office; or

28 **SECTION 4. AMENDMENT.** Subsection 1 of section 41-09-31 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 1. Except as otherwise provided in subsection 4, the filing of a financing statement is not
31 necessary or effective to perfect a security interest in property subject to:

- 1 a. A statute, regulation, or treaty of the United States whose requirements for a
- 2 security interest's obtaining priority over the rights of a lien creditor with respect to
- 3 the property preempt subsection 1 of section 41-09-30;
- 4 b. Section 35-01-05.1; or
- 5 c. A ~~certificate of title~~ statute of another jurisdiction which provides for a security
- 6 interest to be indicated on ~~the~~ certificate of title as a condition or result of the
- 7 security interest's obtaining priority over the rights of a lien creditor with respect to
- 8 the property.

9 **SECTION 5. AMENDMENT.** Section 41-09-36 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **41-09-36. (9-316) ~~Continued perfection of security interest following~~Effect of change**
12 **in governing law.**

- 13 1. A security interest perfected pursuant to the law of the jurisdiction designated in
- 14 subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains
- 15 perfected until the earliest of:
- 16 a. The time perfection would have ceased under the law of that jurisdiction;
- 17 b. The expiration of four months after a change of the debtor's location to another
- 18 jurisdiction; or
- 19 c. The expiration of one year after a transfer of collateral to a person that thereby
- 20 becomes a debtor and is located in another jurisdiction.
- 21 2. If a security interest described in subsection 1 becomes perfected under the law of the
- 22 other jurisdiction before the earliest time or event described in that subsection, it
- 23 remains perfected thereafter. If the security interest does not become perfected under
- 24 the law of the other jurisdiction before the earliest time or event, it becomes
- 25 unperfected and is deemed never to have been perfected as against a purchaser of
- 26 the collateral for value.
- 27 3. A possessory security interest in collateral, other than goods covered by a certificate of
- 28 title and as-extracted collateral consisting of goods, remains continuously perfected if:
- 29 a. The collateral is located in one jurisdiction and subject to a security interest
- 30 perfected under the law of that jurisdiction;
- 31 b. Thereafter the collateral is brought into another jurisdiction; and

- 1 c. Upon entry into the other jurisdiction, the security interest is perfected under the
2 law of the other jurisdiction.
- 3 4. Except as otherwise provided in subsection 5, a security interest in goods covered by
4 a certificate of title which is perfected by any method under the law of another
5 jurisdiction when the goods become covered by a certificate of title from this state
6 remains perfected until the security interest would have become unperfected under the
7 law of the other jurisdiction had the goods not become so covered.
- 8 5. A security interest described in subsection 4 becomes unperfected as against a
9 purchaser of the goods for value and is deemed never to have been perfected as
10 against a purchaser of the goods for value if the applicable requirements for perfection
11 under subsection 2 of section 41-09-31 or section 41-09-33 are not satisfied before
12 the earlier of:
- 13 a. The time the security interest would have become unperfected under the law of
14 the other jurisdiction had the goods not become covered by a certificate of title
15 from this state; or
- 16 b. The expiration of four months after the goods had become so covered.
- 17 6. A security interest in deposit accounts, certificates of deposit, letter-of-credit rights, or
18 investment property which is perfected under the law of the bank's jurisdiction, the
19 issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's
20 jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains
21 perfected until the earlier of:
- 22 a. The time the security interest would have become unperfected under the law of
23 that jurisdiction; or
- 24 b. The expiration of four months after a change of the applicable jurisdiction to
25 another jurisdiction.
- 26 7. If a security interest described in subsection 6 becomes perfected under the law of the
27 other jurisdiction before the earlier of the time or the end of the period described in that
28 subsection, it remains perfected thereafter. If the security interest does not become
29 perfected under the law of the other jurisdiction before the earlier of that time or the
30 end of that period, it becomes unperfected and is deemed never to have been
31 perfected as against a purchaser of the collateral for value.

