

UNIFORM COMMERCIAL CODE

CHAPTER 470

HOUSE BILL NO. 1607
(Representatives Klundt, Skjerven)
(Senator Langley)

FINANCIAL INSTITUTION ACCOUNT SETOFF

AN ACT to create and enact a new section to chapter 41-04 of the North Dakota Century Code, relating to the privilege of setoff between accounts at financial institutions and to define the term "financial institution".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 41-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interfund setoffs - Required notice to depositor - Separate document required. A financial institution may provide by contract for the privilege of setting off deposits in the account of a depositor. The contract meets the consent requirement of section 6-03-67 if, at the time the contract is entered into, a written disclosure is made of the right of setoff and the effect of that right on the depositor's other accounts and the depositor has signed a separate document agreeing to those terms. The written disclosure required by this section must be conspicuous as defined under subsection 10 of section 41-01-11. The financial institution shall give immediate notice to the depositor when a setoff action is taken. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including the Bank of North Dakota, a bank, a savings bank, a trust company, a savings and loan association, or a credit union.

Approved March 27, 1985

CHAPTER 471

HOUSE BILL NO. 1153
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

SECURITIES — UNIFORM COMMERCIAL CODE
CHANGES

AN ACT to create and enact sections 41-08-07.1, 41-08-36.1, 41-08-43, 41-08-44, and a new subsection to section 41-09-03 of the North Dakota Century Code, relating to investment securities and a revision of article 8 of the Uniform Commercial Code with appropriate changes in article 9; and to amend and reenact subsections 5, 14, and 20 of section 41-01-11, subsection 2 of section 41-05-14, sections 41-08-02, 41-08-03, 41-08-04, 41-08-05, 41-08-06, 41-08-07, 41-08-09, 41-08-10, 41-08-11, 41-08-12, 41-08-13, 41-08-14, 41-08-15, 41-08-16, 41-08-17, 41-08-18, 41-08-20, 41-08-21, 41-08-22, 41-08-23, 41-08-24, 41-08-25, 41-08-26, 41-08-27, 41-08-28, 41-08-29, 41-08-30, 41-08-31, 41-08-32, 41-08-33, 41-08-34, 41-08-35, 41-08-36, 41-08-37, 41-08-38, 41-08-39, 41-08-40, 41-08-41, 41-08-42, subdivision a of subsection 3 of section 41-09-03, subdivision i of subsection 1 of section 41-09-05, subsection 1 of section 41-09-16, subsection 1 of section 41-09-23, sections 41-09-25, 41-09-26, 41-09-30, and subsection 7 of section 41-09-33 of the North Dakota Century Code, relating to investment securities and a revision of article 8 of the Uniform Commercial Code with appropriate changes to articles 1, 5, and 9.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 14, and 20 of section 41-01-11 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.
14. "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

20. "Holder" means a person who is in possession of a document of title ~~or~~, an instrument, or ~~an~~ a certificated investment security drawn, issued, or endorsed to him ~~or~~, to his order ~~or~~, to bearer, or in blank.

SECTION 2. AMENDMENT. Subsection 2 of section 41-05-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 41-07-36) or of a certificated security (section 41-08-22) or is forged or fraudulent or there is fraud in the transaction:
 - a. The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances ~~which~~ that would make it a holder in due course (section 41-03-32) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 41-07-31) or a bona fide purchaser of a certificated security (section 41-08-18); and
 - b. In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery, or other defect not apparent on the face of the documents, but a court of appropriate jurisdiction may enjoin such the honor.

SECTION 3. AMENDMENT. Section 41-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-02. (8-102) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:
 - a. A "certificated security" is ~~an instrument a share, participation, or other interest in property of or an enterprise of the issuer or is an obligation of the issuer~~ which:
 - (1) Is represented by an instrument issued in bearer or registered form; ;
 - (2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

- (3) Is either one of a class or series or by its terms is divisible into a class or series of instruments shares, participations, interests, or obligations.
- (4) Evidences a share, participation, or other interest in property or in an enterprise or evidences an obligation of the issuer.
- b. An "uncertificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or is an obligation of the issuer which:
- (1) Is not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;
- (2) Is of a type commonly dealt in upon securities exchanges or markets; and
- (3) Is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.
- c. A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing which that is a certificated security is governed by this chapter and not by chapter 41-03 even though it also meets the requirements of that chapter. This chapter does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by the issuer, that security must be treated as an uncertificated security for purposes of this chapter.
- e- d. A certificated security is in "registered form" when if it specifies a person entitled to the security or to the rights it evidences represents and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.
- d- e. A certificated security is in "bearer form" when if it runs to bearer according to its terms and not by reason of any endorsement.

2. "Clearing corporation" is the Bank of North Dakota or a corporation registered as "clearing agency" under the federal securities laws or a corporation:
- a. At least ninety percent of the whose capital stock of which is held by or for one or more persons (other than individuals) organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of the corporation, and each of whom which:
 - (1) Is subject to supervision or regulation pursuant to federal or state banking laws or state insurance laws;
 - (2) Is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 federal securities laws; or
 - (3) Is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation the federal securities laws; and
 - b. Any remaining capital stock of which is held by individuals who have purchased such that capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such that capital stock as may be necessary to permit them to qualify as such its directors.
3. "Custodian bank" is any bank or trust company which that is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.
4. "Subsequent purchaser" is a person who takes other than by original issue.
5. Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:
- | | |
|------------------------|---|
| "Adverse claim"- | Section 41-08-17-
<u>41-08-18</u> |
| "Bona fide purchaser"- | Section 41-08-18- |
| "Broker"- | Section 41-08-19- |

<u>"Financial intermediary"</u>	Section 41-08-29
<u>"Guarantee of the signature"</u>	Section 41-08-38-
<u>"Initial transaction statement"</u>	Section 41-08-44
<u>"Instruction"</u>	Section 41-08-24
<u>"Intermediary Bank"- bank"</u>	Section 41-04-05-
<u>"Issuer"</u>	Section 41-08-09-
<u>"Overissue"</u>	Section 41-08-04-
<u>"Secured party"</u>	Section 41-09-05
<u>"Security agreement"</u>	Section 41-09-05

6. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 4. AMENDMENT. Section 41-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-03. (8-103) Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

1. The security is certificated and the right of the issuer to such the lien is noted conspicuously on the security thereon; or
2. The security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

SECTION 5. AMENDMENT. Section 41-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-04. (8-104) Effect of overissue - "Overissue".

