

Introduced by

Senators Enget, Boehm, Paulson, Clemens

Representatives Hendrix, S. Olson

1 A BILL for an Act to amend and reenact section 41-08-10, subsection 1 of section 41-08-43,
2 section 41-08-51, and subsection 1 of section 41-09-25 of the North Dakota Century Code,
3 relating to choice of law, the property interest in a financial asset held by a securities
4 intermediary, priority among security interests and entitlement holders, and the law governing
5 perfection and priority of security interests in investment property.

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

7 **SECTION 1. AMENDMENT.** Section 41-08-10 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **41-08-10. (8-110) Applicability - Choice of law.**

- 10 1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:
- 11 a. The validity of a security;
- 12 b. The rights and duties of the issuer with respect to registration of transfer;
- 13 c. The effectiveness of registration of transfer by the issuer;
- 14 d. Whether the issuer owes any duties to an adverse claimant to a security; and
- 15 e. Whether an adverse claim can be asserted against a person to whom transfer of
- 16 a certificated or uncertificated security is registered or a person who obtains
- 17 control of an uncertificated security.
- 18 2. ~~The local law of the securities intermediary's jurisdiction, as specified in~~
19 ~~subsection 5,~~ law of this state governs:
- 20 a. Acquisition of a security entitlement from the securities intermediary;
- 21 b. The rights and duties of the securities intermediary and entitlement holder arising
- 22 out of a security entitlement;
- 23 c. Whether the securities intermediary owes any duties to an adverse claimant to a
- 24 security entitlement; and

- 1 d. Whether an adverse claim can be asserted against a person who acquires a
2 security entitlement from the securities intermediary or a person who purchases a
3 security entitlement or interest therein from an entitlement holder.
- 4 3. The local law of the jurisdiction in which a security certificate is located at the time of
5 delivery governs whether an adverse claim can be asserted against a person to whom
6 the security certificate is delivered.
- 7 4. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is
8 organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction
9 specified by the issuer. An issuer organized under the law of this state may specify the
10 law of another jurisdiction as the law governing the matters specified in subdivisions b
11 through e of subsection 1.
- 12 5. ~~The following rules determine a "securities intermediary's jurisdiction" for purposes of~~
13 ~~this section:~~
- 14 a. ~~If an agreement between the securities intermediary and its entitlement holder~~
15 ~~governing the securities account expressly provides that a particular jurisdiction~~
16 ~~is the securities intermediary's jurisdiction for purposes of this part, this chapter,~~
17 ~~or this title, that jurisdiction is the securities intermediary's jurisdiction.~~
- 18 b. ~~If subdivision a does not apply and an agreement between the securities~~
19 ~~intermediary and its entitlement holder governing the securities account~~
20 ~~expressly provides that the agreement is governed by the law of a particular~~
21 ~~jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~
- 22 c. ~~If neither subdivision a nor b applies and an agreement between the securities~~
23 ~~intermediary and its entitlement holder governing the securities account~~
24 ~~expressly provides that the securities account is maintained at an office in a~~
25 ~~particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~
- 26 d. ~~If none of the preceding subdivisions applies, the securities intermediary's~~
27 ~~jurisdiction is the jurisdiction in which the office identified in an account statement~~
28 ~~as the office serving the entitlement holder's account is located.~~
- 29 e. ~~If none of the preceding subdivisions applies, the securities intermediary's~~
30 ~~jurisdiction is the jurisdiction in which the chief executive office of the securities~~
31 ~~intermediary is located.~~

- 1 6. ~~A securities intermediary's jurisdiction is not determined by the physical location of~~
2 ~~certificates representing financial assets, or by the jurisdiction in which is organized~~
3 ~~the issuer of the financial asset with respect to which an entitlement holder has a~~
4 ~~security entitlement, or by the location of facilities for data processing or other~~
5 ~~recordkeeping concerning the account.~~
- 6 7. ~~The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction~~
7 ~~governs a matter or transaction specified in subsection 1 or 2 even if the matter or~~
8 ~~transaction does not bear any relation to the jurisdiction.~~

9 **SECTION 2. AMENDMENT.** Subsection 1 of section 41-08-43 of the North Dakota Century
10 Code is amended and reenacted as follows:

- 11 1. To the extent necessary for a securities intermediary to satisfy all security entitlements
12 with respect to a particular financial asset, all interests in that financial asset held by
13 the securities intermediary are held by the securities intermediary for the entitlement
14 holders, are not property of the securities intermediary, and are not subject to claims of
15 creditors of the securities intermediary, ~~except as otherwise provided in section~~
16 ~~41-08-51.~~

17 **SECTION 3. AMENDMENT.** Section 41-08-51 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **41-08-51. (8-511) Priority among security interests and entitlement holders.**

- 20 1. ~~Except as otherwise provided in subsections 2 and 3, if~~ a securities intermediary does
21 not have sufficient interests in a particular financial asset to satisfy both its obligations to
22 entitlement holders who have security entitlements to that financial asset and its obligation to a
23 creditor of the securities intermediary who has a security interest in that financial asset, the
24 claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.
- 25 2. ~~A claim of a creditor of a securities intermediary who has a security interest in a~~
26 ~~financial asset held by a securities intermediary has priority over claims of the~~
27 ~~securities intermediary's entitlement holders who have security entitlements with~~
28 ~~respect to that financial asset if the creditor has control over the financial asset.~~
- 29 3. ~~If a clearing corporation does not have sufficient financial assets to satisfy both its~~
30 ~~obligations to entitlement holders who have security entitlements with respect to a~~
31 ~~financial asset and its obligation to a creditor of the clearing corporation who has a~~

1 security interest in that financial asset, the claim of the creditor has priority over the
2 claims of entitlement holders.

3 **SECTION 4. AMENDMENT.** Subsection 1 of section 41-09-25 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 1. Except as otherwise provided in subsection 3, the following rules apply:

6 a. While a security certificate is located in a jurisdiction, the local law of that
7 jurisdiction governs perfection, the effect of perfection or nonperfection, and the
8 priority of a security interest in the certificated security represented thereby.

9 b. The local law of the issuer's jurisdiction as specified in subsection 4 of section
10 41-08-10 governs perfection, the effect of perfection or nonperfection, and the
11 priority of a security interest in an uncertificated security.

12 c. ~~The local law of the securities intermediary's jurisdiction as specified in~~
13 ~~subsection 5 of section 41-08-10~~ this state governs perfection, the effect of
14 perfection or nonperfection, and the priority of a security interest in a security
15 entitlement or securities account.

16 d. The local law of the commodity intermediary's jurisdiction governs perfection, the
17 effect of perfection or nonperfection, and the priority of a security interest in a
18 commodity contract or commodity account.

19 e. Subdivisions b, c, and d apply even if the transaction does not bear any relation
20 to the jurisdiction.