- 1 8. The following rules apply to collateral to which a security interest attaches within four
2 months after the debtor changes its location to another jurisdiction:
- 3 a. A financing statement filed before the change pursuant to the law of the
4 jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of
5 section 41-09-25 is effective to perfect a security interest in the collateral if the
6 financing statement would have been effective to perfect a security interest in the
7 collateral if the debtor had not changed its location.
- 8 b. If a security interest that is perfected by a financing statement that is effective
9 under subdivision a becomes perfected under the law of the other jurisdiction
10 before the earlier of the time the financing statement would have become
11 ineffective under the law of the jurisdiction designated in subsection 1 of section
12 41-09-21 or subsection 3 of section 41-09-25 or the expiration of the four-month
13 period, it remains perfected thereafter. If the security interest does not become
14 perfected under the law of the other jurisdiction before the earlier time or event, it
15 becomes unperfected and is deemed never to have been perfected as against a
16 purchaser of the collateral for value.
- 17 9. If a financing statement naming an original debtor is filed pursuant to the law of the
18 jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section
19 41-09-25 and the new debtor is located in another jurisdiction, the following rules
20 apply:
- 21 a. The financing statement is effective to perfect a security interest in collateral in
22 which the new debtor has or acquires rights before or within four months after the
23 new debtor becomes bound under subsection 4 of section 41-09-13, if the
24 financing statement would have been effective to perfect a security interest in the
25 collateral if the collateral had been acquired by the original debtor.
- 26 b. A security interest that is perfected by the financing statement and which
27 becomes perfected under the law of the other jurisdiction before the earlier of the
28 expiration of the four-month period or the time the financing statement would
29 have become ineffective under the law of the jurisdiction designated in
30 subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains
31 perfected thereafter. A security interest that is perfected by the financing

1 statement but which does not become perfected under the law of the other
2 jurisdiction before the earlier time or event becomes unperfected and is deemed
3 never to have been perfected as against a purchaser of the collateral for value.

4 **SECTION 6. AMENDMENT.** Section 41-09-37 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **41-09-37. (9-317) Interests that take priority over or take free of security interest or**
7 **agricultural lien.**

- 8 1. A security interest or an agricultural lien is subordinate to the rights of:
- 9 a. A person entitled to priority under section 41-09-42; and
- 10 b. Except as otherwise provided in subsection 5, a person that becomes a lien
- 11 creditor before the earlier of the time:
- 12 (1) The security interest or agricultural lien is perfected; or
- 13 (2) One of the conditions specified in subdivision c of subsection 2 of section
- 14 41-09-13 is met and a financing statement covering the collateral is filed.
- 15 2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of
- 16 tangible chattel paper, tangible documents, goods, instruments, or a certificated
- 17 security certificate takes free of a security interest or agricultural lien if the buyer gives
- 18 value and receives delivery of the collateral without knowledge of the security interest
- 19 or agricultural lien and before it is perfected.
- 20 3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a
- 21 security interest or agricultural lien if the lessee gives value and receives delivery of
- 22 the collateral without knowledge of the security interest or agricultural lien and before it
- 23 is perfected.
- 24 4. A licensee of a general intangible or a buyer, other than a secured party, of ~~accounts,~~
- 25 ~~electronic chattel paper, electronic documents, general intangibles, or investment~~
- 26 ~~property~~collateral other than tangible chattel paper, tangible documents, goods,
- 27 instruments, or a certificated security takes free of a security interest if the licensee or
- 28 buyer gives value without knowledge of the security interest and before it is perfected.
- 29 5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a
- 30 financing statement with respect to a purchase-money security interest before or
- 31 within twenty days after the debtor receives delivery of the collateral, the security

1 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise
2 between the time the security interest attaches and the time of filing.

3 **SECTION 7. AMENDMENT.** Section 41-09-46 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-09-46. (9-326) Priority of security interests created by new debtor.**

- 6 1. Subject to subsection 2, a security interest that is created by a new debtor which is in
7 collateral in which the new debtor has or acquired rights and perfected by a filed
8 financing statement that is effective solely under section 41-09-79 in collateral in which
9 a new debtor has or acquires rights would be ineffective to perfect the security interest
10 but for the application of section 41-09-79 or of section 41-09-79 and subdivision a of
11 subsection 9 of section 41-09-36 is subordinate to a security interest in the same
12 collateral which is perfected other than by such a filed financing statement that is
13 effective solely under section 41-09-79.
- 14 2. The other provisions of this part determine the priority among conflicting security
15 interests in the same collateral perfected by filed financing statements that are
16 effective solely under section 41-09-79 described in subsection 1. However, if the
17 security agreements to which a new debtor became bound as debtor were not entered
18 into by the same original debtor, the conflicting security interests rank according to
19 priority in time of the new debtor's having become bound.