1. The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but:
 - a. If an identical security which that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a

that security ~~to~~ for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of the any certificated security, if any, which he holds; or

- b. If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

2. "Overissue" means the issue of securities in excess of the amount ~~which~~ the issuer has corporate power to issue.

SECTION 6. AMENDMENT. Section 41-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-05. (8-105) Securities Certificated securities negotiable - Statements and instructions not negotiable - Presumptions.

1. Securities Certificated securities governed by this chapter are negotiable instruments.
2. Statements (section 41-08-44), notices, and the like sent by the issuer of uncertificated securities and instructions (section 41-08-24) are neither negotiable instruments nor certificated securities.
3. In any action on a security:
 - a. Unless specifically denied in the pleadings, each signature on ~~the~~ a certificated security or, in a necessary endorsement, on an initial transaction statement, or on an instruction is admitted;
 - b. When If the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;
 - c. When If signatures on a certificated security are admitted or established, production of the instrument security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and
 - d. If signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and
 - e. After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or

some person under whom he claims is a person against whom the defense or defect is ineffective (section 41-08-10).

SECTION 7. AMENDMENT. Section 41-08-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-06. (8-106) Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to registration:

1. Registration of transfer of a certificated security;
2. Registration of transfer, pledge, or release of an uncertificated security; and
3. Sending of statements of uncertificated securities are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

SECTION 8. AMENDMENT. Section 41-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-07. (8-107) Securities deliverable transferable - Action for price.

1. Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver transfer securities may deliver transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank or may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.
2. When If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price:
 - a. Of certificated securities accepted by the buyer; and
 - b. Of uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and
 - c. Of other securities, if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

SECTION 9. Section 41-08-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-07.1. (8-108) Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by the secured party. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even though the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

SECTION 10. AMENDMENT. Section 41-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-09. (8-201) "Issuer".

1. With respect to obligations on or defenses to a security, "issuer" includes a person who:
 - a. Places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced represented by the certificated security;
 - b. Creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;
 - c. Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced represented by certificated securities; or
 - e- d. Becomes responsible for or in place of any other person described as an issuer in this section.
2. With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on the a certificated security or on statements of uncertificated securities sent pursuant to section 41-08-44.
3. With respect to registration of transfer, pledge, or release (part 4 of this chapter) "issuer" means a person on whose behalf transfer books are maintained.

SECTION 11. AMENDMENT. Section 41-08-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-10. (8-202) Issuer's responsibility and defenses - Notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a security include:
 - a. If the security is certificated, those stated on the security;
 - b. If the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and these
 - c. Those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like to the extent that the terms so referred to do not conflict with the stated terms stated on the certificate security or contained in the statement. Such a A reference under this subdivision does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits such notice.
2. a- A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than one a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid in the hands of a with respect to the purchaser for value and if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of with respect to a subsequent purchaser for value and without notice of the defect.
 - b- The rule of subdivision a This subsection applies to an issuer which that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in the case of certain unauthorized signatures on issue (section 41-08-13), lack of genuineness of a certificated security or an initial transaction statement is a complete defense even against a purchaser for value and without notice.
4. All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of the a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.
5. Nothing in this section shall be construed to affect affects the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which that is the subject of the contract or in the plan or arrangement pursuant to which such the security is to be issued or distributed.

SECTION 12. AMENDMENT. Section 41-08-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-11. (8-203) Staleness as notice of defects or defenses.

1. After an act or event which that creates a right to immediate performance of the principal obligation evidenced represented by the a certificated security or which that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:
 - a. If the act or event is one requiring the payment of money ~~or~~, the delivery of certificated securities, the registration of transfer of uncertificated securities, or both any of these on presentation or surrender of the certificated security and such those funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and
 - b. If the act or event is not covered by subdivision a and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.
2. A call which that has been revoked is not within subsection 1.

SECTION 13. AMENDMENT. Section 41-08-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-12. (8-204) Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security a restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective except against a any person with without actual knowledge of it unless:

1. The security is certificated and the restriction is noted conspicuously thereon; or
2. The security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to such person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

SECTION 14. AMENDMENT. Section 41-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-13. (8-205) Effect of unauthorized signature on issue certificated security or initial transaction statement. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective except that, but the signature is effective in favor of a purchaser for value and of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if either purchaser is without notice of the lack of authority if and the signing has been done by:

1. An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security ~~or~~, of similar securities, or of initial transaction statements, or thei* the immediate preparation for signing any of them; or
2. An employee of the issuer or of any of the foregoing entrusted with responsible handling of the security or initial transaction statement.

SECTION 15. AMENDMENT. Section 41-08-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-14. (8-206) Completion or alteration of instrument certificated security or initial transaction statement.

1. Where If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
 - a. Any person may complete it by filling in the blanks as authorized; and

- b. Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such its incorrectness.
2. A complete certificated security which that has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.
3. If an initial transaction statement contains the signatures necessary to its validity but is incomplete in any other respect:
 - a. Any person may complete it by filling in the blanks as authorized; and
 - b. Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of its incorrectness.
4. A complete initial transaction statement that has been improperly altered even though fraudulently, is effective in favor of a purchaser to whom it has been sent but only according to its original terms.

SECTION 16. AMENDMENT. Section 41-08-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-15. (8-207) Rights and duties of issuer with respect to registered owners and registered pledgees.

1. Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.
2. Subject to subsections 3, 4, and 5, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.
3. The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to convertible uncertificated security is a transfer within the meaning of this section.

4. Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:
- a. If the instruction specifies a new owner, who may be the registered pledgee, and does not specify a pledgee, register the transfer of the security to the new owner free of pledge;
 - b. If the instruction specifies a new owner and the existing pledgee, register the transfer of the security to the new owner subject to the interest of the existing pledgee; or
 - c. If the instruction specifies the existing owner and another pledgee, register the release of the security from the existing pledge and register the pledge of the security to the other pledgee.

