

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1441

Introduced by

Representatives Toman, Christy, Dockter, Hagert, Heilman, D. Johnston

Senators Boehm, Paulson

1 A BILL for an Act to create and enact a new chapter to title 51 of the North Dakota Century
2 Code, relating to specie legal tender, the taxation of specie legal tender, and United States
3 central bank digital currencies; to amend and reenact section 41-01-09 of the North Dakota
4 Century Code, relating to the definition of United States central bank digital currency.

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

6 **SECTION 1. AMENDMENT.** Section 41-01-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **41-01-09. (1-201) General definitions.**

- 9 1. Unless the context otherwise requires, words or phrases defined in this section, or in
10 additional definitions contained in other chapters of this title which apply to particular
11 chapters or parts of chapters, have the meanings stated.
- 12 2. Subject to definitions contained in other chapters of this title which apply to particular
13 chapters or parts of chapters:
- 14 a. "Action", in the sense of a judicial proceeding, includes recoupment,
15 counterclaim, setoff, suit in equity, and any other proceeding in which rights are
16 determined.
- 17 b. "Aggrieved party" means a party entitled to pursue a remedy.
- 18 c. "Agreement", as distinguished from "contract", means the bargain of the parties
19 in fact, as found in their language or inferred from other circumstances, including
20 course of performance, course of dealing, or usage of trade as provided under
21 section 41-09-17.

- 1 d. "Bank" means a person engaged in the business of banking and includes a
2 savings bank, savings and loan association, credit union, and trust company.
- 3 e. "Bearer" means a person in control of a negotiable electronic document of title or
4 a person in possession of a negotiable instrument, negotiable tangible document
5 of title, or certificated security that is payable to bearer or indorsed in blank.
- 6 f. "Bill of lading" means a document of title evidencing the receipt of goods for
7 shipment issued by a person engaged in the business of directly or indirectly
8 transporting or forwarding goods. The term does not include a warehouse receipt.
- 9 g. "Branch" includes a separately incorporated foreign branch of a bank.
- 10 h. "Burden of establishing" a fact means the burden of persuading the trier of fact
11 that the existence of the fact is more probable than its nonexistence.
- 12 i. "Buyer in ordinary course of business" means a person that buys goods in good
13 faith, without knowledge that the sale violates the rights of another person in the
14 goods, and in the ordinary course from a person, other than a pawnbroker, in the
15 business of selling goods of that kind. A person buys goods in the ordinary
16 course if the sale to the person comports with the usual or customary practices in
17 the kind of business in which the seller is engaged or with the seller's own usual
18 or customary practices. A person that sells oil, gas, or other minerals at the
19 wellhead or minehead is a person in the business of selling goods of that kind. A
20 buyer in ordinary course of business may buy for cash, by exchange of other
21 property, or on secured or unsecured credit, and may acquire goods or
22 documents of title under a pre-existing contract for sale. Only a buyer that takes
23 possession of the goods or has a right to recover the goods from the seller under
24 chapter 41-02 may be a buyer in ordinary course of business. "Buyer in ordinary
25 course of business" does not include a person that acquires goods in a transfer in
26 bulk or as security for or in total or partial satisfaction of a money debt.
- 27 j. "Conspicuous", with reference to a term, means so written, displayed, or
28 presented that, based on the totality of the circumstances, a reasonable person
29 against which it is to operate ought to have noticed it. Whether a term is
30 "conspicuous" or not is a decision for the court.