20 **SECTION 8. AMENDMENT.** Subsection 5 of section 41-09-68 of the North Dakota Century
21 Code is amended and reenacted as follows:

- 22 5. Subsection 4 does not apply to the sale of a payment intangible or promissory note,
23 other than a sale pursuant to a disposition under section 41-09-107 or an acceptance
24 of collateral under section 41-09-115.

25 **SECTION 9. AMENDMENT.** Subsection 2 of section 41-09-70 of the North Dakota Century
26 Code is amended and reenacted as follows:

- 27 2. Subsection 1 applies to a security interest in a payment intangible or promissory note
28 only if the security interest arises out of a sale of the payment intangible or promissory
29 note, other than a sale pursuant to a disposition under section 41-09-107 or an
30 acceptance of collateral under section 41-09-115.

1 **SECTION 10. AMENDMENT.** Subdivision c of subsection 3 of section 41-09-73 of the North
2 Dakota Century Code is amended and reenacted as follows:

3 c. The record satisfies the requirements for a financing statement in this section
4 ~~other than an indication, but:~~

5 (1) The record need not indicate that it is to be filed in the real property records;
6 and

7 (2) The record sufficiently provides the name of a debtor who is an individual if
8 the record provides the individual name of the debtor or the surname and
9 first personal name of the debtor, even if the debtor is an individual to whom
10 subdivision d of subsection 1 of section 41-09-74 applies; and

11 **SECTION 11. AMENDMENT.** Section 41-09-74 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **41-09-74. (9-503) Name of debtor and secured party.**

14 1. A financing statement sufficiently provides the name of the debtor:

15 a. ~~If~~Except as otherwise provided in subdivision c, if the debtor is a registered
16 organization, or the collateral is held in a trust that is a registered organization,
17 only if the financing statement provides the name of the debtor indicated that is
18 stated to be the registered organization's name on the public organic record
19 of most recently filed with or issued or enacted by the debtor's registered
20 organization's jurisdiction of organization which shows the debtor to have been
21 organized purports to state, amend, or restate the registered organization's name;

22 b. ~~If~~Subject to subsection 6, if the debtor is a decedent's estate collateral is being
23 administered by the personal representative of a decedent, only if the financing
24 statement provides, as the name of the debtor, the name of the decedent and, in
25 a separate part of the financing statement, indicates that the debtor is an
26 estate collateral is being administered by a personal representative;

27 c. ~~If the debtor is a trust or a trustee acting with respect to property held in trust,~~
28 ~~only if the financing statement:~~

29 (1) ~~Provides the name specified for the trust in its organic documents or, if no~~
30 ~~name is specified, provides the name of the settlor and additional~~

- 1 information sufficient to distinguish the debtor from other trusts having one-
2 or more of the same settlors; and
- 3 (2) ~~Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a~~
4 ~~trustee acting with respect to property held in trust; collateral is held in a~~
5 ~~trust that is not a registered organization, only if the financing statement:~~
- 6 (1) ~~Provides, as the name of the debtor:~~
- 7 (a) ~~If the organic record of the trust specifies a name for the trust, the~~
8 ~~name so specified; or~~
- 9 (b) ~~If the organic record of the trust does not specify a name for the trust,~~
10 ~~the name of the settlor or testator; and~~
- 11 (2) ~~In a separate part of the financing statement:~~
- 12 (a) ~~If the name is provided in accordance with subparagraph a of~~
13 ~~paragraph 1, indicates that the collateral is held in a trust; or~~
- 14 (b) ~~If the name is provided in accordance with subparagraph b of~~
15 ~~paragraph 1, provides additional information sufficient to distinguish~~
16 ~~the trust from other trusts having one or more of the same settlors or~~
17 ~~the same testator and indicates that the collateral is held in a trust,~~
18 ~~unless the additional information so indicates;~~
- 19 d. ~~Subject to subsection 7, if the debtor is an individual to whom this state has~~
20 ~~issued a driver's license or identity card that has not expired, only if the financing~~
21 ~~statement provides the name of the individual which is indicated on the driver's~~
22 ~~license or identity card;~~
- 23 e. ~~If the debtor is an individual to whom subdivision d does not apply, only if the~~
24 ~~financing statement provides the individual name of the debtor or the surname~~
25 ~~and first personal name of the debtor; and~~
- 26 d-f. In other cases:
- 27 (1) ~~If the debtor has a name, only if ~~the~~ financing statement provides the~~
28 ~~individual or organizational name of the debtor; and~~
- 29 (2) ~~If the debtor does not have a name, only if ~~the~~ financing statement~~
30 ~~provides the names of the partners, members, associates, or other persons~~