Continuity of perfection of the security interest may not be broken by registration of transfer under subdivision b or by registration of release and pledge under subdivision c if the security interest is assigned.

5. If an uncertificated security is subject to a registered pledge:
- a. Any uncertificated securities issued in exchange for or distributed with respect to the pledged security must be registered subject to the pledge;
 - b. Any certificated securities issued in exchange for or distributed with respect to the pledged security must be delivered to the registered pledgee; and
 - c. Any money paid in exchange for or in redemption of part or all of the security must be paid to the registered pledgee.
6. Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

SECTION 17. AMENDMENT. Section 41-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-16. (8-208) Effect of signature of authenticating trustee, registrar, or transfer agent.

1. A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated

security to whom the initial transaction statement has been sent where either purchaser is without notice of the particular defect that:

- a. The certificated security or initial transaction statement is genuine;
 - b. His own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
 - c. He has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.
2. Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

SECTION 18. AMENDMENT. Section 41-08-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-17. (8-301) Rights acquired by purchaser---"Adverse claim"--
--Title acquired by bona fide purchaser.

1. Upon delivery transfer of a security to a purchaser (section 41-08-29), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who has a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security unless the purchaser's rights are limited by subsection 4 of section 41-08-18.
2. A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim-
- 3- A purchaser transferee of a limited interest acquires rights only to the extent of the interest purchased transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

SECTION 19. AMENDMENT. Section 41-08-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-18. (8-302) "Bona fide purchaser" - "Adverse claim" - Title
acquired by bona fide purchaser.

1. A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who:
 - a. Who takes delivery of a certificated security in bearer form or of one in registered form issued to him or endorsed to him or in blank;
 - b. To whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or
 - c. To whom a security is transferred under the provisions of subdivisions c and g and paragraph 1 of subdivision d of subsection 1 of section 41-08-29.
2. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.
3. A bona fide purchaser in addition to acquiring the rights of a purchaser (section 41-08-17) also acquires his interest in the security free of any adverse claim.
4. A transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security or who as a prior holder of the certificated security had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser.

SECTION 20. AMENDMENT. Section 41-08-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-20. (8-304) Notice to purchaser of adverse claims.

1. A purchaser ~~{including,~~ including a broker for the seller or buyer but excluding an intermediary bank, of a certificated security is charged with notice of adverse claims if:
 - a. The security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
 - b. The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.
2. A purchaser, including a broker for the seller or buyer but excluding an intermediary bank, to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under subsection 4 of section 41-08-39 at the time of registration and which are noted

in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

3. The fact that the purchaser ~~{of a certificated or uncertificated security,~~ including a broker for the seller or buyer~~}~~ has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser ~~{excluding an intermediary bank}~~ has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

SECTION 21. AMENDMENT. Section 41-08-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-21. (8-305) Staleness as notice of adverse claims. An act or event ~~which~~ that creates a right to immediate performance of the principal obligation ~~evidenced~~ represented by ~~the a~~ a certificated security or ~~which~~ that sets a date on or after which the certificated security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase transfer:

1. After one year from any date set for ~~such~~ the presentment or surrender for redemption or exchange; or
2. After six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

SECTION 22. AMENDMENT. Section 41-08-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-22. (8-306) Warranties on presentment and transfer of certificated securities - Warranties of originators of instructions.

1. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (section 41-08-27) in a necessary endorsement.

2. A person by transferring a certificated security to a purchaser for value warrants only that:
 - a. His transfer is effective and rightful;
 - b. The security is genuine and has not been materially altered; and
 - c. He knows no fact which might impair the validity of the security.
3. Where If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against ~~such~~ the delivery, the intermediary by ~~such~~ the delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.
4. A pledgee or other holder for security who redelivers ~~the~~ a certificated security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection 3.
5. A person who originates an instruction warrants to the issuer that:
 - a. He is an appropriate person to originate the instruction; and
 - b. At the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.
6. A person who originates an instruction warrants to any person specially guaranteeing his signature (subsection 3 of section 41-08-28) that:
 - a. He is an appropriate person to originate the instruction; and
 - b. At the time the instruction is presented to the issuer:
 - (1) He will be entitled to the registration of transfer, pledge or release; and
 - (2) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

7. A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (subsection 6 of section 41-08-28) that:
- a. He is an appropriate person to originate the instruction;
 - b. The uncertificated security referred to therein is valid; and
 - c. At the time the instruction is presented to the issuer:
 - (1) The transferor will be entitled to the registration of transfer, pledge, or release;
 - (2) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and
 - (3) The requested transfer, pledge, or release will be rightful.
8. If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subdivision b and paragraphs 2 and 3 of subdivision c of subsection 7.
9. A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

SECTION 23. AMENDMENT. Section 41-08-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-23. (8-307) Effect of delivery without endorsement - Right to compel endorsement. Where If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time

the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

SECTION 24. AMENDMENT. Section 41-08-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-24. (8-308) Endorsement---How made---Special endorsement--Enderser not a guaranter---Partial assignment Endorsements - Instructions.

1. An endorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such an appropriate person is written without more upon the back of the security.
2. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.
3. An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.
4. An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.
5. An instruction originated by an appropriate person is:
 - a. A writing signed by an appropriate person; or
 - b. A communication to the issuer in any other form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person, but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

6. "An appropriate person" in subsection 1 means:
 - a. The person specified by the certificated security or by special endorsement to be entitled to the security.

