

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2364

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.~~for an Act to provide for a
6 legislative management study relating to the property rights of entitlement holders in Uniform
7 Commercial Code transactions.

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

9 ~~— **SECTION 1. AMENDMENT.** Section 41-08-10 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~
11 ~~— **41-08-10. (8-110) Applicability – Choice of law.**~~
12 ~~— 1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:~~
13 ~~— a. The validity of a security;~~
14 ~~— b. The rights and duties of the issuer with respect to registration of transfer;~~
15 ~~— c. The effectiveness of registration of transfer by the issuer;~~
16 ~~— d. Whether the issuer owes any duties to an adverse claimant to a security; and~~
17 ~~— e. Whether an adverse claim can be asserted against a person to whom transfer of~~
18 ~~a certificated or uncertificated security is registered or a person who obtains~~
19 ~~control of an uncertificated security.~~

- ~~1 — 2. — The local law of the securities intermediary's jurisdiction, as specified in~~
~~2 subsection 5, law of this state governs:~~
- ~~3 — a. — Acquisition of a security entitlement from the securities intermediary;~~
- ~~4 — b. — The rights and duties of the securities intermediary and entitlement holder arising~~
~~5 out of a security entitlement;~~
- ~~6 — c. — Whether the securities intermediary owes any duties to an adverse claimant to a~~
~~7 security entitlement; and~~
- ~~8 — d. — Whether an adverse claim can be asserted against a person who acquires a~~
~~9 security entitlement from the securities intermediary or a person who purchases a~~
~~10 security entitlement or interest therein from an entitlement holder.~~
- ~~11 — 3. — The local law of the jurisdiction in which a security certificate is located at the time of~~
~~12 delivery governs whether an adverse claim can be asserted against a person to whom~~
~~13 the security certificate is delivered.~~
- ~~14 — 4. — "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is~~
~~15 organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction~~
~~16 specified by the issuer. An issuer organized under the law of this state may specify the~~
~~17 law of another jurisdiction as the law governing the matters specified in subdivisions b~~
~~18 through e of subsection 1.~~
- ~~19 — 5. — The following rules determine a "securities intermediary's jurisdiction" for purposes of~~
~~20 this section:~~
- ~~21 — a. — If an agreement between the securities intermediary and its entitlement holder~~
~~22 governing the securities account expressly provides that a particular jurisdiction~~
~~23 is the securities intermediary's jurisdiction for purposes of this part, this chapter,~~
~~24 or this title, that jurisdiction is the securities intermediary's jurisdiction.~~
- ~~25 — b. — If subdivision a does not apply and an agreement between the securities~~
~~26 intermediary and its entitlement holder governing the securities account~~
~~27 expressly provides that the agreement is governed by the law of a particular~~
~~28 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~
- ~~29 — c. — If neither subdivision a nor b applies and an agreement between the securities~~
~~30 intermediary and its entitlement holder governing the securities account~~

- 1 expressly provides that the securities account is maintained at an office in a
2 particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- 3 ~~d. If none of the preceding subdivisions applies, the securities intermediary's~~
4 ~~jurisdiction is the jurisdiction in which the office identified in an account statement~~
5 ~~as the office serving the entitlement holder's account is located.~~
- 6 ~~e. If none of the preceding subdivisions applies, the securities intermediary's~~
7 ~~jurisdiction is the jurisdiction in which the chief executive office of the securities~~
8 ~~intermediary is located.~~
- 9 ~~6. A securities intermediary's jurisdiction is not determined by the physical location of~~
10 ~~certificates representing financial assets, or by the jurisdiction in which is organized~~
11 ~~the issuer of the financial asset with respect to which an entitlement holder has a~~
12 ~~security entitlement, or by the location of facilities for data processing or other~~
13 ~~recordkeeping concerning the account.~~
- 14 ~~7. The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction~~
15 ~~governs a matter or transaction specified in subsection 1 or 2 even if the matter or~~
16 ~~transaction does not bear any relation to the jurisdiction.~~
- 17 ~~**SECTION 2. AMENDMENT.** Subsection 1 of section 41-08-43 of the North Dakota Century~~
18 ~~Code is amended and reenacted as follows:~~
- 19 ~~1. To the extent necessary for a securities intermediary to satisfy all security entitlements~~
20 ~~with respect to a particular financial asset, all interests in that financial asset held by~~
21 ~~the securities intermediary are held by the securities intermediary for the entitlement~~
22 ~~holders, are not property of the securities intermediary, and are not subject to claims of~~
23 ~~creditors of the securities intermediary, except as otherwise provided in section~~
24 ~~41-08-51.~~
- 25 ~~**SECTION 3. AMENDMENT.** Section 41-08-51 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~
- 27 ~~**41-08-51. (8-511) Priority among security interests and entitlement holders.**~~
- 28 ~~1. Except as otherwise provided in subsections 2 and 3, if a securities intermediary does~~
29 ~~not have sufficient interests in a particular financial asset to satisfy both its obligations to~~
30 ~~entitlement holders who have security entitlements to that financial asset and its obligation to a~~

1 ~~creditor of the securities intermediary who has a security interest in that financial asset, the~~
2 ~~claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.~~

3 ~~—2.— A claim of a creditor of a securities intermediary who has a security interest in a~~
4 ~~financial asset held by a securities intermediary has priority over claims of the~~
5 ~~securities intermediary's entitlement holders who have security entitlements with~~
6 ~~respect to that financial asset if the creditor has control over the financial asset.~~

7 ~~—3.— If a clearing corporation does not have sufficient financial assets to satisfy both its~~
8 ~~obligations to entitlement holders who have security entitlements with respect to a~~
9 ~~financial asset and its obligation to a creditor of the clearing corporation who has a~~
10 ~~security interest in that financial asset, the claim of the creditor has priority over the~~
11 ~~claims of entitlement holders.~~

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

14 ~~—1.— Except as otherwise provided in subsection 3, the following rules apply:~~

15 ~~—a.— While a security certificate is located in a jurisdiction, the local law of that~~
16 ~~jurisdiction governs perfection, the effect of perfection or nonperfection, and the~~
17 ~~priority of a security interest in the certificated security represented thereby.~~

18 ~~—b.— The local law of the issuer's jurisdiction as specified in subsection 4 of section~~
19 ~~41-08-10 governs perfection, the effect of perfection or nonperfection, and the~~
20 ~~priority of a security interest in an uncertificated security.~~

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

25 ~~—d.— The local law of the commodity intermediary's jurisdiction governs perfection, the~~
26 ~~effect of perfection or nonperfection, and the priority of a security interest in a~~
27 ~~commodity contract or commodity account.~~

28 ~~—e.— Subdivisions b, c, and d apply even if the transaction does not bear any relation~~
29 ~~to the jurisdiction.~~

30 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - UNIFORM COMMERCIAL CODE**
31 **PROPERTY RIGHTS.** During the 2025-26 interim, the legislative management shall consider

1 studying the property rights of entitlement holders in Uniform Commercial Code transactions,
2 along with the jurisdiction for disputes between entitlement holders and securities
3 intermediaries. The study must review the provisions of the Uniform Commercial Code,
4 including a review of article 8, in relation to state law, federal law, and the law's interaction as it
5 relates to ownership of personal property. The study must seek input from relevant
6 stakeholders, including securities intermediaries. The legislative management shall report its
7 findings and recommendations, together with any legislation necessary to implement the
8 recommendations, to the seventieth legislative assembly.