- 1 comprising the debtor, in a manner that each name provided would be
2 sufficient if the person named were the debtor.
- 3 2. A financing statement that provides the name of the debtor in accordance with
4 subsection 1 is not rendered ineffective by the absence of:
- 5 a. A trade name or other name of the debtor; or
6 b. Unless required under paragraph 2 of subdivision d of subsection 1, names of
7 partners, members, associates, or other persons comprising the debtor.
- 8 3. A financing statement that provides only the debtor's trade name does not sufficiently
9 provide the name of the debtor.
- 10 4. Failure to indicate the representative capacity of a secured party or representative of a
11 secured party does not affect the sufficiency of a financing statement.
- 12 5. A financing statement may provide the name of more than one debtor and the name of
13 more than one secured party.
- 14 6. The name of the decedent indicated on the order appointing the personal
15 representative of the decedent issued by the court having jurisdiction over the
16 collateral is sufficient as the "name of the decedent" under subdivision b of
17 subsection 1.
- 18 7. If this state has issued to an individual more than one driver's license or identity card
19 of a kind described in subdivision d of subsection 1, the one that was issued most
20 recently is the one to which subdivision d of subsection 1 refers.
- 21 8. The "name of the settlor or testator" means:
- 22 a. If the settlor is a registered organization, the name of the registered organization
23 indicated on the public organic record filed with or issued or enacted by the
24 registered organization's jurisdiction of organization; or
25 b. In other cases, the name of the settlor or testator indicated in the trust's organic
26 record.

27 **SECTION 12. AMENDMENT.** Subsection 3 of section 41-09-78 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 3. ~~If a debtor so changes its~~the name that a filed financing statement provides for a
30 debtor becomes insufficient as the name of the debtor under subsection 1 of section

1 41-09-74 so that the financing statement becomes seriously misleading under section
2 41-09-77:

- 3 a. The financing statement is effective to perfect a security interest in collateral
4 acquired by the debtor before, or within four months after, the ~~change~~filed
5 financing statement becomes seriously misleading; and
6 b. The financing statement is not effective to perfect a security interest in collateral
7 acquired by the debtor more than four months after the ~~change~~filed financing
8 statement becomes seriously misleading, unless an amendment to the financing
9 statement which renders the financing statement not seriously misleading is filed
10 within four months after ~~the change~~that event.

11 **SECTION 13. AMENDMENT.** Subsection 6 of section 41-09-86 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 6. If a debtor is a transmitting utility and a filed initial financing statement so indicates, the
14 financing statement is effective until a termination statement is filed.

15 **SECTION 14. AMENDMENT.** Subsection 2 of section 41-09-87 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 2. Filing does not occur with respect to a record that a filing office refuses to accept
18 because:
- 19 a. The record is not communicated by a method or medium of communication
20 authorized by the filing office;
- 21 b. An amount equal to or greater than the applicable filing fee is not tendered;
- 22 c. The filing office is unable to index the record because:
- 23 (1) In the case of an initial financing statement, the record does not provide a
24 name for the debtor;
- 25 (2) In the case of an amendment or ~~correction~~information statement, the record:
- 26 (a) Does not identify the initial financing statement as required by section
27 41-09-83 or 41-09-89, as applicable; or
- 28 (b) Identifies an initial financing statement whose effectiveness has
29 lapsed under section 41-09-86;
- 30 (3) In the case of an initial financing statement that provides the name of a
31 debtor identified as an individual or an amendment that provides a name of