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

- 1 (1) Goods of which any unit, by nature or usage of trade, is the equivalent of
2 any other like unit; or
- 3 (2) Goods that by agreement are treated as equivalent.
- 4 t. "Genuine" means free of forgery or counterfeiting.
- 5 u. "Good faith", except as otherwise provided in chapter 41-05, means honesty in
6 fact and the observance of reasonable commercial standards of fair dealing.
- 7 v. "Holder" means:
- 8 (1) The person in possession of a negotiable instrument that is payable either
9 to bearer or to an identified person that is the person in possession;
- 10 (2) The person in possession of a document of title if the goods are deliverable
11 either to bearer or to the order of the person in possession; or
- 12 (3) The person in control, other than pursuant to subsection 7 of section
13 41-07-06, of a negotiable electronic document of title.
- 14 w. "Insolvency proceeding" includes an assignment for the benefit of creditors or
15 other proceeding intended to liquidate or rehabilitate the estate of the person
16 involved.
- 17 x. "Insolvent" means:
- 18 (1) Having generally ceased to pay debts in the ordinary course of business
19 other than as a result of bona fide dispute;
- 20 (2) Being unable to pay debts as they become due; or
- 21 (3) Being insolvent within the meaning of federal bankruptcy law.
- 22 y. "Money" means a medium of exchange that is currently authorized or adopted by
23 a domestic or foreign government. The term includes a monetary unit of account
24 established by an intergovernmental organization, or by agreement between two
25 or more countries. The term does not include an electronic record that is a
26 medium of exchange recorded and transferable in a system that existed and
27 operated for the medium of exchange before the medium of exchange was
28 authorized or adopted by the government.
- 29 z. "Organization" means a person other than an individual.
- 30 aa. "Party", as distinguished from "third party", means a person that has engaged in
31 a transaction or made an agreement subject to this title.

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

1 goods on identification of those goods to a contract for sale under section
2 41-02-46, but a buyer may also acquire a "security interest" by complying with
3 chapter 41-09. Except as otherwise provided in section 41-02-53, the right of a
4 seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire
5 possession of the goods is not a "security interest", but a seller or lessor may
6 also acquire a "security interest" by complying with chapter 41-09. The retention
7 or reservation of title by a seller of goods notwithstanding shipment or delivery to
8 the buyer under section 41-02-46 is limited in effect to a reservation of a "security
9 interest". Whether a transaction in the form of a lease creates a "security interest"
10 is determined under section 41-01-11.

11 kk. "Send", in connection with a record or notification, means:

12 (1) To deposit in the mail, deliver for transmission, or transmit by any other
13 usual means of communication, with postage or cost of transmission
14 provided for, addressed to any address reasonable under the
15 circumstances; or

16 (2) To cause the record or notification to be received within the time it would
17 have been received if properly sent under paragraph 1.

18 ll. "Sign" means, with present intent to authenticate or adopt a record, to execute or
19 adopt a tangible symbol, or attach to or logically associate with the record an
20 electronic symbol, sound, or process. "Signed", "signing", and "signature" have
21 corresponding meanings.

22 mm. "State" means a state of the United States, the District of Columbia, Puerto Rico,
23 the United States Virgin Islands, or any territory or insular possession subject to
24 the jurisdiction of the United States.

25 nn. "Surety" includes a guarantor or other secondary obligor.

26 oo. "Term" means a portion of an agreement that relates to a particular matter.

27 pp. "Unauthorized signature" means a signature made without actual, implied, or
28 apparent authority. The term includes a forgery.

29 qq. "United States central bank digital currency" means a digital currency, digital
30 medium of exchange, or digital monetary unit of account issued by the United
31 States federal reserve system.

1 ~~rr.~~ "Warehouse receipt" means a document of title issued by a person engaged in
2 the business of storing goods for hire.

3 ~~ff.ss.~~ "Writing" includes printing, typewriting, or any other intentional reduction to
4 tangible form. "Written" has a corresponding meaning.

5 **SECTION 2.** A new chapter to title 51 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 For purposes of this chapter:

9 1. "Specie" means refined precious metal bullion that is coined, stamped, or imprinted
10 with its weight and purity and valued primarily based on its metal content and not its
11 shape or form.

12 2. "Specie legal tender" means gold or silver specie issued by the United States or any
13 other form of gold or silver specie.

14 3. "United States central bank digital currency" means a digital currency, digital medium
15 of exchange, or digital monetary unit of account issued by the United States federal
16 reserve system.

17 **Specie legal tender.**

18 Specie legal tender is legal tender in this state. A person may not be required to offer or
19 accept specie legal tender for the payment of debts, deposit, or any other purpose. A person
20 may not incur liability for refusing to offer or accept specie legal tender, except as specifically
21 provided for by contract.

22 **Specie legal tender - Taxation.**

23 The exchange, purchase, or sale of any type or form of specie legal tender may not give
24 rise to any tax liability of any kind.

25 **United States Central bank digital currency - Not legal tender.**

26 A United States central bank digital currency is not legal tender.