7. "An appropriate person" in subsection 5 means:
- a. For an instruction to transfer or pledge an uncertificated security that is then not subject to a registered pledge, the registered owner; or
 - b. For an instruction to transfer or release an uncertificated security that is then subject to a registered pledge, the registered pledgee.
8. In addition to the persons designated in subsections 6 and 7, "an appropriate person" in subsections 1 and 5 includes:
- ~~b-~~ a. Where if the person so specified designated is described as a fiduciary, but is no longer serving in the described capacity, either that person or his successor;
 - ~~e-~~ b. Where if the security or endorsement persons so specifies designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;
 - ~~d-~~ c. Where if the person so specified designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;
 - ~~e-~~ d. Where if the security or endorsement persons so specifies designated are described as more than one person, as tenants by the entirety entireties or with right of survivorship, and by reason of death all cannot sign, the survivor or survivors;
 - ~~f-~~ e. A person having power to sign under applicable law or controlling instrument; or
 - ~~g-~~ f. To the extent that any of the foregoing persons may act through an agent, his authorized agent.
- ~~4-~~ 9. Unless otherwise agreed, the endorser of a certificated security by his endorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in section 41-08-22.
- 5- An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

- 6- 10. Whether the person signing is appropriate is determined as of the date of signing and an endorsement made by or an instruction originated by such a that person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.
- 7- 11. Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his endorsement or an instruction originated by him unauthorized for the purposes of this chapter.

SECTION 25. AMENDMENT. Section 41-08-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-25. (8-309) Effect of endorsement without delivery. An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security.

SECTION 26. AMENDMENT. Section 41-08-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-26. (8-310) Endorsement of certificated security in bearer form. An endorsement of a certificated security in bearer form may give notice of adverse claims (section 41-08-20) but does not otherwise affect any right to registration the holder may possess.

SECTION 27. AMENDMENT. Section 41-08-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-27. (8-311) Effect of unauthorized endorsement or instruction. Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

- a- 1. He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and
- b- 2. An issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction

is subject to liability for improper registration (section 41-08-40).

SECTION 28. AMENDMENT. Section 41-08-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-28. (8-312) Effect of guaranteeing signature ~~or~~, endorsement, or instruction.

1. Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing:
 - a. The signature was genuine;
 - b. The signer was an appropriate person to endorse (section 41-08-24); and
 - c. The signer had legal capacity to sign.
2. Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:
 - a. The signature was genuine;
 - b. The signer was an appropriate person to originate the instruction (section 41-08-24) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty;
 - c. The signer had legal capacity to sign; and
 - d. The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.
3. Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection 2) but also warrants that at the time the instruction is presented to the issuer:
 - a. The person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and
 - b. The transfer, pledge, or release of the uncertificated security requested in the instruction will be

registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. ~~But the~~ The guarantor under subsections 1 and 2 or the special guarantor under subsection 3 does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.
- 2- 5. ~~Any person may guarantee~~ guaranteeing an endorsement of a certificated security and by so doing warrants makes not only the warranties of a signature (subsection 1) guarantor under subsection 1 but also warrants the rightfulness of the particular transfer in all respects. But no
6. Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection 3 but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.
7. No issuer may require a special guarantee of signature (subsection 3), a guarantee of endorsement (subsection 5), or a guarantee of instruction (subsection 6) as a condition to registration of transfer, pledge, or release.
- 3- 8. The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such that person for any loss resulting from breach of the warranties.

SECTION 29. AMENDMENT. Section 41-08-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-29. (8-313) When delivery transfer to the purchaser occurs - Purchaser's broker Financial intermediary as holder bona fide purchaser - "Financial intermediary".

1. Delivery Transfer of a security or a limited interest, including a security interest, therein to a purchaser occurs when only:
- a. He When he or a person designated by him acquires possession of a certificated security;
 - b. When the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;
 - c. His broker When his financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

- e- d. His broker When a financial intermediary, not a clearing corporation sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;
- (1) A specific certificated security in the financial intermediary's possession;
 - (2) A quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or
 - (3) A quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;
- d- e. With respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, when that person acknowledges that he holds for the purchaser; or
- e- f. Appropriate With respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, when that person acknowledges that he holds for the purchaser;
- g. When appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under section 41-08-36;
- h. With respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, when a written notification, which, in the case of the creation of the security interest, is signed by the debtor, which may be a copy of the security agreement, or which, in the case of the release or assignment of the security interest created pursuant to this subdivision, is signed by the secured party, is received by:
- (1) A financial intermediary on the books of which the interest of the transferor in the security appears;

- (2) A third person, not a financial intermediary, in possession of the security, if it is certificated;
 - (3) A third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or
 - (4) A third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;
- i. With respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, when new value is given by the secured party; or
 - j. With respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under subdivision a, b, c, d, or g, at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.
2. The purchaser is the owner of a security held for him by his broker a financial intermediary, but is not the holder cannot be a bona fide purchaser of a security so held except as in the circumstances specified in subdivisions b, c, d, e, f, g and paragraph 1 of subdivision d of subsection 1. Where if a security so held is part of a fungible bulk, as in circumstances specified in paragraphs 2 and 3 of subdivision d of subsection 1, the purchaser is the owner of a proportionate property interest in the fungible bulk.
 3. Notice of an adverse claim received by the broker financial intermediary or by the purchaser after the broker financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the broker financial intermediary or as to the purchaser. However, as between the broker financial intermediary and the purchaser, the purchaser may demand delivery transfer of an equivalent security as to which no notice of an adverse claim has been received.
 4. A "financial intermediary" is a bank, broker, clearing corporation, or other person, or the nominee of any of them, which in the ordinary course of its business

maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customers.

SECTION 30. AMENDMENT. Section 41-08-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-30. (8-314) Duty to deliver transfer - When completed.

1. Unless otherwise agreed, where a sale of a security is made on an exchange or otherwise through brokers:
 - a. The selling customer fulfills his duty to deliver transfer when he:
 - (1) He places such a certificated security in the possession of the seller broker or of a person designated by the broker or;
 - (2) He, if requested, causes an acknowledgment to be made to the selling broker that ~~it~~ a certificated or uncertificated security is held for him;
 - (3) He causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker; or
 - (4) He places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, provided the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within thirty days thereafter; and
 - b. The A selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to deliver by placing the transfer when he:
 - (1) Places a certificated security or a like security in the possession of the buying broker or a person designated by him or by effecting;
 - (2) Causes an uncertificated security to be registered in the name of the buying broker or a person designated by him;
 - (3) Places in the possession of the buying broker or of a person designated by him a transfer instruction for an uncertificated security, provided the issuer does not refuse to register the requested transfer if the instruction is

presented to the issuer for registration within thirty days thereafter; or

(4) Effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

2. Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to ~~deliver~~ transfer a security under a contract of purchase is not fulfilled until he ~~places the~~:
 - a. Places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at;
 - b. At the purchaser's request, causes an acknowledgment to be made to the purchaser that ~~it~~ a certificated or uncertificated security is held for him; or
 - c. Causes an uncertificated security to be registered in the name of the purchaser or of a person designated by him.
3. Unless made on an exchange, a sale to a broker purchasing for his own account is within ~~this~~ subsection 2 and not within subsection 1.