1 a debtor identified as an individual which was not previously provided in the
2 financing statement to which the record relates, the record does not identify
3 the debtor's ~~last name~~surname; or

4 (4) In the case of a record filed or recorded in the filing office described in
5 subdivision a of subsection 1 of section 41-09-72, the record does not
6 provide a sufficient description of the real property to which it relates;

7 d. In the case of an initial financing statement or an amendment that adds a
8 secured party of record, the record does not provide a name and mailing address
9 for the secured party of record;

10 e. In the case of an initial financing statement or an amendment that provides a
11 name of a debtor which was not previously provided in the financing statement to
12 which the amendment relates, the record does not:

13 (1) Provide a mailing address for the debtor; or

14 (2) Indicate whether the name provided as the name of the debtor is the name
15 of an individual or an organization; or

16 (3) ~~If the financing statement indicates that the debtor is an organization,~~
17 ~~provide:~~

18 (a) ~~A type of organization for the debtor;~~

19 (b) ~~A jurisdiction of organization for the debtor; or~~

20 (c) ~~An organizational identification number for the debtor or indicate that~~
21 ~~the debtor has none;~~

22 f. In the case of an assignment reflected in an initial financing statement under
23 subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of
24 section 41-09-85, the record does not provide a name and mailing address for
25 the assignee;

26 g. In the case of a continuation statement, the record is not filed within the
27 six-month period prescribed by subsection 4 of section 41-09-86; or

28 h. The record does not contain the social security number or the federal tax
29 identification number of the debtor.

30 **SECTION 15. AMENDMENT.** Section 41-09-89 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.**

2 1. A person may file in the filing office a ~~correction~~an information statement with respect
3 to a record indexed there under the person's name if the person believes that the
4 record is inaccurate or was wrongfully filed.

5 2. ~~A correction~~An information statement under subsection 1 must:

6 a. Identify the record to which it relates by the file number assigned to the initial
7 financing statement to which the record relates;

8 b. Indicate that it is a ~~correction~~an information statement; and

9 c. Provide the basis for the person's belief that the record is inaccurate and indicate
10 the manner in which the person believes the record should be amended to cure
11 any inaccuracy or provide the basis for the person's belief that the record was
12 wrongfully filed.

13 3. A person may file in the filing office an information statement with respect to a record
14 filed there if the person is a secured party of record with respect to the financing
15 statement to which the record relates and believes that the person that filed the record
16 was not entitled to do so under subsection 4 of section 41-09-80.

17 4. An information statement under subsection 3 must:

18 a. Identify the record to which the information statement relates by the file number
19 assigned to the initial financing statement to which the record relates;

20 b. Indicate that it is an information statement; and

21 c. Provide the basis for the person's belief that the person that filed the record was
22 not entitled to do so under subsection 4 of section 41-09-80.

23 5. The filing of a ~~correction~~an information statement does not affect the effectiveness of
24 an initial financing statement or other filed record.

25 **SECTION 16. AMENDMENT.** Paragraph 1 of subdivision b of subsection 2 of section
26 41-09-104 of the North Dakota Century Code is amended and reenacted as follows:

27 (1) A default has occurred with respect to the obligation secured by the
28 mortgage; and

29 **SECTION 17.** Section 41-09-132 of the North Dakota Century Code is created and enacted
30 as follows:

31 **41-09-132. (9-802) Savings clause.**

1 1. Except as otherwise provided in this section, this Act applies to a transaction or lien
2 within its scope, even if the transaction or lien was entered or created before this Act
3 takes effect.

4 2. This Act does not affect an action, case, or proceeding commenced before this Act
5 takes effect.

6 **SECTION 18.** Section 41-09-133 of the North Dakota Century Code is created and enacted
7 as follows:

8 **41-09-133. (9-803) Security interest perfected before effective date.**

9 1. A security interest that is a perfected security interest immediately before this Act takes
10 effect is a perfected security interest under this chapter as amended by this Act if,
11 when this Act takes effect, the applicable requirements for attachment and perfection
12 under this chapter as amended by this Act are satisfied without further action.

