

Introduced by

Judiciary Committee

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

1 A BILL for an Act to create and enact a new subsection to section 41-08-03, a new subsection
2 to section 41-08-10, sections 41-09-05.1, 41-09-07.1, 41-09-07.2, 41-09-26.1, 41-09-26.2,
3 41-09-34.1, and 41-09-46.1, a new subsection to section 41-09-70, and chapters 41-11 and
4 41-12 of the North Dakota Century Code, relating to the adoption of the Uniform Commercial
5 Code amendments (2022); to amend and reenact sections 41-01-09, 41-01-12, 41-01-15,
6 41-01-20, 41-02-02, 41-02-06, 41-02-08, 41-02-09, 41-02-10, and 41-02-12, subsection 2 of
7 section 41-02-16, section 41-02.1-02, subsection 1 of section 41-02.1-03, sections 41-02.1-07,
8 41-02.1-10, 41-02.1-11, 41-02.1-12, and 41-02.1-14, subsection 2 of section 41-02.1-17,
9 subsection 1 of section 41-03-04, subsection 1 of section 41-03-05, sections 41-03-38,
10 41-03-66, 41-04.1-03, 41-04.1-09, 41-04.1-10, and 41-04.1-11, subsection 3 of section
11 41-04.1-15, subdivision b of subsection 2 of section 41-04.1-16, subsection 1 of section
12 41-04.1-18, subsection 1 of section 41-04.1-19, sections 41-04.1-25, 41-05-04, 41-05-16,
13 41-07-02, 41-07-06, 41-08-02, 41-08-06, 41-08-29, 41-09-02, 41-09-04, and 41-09-05,
14 subsection 2 of section 41-09-13, section 41-09-14, subsection 3 of section 41-09-17, sections
15 41-09-18, 41-09-19, 41-09-20, and 41-09-21, subsection 1 of section 41-09-24, subsection 1 of
16 section 41-09-25, sections 41-09-30, 41-09-32, 41-09-33, 41-09-34, 41-09-36, 41-09-37,
17 41-09-43, 41-09-44, 41-09-50, 41-09-51, and 41-09-52, subsection 6 of section 41-09-54,
18 section 41-09-61, subdivision b of subsection 1 of section 41-09-66, sections 41-09-68 and
19 41-09-80, subsection 2 of section 41-09-98, section 41-09-102, subdivision a of subsection 1 of
20 section 41-09-105, section 41-09-108, subsection 1 of section 41-09-111, subsection 1 of
21 section 41-09-114, section 41-09-115, subdivision a of subsection 1 of section 41-09-116, and
22 sections 41-09-119 and 41-09-123 of the North Dakota Century Code, relating to the adoption of
23 the Uniform Commercial Code amendments (2022).

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

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

3 **41-01-09. (1-201) General definitions.**

- 4 1. Unless the context otherwise requires, words or phrases defined in this section, or in
5 additional definitions contained in other chapters of this title which apply to particular
6 chapters or parts of chapters, have the meanings stated.
- 7 2. Subject to definitions contained in other chapters of this title which apply to particular
8 chapters or parts of chapters:
- 9 a. "Action", in the sense of a judicial proceeding, includes recoupment,
10 counterclaim, setoff, suit in equity, and any other proceeding in which rights are
11 determined.
- 12 b. "Aggrieved party" means a party entitled to pursue a remedy.
- 13 c. "Agreement", as distinguished from "contract", means the bargain of the parties
14 in fact, as found in their language or inferred from other circumstances, including
15 course of performance, course of dealing, or usage of trade as provided under
16 section 41-09-17.
- 17 d. "Bank" means a person engaged in the business of banking and includes a
18 savings bank, savings and loan association, credit union, and trust company.
- 19 e. "Bearer" means a person in control of a negotiable electronic document of title or
20 a person in possession of a negotiable instrument, negotiable tangible document
21 of title, or certificated security that is payable to bearer or indorsed in blank.
- 22 f. "Bill of lading" means a document of title evidencing the receipt of goods for
23 shipment issued by a person engaged in the business of directly or indirectly
24 transporting or forwarding goods. The term does not include a warehouse receipt.
- 25 g. "Branch" includes a separately incorporated foreign branch of a bank.
- 26 h. "Burden of establishing" a fact means the burden of persuading the trier of fact
27 that the existence of the fact is more probable than its nonexistence.
- 28 i. "Buyer in ordinary course of business" means a person that buys goods in good
29 faith, without knowledge that the sale violates the rights of another person in the
30 goods, and in the ordinary course from a person, other than a pawnbroker, in the
31 business of selling goods of that kind. A person buys goods in the ordinary