SECTION 31. AMENDMENT. Section 41-08-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-31. (8-315) Action against ~~purchaser~~ transferee based upon wrongful transfer.

1. Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may, against anyone except a bona fide purchaser ~~reclaim~~:
 - a. Reclaim possession of the certificated security or ~~obtain~~ wrongfully transferred;
 - b. Obtain possession of any new certificated security evidencing representing all or part of the same rights or have;
 - c. Compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or
 - d. Recover damages.
2. If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also

reclaim or obtain possession of ~~the~~ that security or new certificated security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (section 41-08-27).

3. The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and ~~the~~ the transfer of a certificated or uncertificated security enjoined and ~~the~~ a certificated security impounded pending the litigation.

SECTION 32. AMENDMENT. Section 41-08-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-32. (8-316) Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security must, on due demand, supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite which that may be necessary to obtain registration of the transfer, pledge, or release of the security but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer, pledge, or release.

SECTION 33. AMENDMENT. Section 41-08-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-33. (8-317) Attachment or levy upon security Creditors' rights.

1. No Subject to the exceptions in subsections 3 and 4, no attachment or levy upon a certificated security or any share or other interest evidenced represented thereby which that is outstanding shall be is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which that has been surrendered to the issuer may be attached or levied upon at the source reached by a creditor by legal process at the issuer's chief executive office in the United States.
2. An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.
3. The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered

in the name of a secured party not a financial intermediary or in the name of a nominee of the secured party may be reached by a creditor by legal process upon the secured party.

4. The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on the books of which the interest of the debtor appears.
5. Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection 3 or 4 may not operate as a restraint of the transfer of the security, free of the lien, to a third party for new value, but, in the event of the transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary subject to any claims having priority.
6. A creditor whose debtor is the owner of a security shall be is entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such the security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which that cannot readily be attached or levied upon reached by ordinary legal process.

SECTION 34. AMENDMENT. Section 41-08-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-34. (8-318) No conversion by good faith delivery conduct. An agent or bailee who in good faith ~~{including, including~~ observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities}, has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to ~~dispose of them take that action.~~

SECTION 35. AMENDMENT. Section 41-08-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-35. (8-319) Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

1. There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for

sale of a stated quantity of described securities at a defined or stated price;

2. Delivery of the a certificated security or transfer instruction has been accepted, transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten days after receipt of the initial transaction statement confirming the registration, or payment has been made but the contract is enforceable under this provision only to the extent of such the delivery, registration, or payment;
3. Within a reasonable time, a writing in confirmation of the sale or purchase and sufficient against the sender under subsection 1 has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or
4. The party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

SECTION 36. AMENDMENT. Section 41-08-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-36. (8-320) Transfer or pledge within a central depository system.

1. In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the amount of the obligation, or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee in the books of the clearing corporation; is subject to the control of the clearing corporation; and
 - a. If a security- certificated,
 - a- (1) Is in the custody of a clearing corporation or of, another clearing corporation, a custodian bank, or a nominee of either subject to the instructions of the clearing corporation any of them; and
 - b- (2) Is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

- c. is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged or
- b. If uncertified, is registered in the name of a clearing corporation, another clearing corporation, or a nominee of any of them.
2. Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate, or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or, pledges, or releases of the same security.
 3. A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 41-08-17) representing the amount of the obligation or the number of shares or rights transferred or pledged is effective (section 41-08-29) and the purchaser acquires the rights of the transferor (section 41-08-17). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 41-09-20 and 41-09-21) security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (section 41-08-36). A transferee or pledgee under this section is a holder may be a bona fide purchaser (section 41-08-18).
 4. A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this chapter.
 5. That entries made on the books of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.
 6. Under this section a clearing corporation shall, upon written request, shall furnish to any issuer within a reasonable time a list disclosing the names of all persons

who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each ~~such~~ security of the issuer on deposit. The clearing corporation may charge the issuer a fee for ~~such~~ the written list ~~provided~~, however, ~~that~~ the fee ~~shall~~ ~~must~~ bear a reasonable relation to the cost of furnishing ~~such~~ the list.

SECTION 37. Section 41-08-36.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-36.1. (8-321) Enforceability - Attachment - Perfection and termination of security interests.

1. A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to subsection 1 of section 41-08-29.
2. A security interest that has thus been transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under subdivision i of subsection 1 of section 41-08-29 becomes unperfected after twenty-one days, unless, within the twenty-one days, the requirements for transfer under any other provision of subsection 1 of section 41-08-29 are satisfied.
3. A security interest in a security is subject to the provisions of chapter 41-09, but:
 - a. No filing is required to perfect the security interest; and
 - b. No written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in subdivision h or i of subsection 1 of section 41-08-29.

A secured party has the rights and duties provided under section 41-09-20, to the extent they apply, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

4. Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of subsection 1 of section 41-08-29. If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer. In that case, the security

interest becomes unperfected after twenty-one days unless, within the twenty-one days, the security, or securities for which it has been exchanged, is transferred to the secured party or a person designated by him pursuant to subsection 1 of section 41-08-29.

SECTION 38. AMENDMENT. Section 41-08-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-37. (8-401) Duty of issuer to register transfer, pledge, or release.

1. Where If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer is under a duty to register the transfer as requested if:
 - a. The security is endorsed or the instruction was originated by the appropriate person or persons (section 41-08-24);
 - b. Reasonable assurance is given that those endorsements or instructions are genuine and effective (section 41-08-38);
 - c. The issuer has no duty to inquire into as to adverse claims or has discharged any such duty (section 41-08-39);
 - d. Any applicable law relating to the collection of taxes has been complied with; and
 - e. The transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.
2. Where If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting ~~it~~ a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

SECTION 39. AMENDMENT. Section 41-08-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-38. (8-402) Assurance that endorsements and instructions are effective.