13 2. Except as otherwise provided in section 41-09-135, if, immediately before this Act
14 takes effect, a security interest is a perfected security interest, but the applicable
15 requirements for perfection under this chapter as amended by this Act are not satisfied
16 when this Act takes effect, the security interest remains perfected thereafter only if the
17 applicable requirements for perfection under this chapter as amended by this Act are
18 satisfied within one year after this Act takes effect.

19 **SECTION 19.** Section 41-09-134 of the North Dakota Century Code is created and enacted
20 as follows:

21 **41-09-134. (9-804) Security interest unperfected before effective date.**

22 A security interest that is an unperfected security interest immediately before this Act takes
23 effect becomes a perfected security interest:

24 1. Without further action, when this Act takes effect if the applicable requirements for
25 perfection under this chapter as amended by this Act are satisfied before or at that
26 time; or

27 2. When the applicable requirements for perfection are satisfied if the requirements are
28 satisfied after that time.

29 **SECTION 20.** Section 41-09-135 of the North Dakota Century Code is created and enacted
30 as follows:

1 **41-09-135. (9-805) Effectiveness of action taken before effective date.**

2 1. The filing of a financing statement before this Act takes effect is effective to perfect a
3 security interest to the extent the filing would satisfy the applicable requirements for
4 perfection under this chapter as amended by this Act.

5 2. This Act does not render ineffective an effective financing statement that, before this
6 Act takes effect, is filed and satisfies the applicable requirements for perfection under
7 the law of the jurisdiction governing perfection as provided in this chapter as it existed
8 before amendment of this Act. However, except as otherwise provided in
9 subsections 3 and 4 and section 41-09-136, the financing statement ceases to be
10 effective:

11 a. If the financing statement is filed in this state, at the time the financing statement
12 would have ceased to be effective had this Act not taken effect; or

13 b. If the financing statement is filed in another jurisdiction, at the earlier of:

14 (1) The time the financing statement would have ceased to be effective under
15 the law of that jurisdiction; or

16 (2) June 30, 2018.

17 3. The filing of a continuation statement after this Act takes effect does not continue the
18 effectiveness of the financing statement filed before this Act takes effect. However,
19 upon the timely filing of a continuation statement after this Act takes effect and in
20 accordance with the law of the jurisdiction governing perfection as provided in this
21 chapter as amended by this Act, the effectiveness of a financing statement filed in the
22 same office in that jurisdiction before this Act takes effect continues for the period
23 provided by the law of that jurisdiction.

24 4. Paragraph 2 of subdivision b of subsection 2 applies to a financing statement that,
25 before this Act takes effect, is filed against a transmitting utility and satisfies the
26 applicable requirements for perfection under the law of the jurisdiction governing
27 perfection as provided in this chapter as it existed before amendment, only to the
28 extent that this chapter as amended by this Act provides that the law of a jurisdiction
29 other than the jurisdiction in which the financing statement is filed governs perfection
30 of a security interest in collateral covered by the financing statement.

1 5. A financing statement that includes a financing statement filed before this Act takes
2 effect and a continuation statement filed after this Act takes effect is effective only to
3 the extent that it satisfies the requirements of sections 41-09-72 through 41-09-97 as
4 amended by this Act for an initial financing statement. A financing statement that
5 indicates that the debtor is a decedent's estate indicates that the collateral is being
6 administered by a personal representative within the meaning of subdivision b of
7 subsection 1 of section 41-09-74 as amended by this Act. A financing statement that
8 indicates that the debtor is a trust or is a trustee acting with respect to property held in
9 trust indicates that the collateral is held in a trust within the meaning of subdivision c of
10 subsection 1 of section 41-09-74 as amended by this Act.