1 course if the sale to the person comports with the usual or customary practices in
2 the kind of business in which the seller is engaged or with the seller's own usual
3 or customary practices. A person that sells oil, gas, or other minerals at the
4 wellhead or minehead is a person in the business of selling goods of that kind. A
5 buyer in ordinary course of business may buy for cash, by exchange of other
6 property, or on secured or unsecured credit, and may acquire goods or
7 documents of title under a pre-existing contract for sale. Only a buyer that takes
8 possession of the goods or has a right to recover the goods from the seller under
9 chapter 41-02 may be a buyer in ordinary course of business. "Buyer in ordinary
10 course of business" does not include a person that acquires goods in a transfer in
11 bulk or as security for or in total or partial satisfaction of a money debt.

12 j. "Conspicuous", with reference to a term, means so written, displayed, or
13 presented that, based on the totality of the circumstances, a reasonable person
14 against which it is to operate ought to have noticed it. Whether a term is
15 "conspicuous" or not is a decision for the court. ~~Conspicuous terms include the~~
16 ~~following:~~

17 (1) ~~A heading in capitals equal to or greater in size than the surrounding text, or~~
18 ~~in contrasting type, font, or color to the surrounding text of the same or~~
19 ~~lesser size; and~~

20 (2) ~~Language in the body of a record or display in larger type than the~~
21 ~~surrounding text, or in contrasting type, font, or color to the surrounding text~~
22 ~~of the same size, or set off from surrounding text of the same size by~~
23 ~~symbols or other marks that call attention to the language.~~

24 k. "Consumer" means an individual who enters into a transaction primarily for
25 personal, family, or household purposes.

26 l. "Contract", as distinguished from "agreement", means the total legal obligation
27 that results from the parties' agreement as determined by this title as
28 supplemented by any other applicable laws.

29 m. "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any
30 representative of creditors, including an assignee for the benefit of creditors, a

1 trustee in bankruptcy, a receiver in equity, and an executor or administrator of an
2 insolvent debtor's or assignor's estate.

3 n. "Defendant" includes a person in the position of defendant in a counterclaim,
4 cross-claim, or third-party claim.

5 o. "Delivery", with respect to an electronic document of title, means voluntary
6 transfer of control and, with respect to an instrument, a tangible document of title,
7 or an authoritative tangible copy of a record evidencing chattel paper, means
8 voluntary transfer of possession.

9 p. "Document of title" means a record that in the regular course of business or
10 financing is treated as adequately evidencing that the person in possession or
11 control of the record is entitled to receive, control, hold, and dispose of the record
12 and the goods the record covers and that purports to be issued by or addressed
13 to a bailee and to cover goods in the bailee's possession which are either
14 identified or are fungible portions of an identified mass. The term includes a bill of
15 lading, transport document, dock warrant, dock receipt, warehouse receipt, and
16 order for delivery of goods. An electronic document of title means a document of
17 title evidenced by a record consisting of information stored in an electronic
18 medium. A tangible document of title means a document of title evidenced by a
19 record consisting of information that is inscribed on a tangible medium.

20 q. "Electronic" means relating to technology having electrical, digital, magnetic,
21 wireless, optical, electromagnetic, or similar capabilities.

22 r. "Fault" means a default, breach, or wrongful act or omission.

23 r.s. "Fungible goods" means:

24 (1) Goods of which any unit, by nature or usage of trade, is the equivalent of
25 any other like unit; or

26 (2) Goods that by agreement are treated as equivalent.

27 s.t. "Genuine" means free of forgery or counterfeiting.

28 t.u. "Good faith", except as otherwise provided in chapter 41-05, means honesty in
29 fact and the observance of reasonable commercial standards of fair dealing.

30 u.v. "Holder" means:

- 1 (1) The person in possession of a negotiable instrument that is payable either
2 to bearer or to an identified person that is the person in possession;
3 (2) The person in possession of a document of title if the goods are deliverable
4 either to bearer or to the order of the person in possession; or
5 (3) The person in control, other than pursuant to subsection 7 of section
6 41-07-06, of a negotiable electronic document of title.

7 v.w. "Insolvency proceeding" includes an assignment for the benefit of creditors or
8 other proceeding intended to liquidate or rehabilitate the estate of the person
9 involved.

10 w.x. "Insolvent" means:

- 11 (1) Having generally ceased to pay debts in the ordinary course of business
12 other than as a result of bona fide dispute;
13 (2) Being unable to pay debts as they become due; or
14 (3) Being insolvent within the meaning of federal bankruptcy law.