1. The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (section 41-08-24) is genuine and effective:

- a. In all cases, a guarantee of the signature (subsection 1 or 2 of section 41-08-28) of the person endorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;
 - b. Where If the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;
 - c. Where If the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;
 - d. Where If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
 - e. Where If the endorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.
2. A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility, provided such those standards are not manifestly unreasonable.
 3. "Appropriate evidence of appointment or incumbency" in subsection 1 means:
 - a. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer, pledge, or release; or
 - b. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible, or in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such the evidence, provided such the standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this subdivision except to the extent that the contents relate directly to the appointment or incumbency.

4. The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subdivision b of subsection 3 both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

SECTION 40. AMENDMENT. Section 41-08-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-39. (8-403) Limited duty of inquiry Issuer's duty as to adverse claims.

1. An issuer to whom a certificated security is presented for registration is under a duty to inquire into adverse claims if:
 - a. A written notification of an adverse claim is received at a time and in a manner which that affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered certificated security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or
 - b. The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection 4 of section 41-08-38.
2. The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be is no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from after the date of mailing the notification, either:
 - a. An appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or
 - b. An indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved, from any loss which that it or they may suffer by complying with the adverse claim, is filed with the issuer.
3. Unless an issuer is charged with notice of an adverse claim from a controlling instrument which that it has

elected to require under subsection 4 of section 41-08-38 or receives notification of an adverse claim under subsection 1 of this section, where if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

- a. An issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such fiduciary with respect to the particular security.
 - b. An issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer.
 - c. ~~The~~ An issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and ~~even though~~ the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.
4. An issuer is under no duty as to adverse claims with respect to an uncertificated security except:
- a. Claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;
 - b. Claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;
 - c. Claims, including restrictions on transfer not imposed by the issuer, to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

- d. Claims with notice of which an issuer is charged from a controlling instrument that it has elected to require under subsection 4 of section 41-08-38.
5. If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:
 - a. Including a notation of the claim in any statements sent with respect to the security under subsections 3, 6, and 7 of section 41-08-44; and
 - b. Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.
6. If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee pursuant to section 41-08-44.
7. Notwithstanding subsections 4 and 5, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:
 - a. The claim was embodied in legal process that expressly provides otherwise;
 - b. The claim was asserted in a written notification from the registered pledgee;
 - c. The claim was one with notice of which the issuer was charged from a controlling instrument that it had elected to require under subsection 4 of section 41-08-38 in connection with the pledgee's request for transfer; or
 - d. The transfer requested is to the registered owner.

SECTION 41. AMENDMENT. Section 41-08-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-40. (8-404) Liability and nonliability for registration.

1. Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

- a. There were on or with ~~the~~ a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (section 41-08-24); and
 - b. The issuer had no duty ~~to inquire into~~ as to adverse claims or has discharged any such duty (section 41-08-39).
2. Where If an issuer has registered a transfer of a certificated security to a person not entitled to it the issuer on demand ~~must~~ shall deliver a like security to the true owner unless:
 - a. The registration was pursuant to subsection 1;
 - b. The owner is precluded from asserting any claim for registering the transfer under subsection 1 of section ~~41-04-41~~ 41-08-41; or
 - c. ~~Such~~ The delivery would result in overissue, in which case the issuer's liability is governed by section 41-08-04.
 3. If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the state that would have obtained if the improper registration had not been made unless:
 - a. The registration was pursuant to subsection 1; or
 - b. The registration would result in overissue, in which case the issuer's liability is governed by section 41-08-04.

SECTION 42. AMENDMENT. Section 41-08-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-41. (8-405) Lost, destroyed, and or stolen certificated securities.

1. Where If a certificated security has been lost, apparently destroyed, or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving ~~such~~ a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 41-08-40 or any claim to a new security under this section.
2. Where If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully

taken, the issuer ~~must~~ shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

- a. So requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
 - b. Files with the issuer a sufficient indemnity bond; and
 - c. Satisfies any other reasonable requirements imposed by the issuer.
3. If, after the issue of the new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer ~~must~~ shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 41-08-04. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

SECTION 43. AMENDMENT. Section 41-08-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-42. (8-406) Duty of authenticating trustee, transfer agent, or registrar.

1. ~~Where~~ If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities or in the issue of new securities or in the cancellation of surrendered securities:
 - a. He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
 - b. He has with regard to the particular function he performs the same obligation to the holder or owner of the a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

2. Notice to an authenticating trustee, transfer agent, registrar, or other such agent is notice to the issuer with respect to the functions performed by the agent.

SECTION 44. Section 41-08-43 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-43. (8-407) Exchangeability of securities.

1. No issuer is subject to the requirements of this section unless it regularly maintains a system for the issue of the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners that includes the person in whose name the new security is to be registered.
2. Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (section 41-08-39), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.
3. Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:
 - a. The registered owner, if the uncertificated security was not subject to a registered pledge; or
 - b. The registered pledgee, if the uncertificated security was subject to a registered pledge.

SECTION 45. Section 41-08-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-44. (8-408) Statements of uncertificated securities.

1. Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units transferred.
 - c. The name, address, and taxpayer identification number, if any, of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee.
 - d. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
 - e. The date the transfer was registered.
2. Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units pledged.
 - c. The name, address, and taxpayer identification number, if any, of the registered owner and the registered pledgee.
 - d. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
 - e. The date the pledge was registered.
3. Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units released from pledge.

- c. The number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement.
 - d. The name, address, and taxpayer identification number, if any, of any registered pledgee and the number of shares or units subject to the pledge.
 - e. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
7. At periodic intervals no less frequent than once each year and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated, written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The name, address, and taxpayer identification number, if any, of the registered owner.
 - c. The name, address, and taxpayer identification number, if any, of the registered pledgee.
 - d. The number of shares or units subject to the pledge.
 - e. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
8. If the issuer sends the statements described in subsections 6 and 7 at periodic intervals no less frequent than quarter-annually, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.
9. Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows:

This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security.