11 **SECTION 21.** Section 41-09-136 of the North Dakota Century Code is created and enacted
12 as follows:

13 **41-09-136. (9-806) When initial financing statement suffices to continue effectiveness**
14 **of financing statement.**

- 15 1. The filing of an initial financing statement in the office specified in section 41-09-72
16 continues the effectiveness of a financing statement filed before this Act takes effect if:
- 17 a. The filing of an initial financing statement in that office would be effective to
18 perfect a security interest under this chapter as amended by this Act;
- 19 b. The pre-effective-date financing statement was filed in an office in another state;
20 and
- 21 c. The initial financing statement satisfies subsection 3.
- 22 2. The filing of an initial financing statement under subsection 1 continues the
23 effectiveness of the pre-effective-date financing statement:
- 24 a. If the initial financing statement is filed before this Act takes effect, for the period
25 provided in unamended section 41-09-86 with respect to an initial financing
26 statement; and
- 27 b. If the initial financing statement is filed after this Act takes effect, for the period
28 provided in section 41-09-86 as amended by this Act with respect to an initial
29 financing statement.
- 30 3. To be effective for purposes of subsection 1, an initial financing statement must:

- 1 a. Satisfy the requirements of sections 41-09-72 through 41-09-97 as amended by
2 this Act for an initial financing statement;
- 3 b. Identify the pre-effective-date financing statement by indicating the office in which
4 the financing statement was filed and providing the dates of filing and file
5 numbers, if any, of the financing statement and of the most recent continuation
6 statement filed with respect to the financing statement; and
- 7 c. Indicate that the pre-effective-date financing statement remains effective.

8 **SECTION 22.** Section 41-09-137 of the North Dakota Century Code is created and enacted
9 as follows:

10 **41-09-137. (9-807) Amendment of pre-effective-date financing statement.**

- 11 1. In this section, "pre-effective-date financing statement" means a financing statement
12 filed before this Act takes effect.
- 13 2. After this Act takes effect, a person may add or delete collateral covered by, continue
14 or terminate the effectiveness of, or otherwise amend the information provided in a
15 pre-effective-date financing statement only in accordance with the law of the
16 jurisdiction governing perfection as provided in this chapter as amended by this Act.
17 However, the effectiveness of a pre-effective-date financing statement also may be
18 terminated in accordance with the law of the jurisdiction in which the financing
19 statement is filed.
- 20 3. Except as otherwise provided in subsection 4, if the law of this state governs
21 perfection of a security interest, the information in a pre-effective-date financing
22 statement may be amended after this Act takes effect only if:
 - 23 a. The pre-effective-date financing statement and an amendment are filed in the
24 office specified in section 41-09-72;
 - 25 b. An amendment is filed in the office specified in section 41-09-72 concurrently
26 with, or after the filing in that office of, an initial financing statement that satisfies
27 subsection 3 of section 41-09-136; or
 - 28 c. An initial financing statement that provides the information as amended and
29 satisfies subsection 3 of section 41-09-136 is filed in the office specified in
30 section 41-09-72.

1 4. If the law of this state governs perfection of a security interest, the effectiveness of a
2 pre-effective-date financing statement may be continued only under subsections 3 and
3 5 of section 41-09-135 or section 41-09-136.

4 5. Whether or not the law of this state governs perfection of a security interest, the
5 effectiveness of a pre-effective-date financing statement filed in this state may be
6 terminated after this Act takes effect by filing a termination statement in the office in
7 which the pre-effective-date financing statement is filed, unless an initial financing
8 statement that satisfies subsection 3 of section 41-09-136 has been filed in the office
9 specified by the law of the jurisdiction governing perfection as provided in this chapter
10 as amended by this Act as the office in which to file a financing statement.

11 **SECTION 23.** Section 41-09-138 of the North Dakota Century Code is created and enacted
12 as follows:

13 **41-09-138. (9-808) Person entitled to file initial financing statement or continuation**
14 **statement.**

15 A person may file an initial financing statement or a continuation statement under sections
16 41-09-132 through 41-09-139 if:

- 17 1. The secured party of record authorizes the filing; and
18 2. The filing is necessary under sections 41-09-132 through 41-09-139:
19 a. To continue the effectiveness of a financing statement filed before this Act takes
20 effect; or
21 b. To perfect or continue the perfection of a security interest.

22 **SECTION 24.** Section 41-09-139 of the North Dakota Century Code is created and enacted
23 as follows:

24 **41-09-139. (9-809) Priority.**

25 This Act determines the priority of conflicting claims to collateral. However, if the relative
26 priorities of the claims were established before this Act takes effect, this chapter as it existed
27 before amendment determines priority.

28 **SECTION 25. EFFECTIVE DATE.** This Act takes effect on July 1, 2013.