15 x.y. "Money" means a medium of exchange that is currently authorized or adopted by
16 a domestic or foreign government. The term includes a monetary unit of account
17 established by an intergovernmental organization, or by agreement between two
18 or more countries. The term does not include an electronic record that is a
19 medium of exchange recorded and transferable in a system that existed and
20 operated for the medium of exchange before the medium of exchange was
21 authorized or adopted by the government.

22 y.z. "Organization" means a person other than an individual.

23 z.aa. "Party", as distinguished from "third party", means a person that has engaged in
24 a transaction or made an agreement subject to this title.

25 aa.bb. "Person" means an individual, a corporation, a business trust, an estate, a trust,
26 a partnership, a limited liability company, an association, a joint venture, a
27 government, a governmental subdivision, an agency, or an instrumentality, ~~a~~
28 ~~public corporation~~, or any other legal or commercial entity. The term includes a
29 protected series, however denominated, of an entity if the protected series is
30 established under law other than this title which limits, or limits if conditions
31 specified under the law are satisfied, the ability of a creditor of the entity or of any

1 other protected series of the entity to satisfy a claim from assets of the protected
2 series.

3 ~~bb-cc.~~ "Present value" means the amount as of a date certain of one or more sums
4 payable in the future, discounted to the date certain by use of either an interest
5 rate specified by the parties if that rate is not manifestly unreasonable at the time
6 the transaction is entered or, if an interest rate is not so specified, a commercially
7 reasonable rate that takes into account the facts and circumstances at the time
8 the transaction is entered.

9 ~~ee-dd.~~ "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge,
10 lien, security interest, issue or reissue, gift, or any other voluntary transaction
11 creating an interest in property.

12 ~~dd-ee.~~ "Purchaser" means a person that takes by purchase.

13 ~~ee-ff.~~ "Record" means information that is inscribed on a tangible medium or that is
14 stored in an electronic or other medium and is retrievable in perceivable form.

15 ~~ff-gg.~~ "Remedy" means any remedial right to which an aggrieved party is entitled with
16 or without resort to a tribunal.

17 ~~gg-hh.~~ "Representative" means a person empowered to act for another, including an
18 agent, an officer of a corporation or association, and a trustee, executor, or
19 administrator of an estate.

20 ~~hh-ii.~~ "Right" includes remedy.

21 ~~ii-jj.~~ "Security interest" means an interest in personal property or fixtures which
22 secures payment or performance of an obligation. "Security interest" includes any
23 interest of a consignor and a buyer of accounts, chattel paper, a payment
24 intangible, or a promissory note in a transaction that is subject to chapter 41-09.
25 "Security interest" does not include the special property interest of a buyer of
26 goods on identification of those goods to a contract for sale under section
27 41-02-46, but a buyer may also acquire a "security interest" by complying with
28 chapter 41-09. Except as otherwise provided in section 41-02-53, the right of a
29 seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire
30 possession of the goods is not a "security interest", but a seller or lessor may
31 also acquire a "security interest" by complying with chapter 41-09. The retention

1 or reservation of title by a seller of goods notwithstanding shipment or delivery to
2 the buyer under section 41-02-46 is limited in effect to a reservation of a "security
3 interest". Whether a transaction in the form of a lease creates a "security interest"
4 is determined under section 41-01-11.

5 ~~jj-kk.~~ "Send", in connection with a ~~writing, record, or notice~~notification, means:

- 6 (1) To deposit in the mail ~~or~~ deliver for transmission, or transmit by any other
7 usual means of communication, with postage or cost of transmission
8 provided for ~~and properly addressed and, in the case of an instrument, to an~~
9 ~~address specified on the instrument or otherwise agreed, or if there be~~
10 ~~none,~~ addressed to any address reasonable under the circumstances; or
11 (2) ~~In any other way to cause to be received any record or notice within the time~~
12 ~~it would have arrived if properly sent~~To cause the record or notification to be
13 received within the time it would have been received if properly sent under
14 paragraph 1.

15 ~~kk.~~ "Signed" ~~includes using any symbol executed or adopted with present intention to~~
16 ~~adopt or accept a writing~~

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

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

24 ~~nn-oo.~~ "Surety" includes a guarantor or other secondary obligor.

25 ~~pp-qq.~~ "Term" means a portion of an agreement that relates to a particular matter.

26 ~~rr-ss.~~ "Unauthorized signature" means a signature made without actual, implied, or
27 apparent authority. The term includes a forgery.

28 ~~tt-uu.~~ "Warehouse receipt" means a document of title issued by a person engaged in
29 the business of storing goods for hire.