SECTION 46. AMENDMENT. Subdivision a of subsection 3 of section 41-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. This subsection applies to accounts (other than an account described in subsection 5 on minerals) ~~and~~ general intangibles other than uncertificated securities, and to goods ~~which that~~ are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, roadbuilding and construction machinery, and commercial harvesting machinery and the like, if the goods are equipment or are inventory-leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection 2.

SECTION 47. A new subsection to section 41-09-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Uncertificated securities. The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

SECTION 48. AMENDMENT. Subdivision i of subsection 1 of section 41-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- i. "Instrument" means a negotiable instrument (defined in section 41-03-04), ~~or~~ a certificated security (defined in section 41-08-02), or any other writing which that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

SECTION 49. AMENDMENT. Subsection 1 of section 41-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Subject to the provisions of section 41-04-18 on the security interest of the collecting bank, section 41-08-36.1 on security interests in securities, and section 41-09-13 on a security interest arising under the chapter on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:

- a. The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which that contains a description of the collateral and, in addition, when if the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.
- b. Value has been given.
- c. The debtor has rights in the collateral.

SECTION 50. AMENDMENT. Subsection 1 of section 41-09-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A financing statement must be filed to perfect all security interests except the following:
 - a. A security interest in collateral in possession of the secured party under section 41-09-26.
 - b. A security interest temporarily perfected in instruments or documents without delivery under section 41-09-25 or in proceeds for a ten-day period under section 41-09-27.
 - c. A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.
 - d. A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and fixture filing is required for priority over a conflicting real estate interest in a fixture to the extent provided in section 41-09-34.
 - e. An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.
 - f. A security interest of a collecting bank (section 41-04-18) or in securities (section 41-08-36.1) or arising under the chapter on sales (see section 41-09-13) or covered in subsection 3.
 - g. An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

SECTION 51. AMENDMENT. Section 41-09-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments ~~(other, other than certificated securities or instruments which that~~ constitute part of chattel paper), can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during ~~such that~~ period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in ~~instruments or a negotiable documents document or an instrument other than a~~ certificated security is perfected without filing or the taking of possession for a period of twenty-one days ~~from the time after~~ it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing ~~where if~~ a secured party having a perfected security interest in a negotiable document, an instrument, a negotiable document other than a certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or

- b. Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.
6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

SECTION 52. AMENDMENT. Section 41-09-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16), goods, instruments other than certificated securities, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

SECTION 53. AMENDMENT. Section 41-09-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-30. (9-309) Protection of purchasers of instruments and documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (section 41-03-32) or a holder to whom a negotiable document of title has been duly negotiated (section 41-07-30) or a bona fide purchaser of a security (section ~~41-08-17~~ 41-08-18) and such those holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such those holders or purchasers.

SECTION 54. AMENDMENT. Subsection 7 of section 41-09-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. If future advances are made while a security interest is perfected by filing ~~or~~, the taking of possession, or under section 41-08-36.1 on securities, the security interest has the same priority for the purposes of subsection 5 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases, a

perfected security interest has priority from the date the advance is made.

Approved April 4, 1985

CHAPTER 472

SENATE BILL NO. 2450
(Senators Bakewell, Redlin, Dotzenrod)
(Representatives Nicholas, Keller)

CENTRAL FILING CROP AND LIVESTOCK PROTECTION

AN ACT to create and enact subsections 9, 10, 11, 12, and 13 to section 41-09-28, four new subsections to section 41-09-42, and a new section to title 41 of the North Dakota Century Code, relating to a central notice system, the protection of buyers of crops and livestock, the responsibilities of the secretary of state for the central notice system, fees chargeable, and transition; to amend and reenact subsection 8 of section 11-18-01, subsection 1 of section 41-09-28, and section 41-09-46 of the North Dakota Century Code, relating to sales of crops or livestock, responsibilities of the secretary of state, and financing statements; to repeal subsections 4, 5, 6, 7, and 8 of section 41-09-28, relating to the certificate of ownership law; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 11-18-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Furnish upon written or telephonic request to ~~merchants,~~ ~~as referred to in subsection 7 of section 41-09-28,~~ ~~persons~~ the information contained in financing statements filed to perfect a security interest pursuant to chapter 41-09 when the collateral is farm products, and to provide written confirmation of the oral information provided upon receipt of a fee which shall be the same as for recording that instrument.

SECTION 2. AMENDMENT. Subsection 1 of section 41-09-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A buyer in the ordinary course of business (subsection 9 of section 41-01-11) other than a person buying farm products from a person engaged in farming operations takes

free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. A crop or livestock buyer is a buyer in the ordinary course of business as to security interests and liens if such person qualifies under the provisions of subsection 13. As used in this section, a crop or livestock buyer is a person who buys crops or livestock from, or who sells crops or livestock on a fee or commission for, a person engaged in farming operations.

SECTION 3. Subsections 9, 10, 11, 12, and 13 to section 41-09-28 of the North Dakota Century Code are hereby created and enacted to read as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise, which includes, but is not limited to, liens for threshing, crop production, fertilizer, farm chemicals, and seed, and landlord's lien, intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state a form prescribed by him which contains all of the following information:
- a. The name and address of the person engaged in farming operations.
 - b. The county of residence of the person engaged in farming operations.
 - c. The social security number of the person engaged in farming operations.
 - d. The name and address of the secured party or lienholder.
 - e. A description of the crops or livestock and their amount, if known, subject to the security interest or lien.
 - f. The legal description as to the location of the crops or livestock.

A form filed pursuant to this section is effective for a period of five years. The effectiveness and continuation of the form filed is to be treated as if it were filed as a financing statement.