30 ~~vv-ww.~~ "Writing" includes printing, typewriting, or any other intentional reduction to
31 tangible form. "Written" has a corresponding meaning.

1 **SECTION 2. AMENDMENT.** Section 41-01-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **41-01-12. (1-204) Value.**

4 Except as otherwise provided in chapters 41-03, 41-04, ~~and 41-05~~, and 41-12, a person
5 gives value for rights if the person acquires the rights:

- 6 1. In return for a binding commitment to extend credit or for the extension of immediately
7 available credit, whether or not drawn upon and whether or not a chargeback is
8 provided for in the event of difficulties in collection;
- 9 2. As security for, or in total or partial satisfaction of, a pre-existing claim;
- 10 3. By accepting delivery under a pre-existing contract for purchase; or
- 11 4. In return for any consideration sufficient to support a simple contract.

12 **SECTION 3. AMENDMENT.** Section 41-01-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **41-01-15. (1-301) Territorial applicability - Parties' power to choose applicable law.**

- 15 1. Except as provided hereafter in this section, when a transaction bears a reasonable
16 relation to this state and also to another state or nation the parties may agree that the
17 law either of this state or of such other state or nation shall govern their rights and
18 duties. Failing such agreement, this title applies to transactions bearing an appropriate
19 relation to this state.
- 20 2. If one of the following provisions of this title specifies the applicable law, that provision
21 governs and a contrary agreement is effective only to the extent permitted by the law,
22 including the conflict of laws rules, so specified:
 - 23 a. Rights of creditors against sold goods. Section 41-02-47.
 - 24 b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
 - 25 c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
 - 26 d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
 - 27 e. Letters of credit. Section 41-05-16.
 - 28 f. Applicability of the chapter on investment securities. Section 41-08-10.
 - 29 g. Law governing perfection, the effect of perfection or nonperfection, and the
30 priority of security interests and agricultural liens. Sections 41-09-21 through
31 41-09-27.

1 h. Governing law in the chapter on controllable electronic records. Section
2 41-12-07.

3 **SECTION 4. AMENDMENT.** Section 41-01-20 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-01-20. (1-306) Waiver or renunciation of claim or right after breach.**

6 A claim or right arising out of an alleged breach may be discharged in whole or in part
7 without consideration by agreement of the aggrieved party in an ~~authenticated~~ signed record.

8 **SECTION 5. AMENDMENT.** Section 41-02-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **41-02-02. (2-102) Scope - Certain security and other transactions excluded from this**
11 **chapter.**

12 1. Unless the context otherwise requires, and except as provided in subsection 3, this
13 chapter applies to transactions in goods; it and, in the case of a hybrid transaction, it
14 applies to the extent provided in subsection 2.

15 2. In a hybrid transaction:

16 a. If the sale-of-goods aspects do not predominate, only the provisions of this
17 chapter which relate primarily to the sale-of-goods aspects of the transaction
18 apply, and the provisions that relate primarily to the transaction as a whole do not
19 apply.

20 b. If the sale-of-goods aspects predominate, this chapter applies to the transaction
21 but does not preclude application in appropriate circumstances of other law to
22 aspects of the transaction which do not relate to the sale of goods.

23 3. This chapter does not apply:

24 a. Apply to any ~~transaction which although that, even though~~ in the form of an
25 unconditional contract to sell or present sale is intended to operate, operates only
26 asto create a security transaction nor does this chapter impair interest; or

27 b. Impair or repeal any statute regulating sales to consumers, farmers, or other
28 specified classes of buyers.

29 **SECTION 6. AMENDMENT.** Section 41-02-06 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **41-02-06. (2-106) Definitions.**

2 1. In this chapter, unless the context otherwise requires:

3 a. "Agreement" and "contract" are limited to those relating to the present or future
4 sale of goods.

5 b. "Contract for sale" includes both a present sale of goods and a contract to sell
6 goods at a future time.

7 c. "Present sale" means a sale that is accomplished by the making of the contract.

8 d. "Sale" consists in the passing of title from the seller to the buyer for a price
9 (section 41-02-46).

10 2. "Cancellation" occurs when either party puts an end to the contract for breach by the
11 other and its effect is the same as that of "termination" except that the canceling party
12 also retains any remedy for breach of the whole contract or any unperformed balance.

13 3. Goods or conduct including any part of a performance are "conforming" or conform to
14 the contract when they are in accordance with the obligations under the contract.

15 4. "Hybrid transaction" means a single transaction involving a sale of goods and:

16 a. The provision of services;

17 b. A lease of other goods; or

18 c. A sale, lease, or license of property other than goods.