10. A secured party who files the prescribed form with the secretary of state pursuant to subsection 9 shall advise the person engaged in farming operations of all of the following at the time the loan is made:
 - a. That the secured party will be filing such form with the secretary of state.
 - b. Of the information that will be part of the central notice system.
 - c. That the secretary of state will generate a list or lists monthly which will contain such information.
 - d. That a crop or livestock buyer is required to enter on the check or draft the name of secured parties or lienholders and the person engaged in farming operations so long as such information is part of the central notice system with the office of the secretary of state.
 - e. That at any time the debt is repaid, the secured party shall advise the person engaged in farming that the person has the right to demand a release of the debt, that the release must be filed with the appropriate officers by the secured party within thirty days.
11. When a crop or livestock buyer issues a check or draft to a person engaged in farming operations in payment for crops or livestock in order to take free of security interests or liens against such crops or livestock, the crop or livestock buyer must issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold and whose names appear on the most current list or lists distributed by the secretary of state at the time the check or draft is issued. No civil action may be commenced by a secured party or lienholder against a crop or livestock buyer for a loss incurred as a result of issuing a check or draft after January 1, 1986, which does not include the name of a secured party or lienholder under this section more than eighteen months after the date of the check or draft unless within the eighteen-month period the secured party or lienholder sends a notice as provided herein, but in no event can the action be commenced more than five years after the date of the check or draft. The notice must do all of the following:
 - a. Be sent by certified mail to, or personally served upon, the crop or livestock buyer.

- b. Name the person engaged in farming operations and the date of the check or draft which gives rise to the claim.
 - c. State the intention of the secured party or lienholder to make a claim.
 - d. State the amount the secured party or lienholder is claiming.
 - e. Give a description of and the amount of crops or livestock upon which the claim is based.
 - f. State that the secured party or lienholder has commenced an action seeking judgment against the person engaged in farming operations or such person has filed or has been placed in bankruptcy or receivership proceedings under chapter 32-10.
12. No complaint by a secured party or lienholder shall be filed or served against a crop or livestock buyer for collection of any loss sustained by the secured party or lienholder through any transaction filed pursuant to subsection 9 until all of the following have been accomplished and alleged:
- a. That a judgment has been obtained and a good faith effort made to collect that judgment against the person engaged in farming operations, or that proceedings against the person engaged in farming operations were stayed by federal bankruptcy proceedings, or that receivership proceedings have been commenced under chapter 32-10.
 - b. That within eighteen months following the date of the check or draft, the notice required to be sent pursuant to subsection 11 was served upon the crop or livestock buyer and reciting or incorporating by reference all the information contained in that notice.
 - c. List any other collateral taken by the secured party or lienholder as security on the same debt from the person engaged in farming operations, including a statement of value, status, and plans for application of such collateral to the indebtedness of the person engaged in farming operations.
13. A crop or livestock buyer takes free of any security interest created by, or any lien against crops or livestock of, the person engaged in farming operations if any of the following apply:

- a. The crop or livestock buyer has complied with the requirements of subsection 11 of this section.
- b. No evidence of security interests or liens appear on the most current lists prepared and distributed by the secretary of state pursuant to subsections 3 and 4 of section 41-09-46.
- c. The name of the person represented to be the seller of the crops or livestock does not appear on the most current lists prepared and distributed pursuant to subsections 3 and 4 of section 41-09-46.

SECTION 4. AMENDMENT. Section 41-09-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-46. (9-407) Information from filing officer - Central notice - Secretary of state to compile lists for crops and livestock - Distribution of lists.

1. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.
2. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for such a certificate shall be as provided by section 41-09-42. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a fee as provided by section 41-09-42.
3. The secretary of state shall develop and implement a central notice system which shall contain the information filed with his office pursuant to subsection 9 of section 41-09-28. From the central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contains the information as filed on the forms pursuant to subsection 9 of section 41-09-28. The list shall be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If a request is made, the lists shall be in printed form and on

microfiche. Each list shall conspicuously note its effective date.

4. The lists prepared pursuant to subsection 3 shall be distributed monthly by mail at least five business days in advance of their effective date. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 41-09-42.
5. Upon a verbal request of any person, the secretary of state or a designee shall verbally provide information contained on the list generated through the central notice system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state and the secretary of state shall confirm the information given. The fee for a verbal request and such a certificate shall be as provided by section 41-09-42.

SECTION 5. Four new subsections to section 41-09-42 of the North Dakota Century Code are hereby created and enacted to read as follows:

The fee for filing a form with the secretary of state pursuant to subsection 9 of section 41-09-28 is not to exceed five dollars.

The fee for furnishing information on a verbal request pursuant to subsection 5 of section 41-09-46 is two dollars.

The fee for furnishing a certificate pursuant to subsection 5 of section 41-09-46 is five dollars.

The fee for furnishing lists pursuant to subsection 4 of section 41-09-46 shall be established by the secretary of state, but not to exceed eight dollars for a microfiche list and twenty-five dollars for a printed list.

SECTION 6. A new section to title 41 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transition provision to central notice system.

1. Until January 1, 1986, a merchant who purchases or commission merchant who sells farm products for another for a fee or commission takes free of security interest created by the seller only if the requirements of subsection 7 of section 41-09-28 are met.

2. Until December 1, 1985, copies of security documents filed by secured parties or lienholders with the register of deeds along with the additional information to be filed pursuant to subsection 9 of section 41-09-28 may be filed with the secretary of state and such documents shall be effective for five years under the central notice system.
3. The secretary of state or a designee shall mail the first lists for crops and livestock created under the central notice system five business days prior to their effective day in January 1986.

SECTION 7. REPEAL. Subsections 4, 5, 6, 7, and 8 of section 41-09-28 of the North Dakota Century Code are hereby repealed.

SECTION 8. EFFECTIVE DATE. Sections 2 and 7 of this Act and subsections 11, 12, and 13 of section 41-09-28 as contained in section 3 of this Act become effective on January 1, 1986.

Approved April 15, 1985

CHAPTER 473

HOUSE BILL NO. 1595
(A. Williams, Dotzenrod, Shide)

NOTICE OF ASSIGNMENT

AN ACT to amend and reenact subsection 3 of section 41-09-39 of the North Dakota Century Code, relating to the notice of an assignment which must be given an account debtor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 41-09-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The account debtor is authorized to pay the assignor until the account debtor receives notification which must be given by certified mail that the amount due or to become due has been assigned and that payment is to be made to the assignee. The notification of assignment need not be made if the intent to assign to an identified assignee is stated and acknowledged in the account documents. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

Approved March 27, 1985