19 5. "Termination" occurs when either party pursuant to a power created by agreement or
20 law puts an end to the contract otherwise than for its breach. On "termination" all
21 obligations which are still executory on both sides are discharged but any right based
22 on prior breach or performance survives.

23 **SECTION 7. AMENDMENT.** Section 41-02-08 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-02-08. (2-201) Formal requirements - Statute of frauds.**

26 1. Except as otherwise provided in this section, a contract for the sale of goods for the
27 price of five hundred dollars or more is not enforceable by way of action or defense
28 unless there is ~~some writing~~ a record sufficient to indicate that a contract for sale has
29 been made between the parties and signed by the party against whom enforcement is
30 sought or by ~~that~~ the party's authorized agent or broker. A ~~writing~~ record is not
31 insufficient because it omits or incorrectly states a term agreed upon but the contract

1 is not enforceable under this subsection beyond the quantity of goods shown in such-
2 ~~writing~~the record.

3 2. Between merchants if within a reasonable time a ~~writing~~record in confirmation of the
4 contract and sufficient against the sender is received and the party receiving it has
5 reason to know its contents, it satisfies the requirements of subsection 1 against
6 ~~such~~the party unless ~~written~~ notice in a record of objection to its contents is given
7 within ten days after it is received.

8 3. A contract ~~which~~that does not satisfy the requirements of subsection 1 but which is
9 valid in other respects is enforceable:

- 10 a. If the goods are to be specially manufactured for the buyer and are not suitable
11 for sale to others in the ordinary course of the seller's business and the seller,
12 before notice of repudiation is received and under circumstances which
13 reasonably indicate that the goods are for the buyer, has made either a
14 substantial beginning of their manufacture or commitments for their procurement;
- 15 b. If the party against whom enforcement is sought admits in that party's pleading,
16 testimony, or otherwise in court that a contract for sale was made, but the
17 contract is not enforceable under this provision beyond the quantity of goods
18 admitted; or
- 19 c. With respect to goods for which payment has been made and accepted or which
20 have been received and accepted (section 41-02-69).

21 **SECTION 8. AMENDMENT.** Section 41-02-09 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **41-02-09. (2-202) Final ~~written~~ expression - Parol or extrinsic evidence.**

24 Terms with respect to which the confirmatory memoranda of the parties agree or which are
25 otherwise set forth in a ~~writing~~record intended by the parties as a final expression of their
26 agreement with respect to such terms as are included therein may not be contradicted by
27 evidence of any prior agreement or of a contemporaneous oral agreement but may be
28 explained or supplemented:

- 29 1. By course of performance, course of dealing, or usage of trade (section 41-01-17);
30 and

1 2. By evidence of consistent additional terms unless the court finds the writingrecord to
2 have been intended also as a complete and exclusive statement of the terms of the
3 agreement.

4 **SECTION 9. AMENDMENT.** Section 41-02-10 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **41-02-10. (2-203) Seals inoperative.**

7 The affixing of a seal to a writingrecord evidencing a contract for sale or an offer to buy or
8 sell goods does not constitute the writingrecord a sealed instrument and the law with respect to
9 sealed instruments does not apply to such a contract or offer.

10 **SECTION 10. AMENDMENT.** Section 41-02-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **41-02-12. (2-205) Firm offers.**

13 An offer by a merchant to buy or sell goods in a signed ~~writing which~~ record that by its terms
14 gives assurance that it will be held open is not revocable, for lack of consideration, during the
15 time stated or if no time is stated for a reasonable time, but in no event may such period of
16 irrevocability exceed three months; but any such term of assurance on a form supplied by the
17 offeree must be separately signed by the offeror.

18 **SECTION 11. AMENDMENT.** Subsection 2 of section 41-02-16 of the North Dakota Century
19 Code is amended and reenacted as follows:

20 2. A signed agreement ~~which~~ that excludes modification or rescission except by a signed
21 writing or other signed record cannot be otherwise modified or rescinded, but except
22 as between merchants such a requirement on a form supplied by the merchant must
23 be separately signed by the other party.

24 **SECTION 12. AMENDMENT.** Section 41-02.1-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **41-02.1-02. (2A-102) Scope.**

27 1. This chapter applies to any transaction, regardless of form, that creates a lease and, in
28 the case of a hybrid lease, it applies to the extent provided in subsection 2.

29 2. In a hybrid lease:

30 a. If the lease-of-goods aspects do not predominate:

- 1 (1) Only the provisions of this chapter which relate primarily to the lease-of-
2 goods aspects of the transaction apply, and the provisions that relate
3 primarily to the transaction as a whole do not apply;
4 (2) Section 41-02.1-18 applies if the lease is a finance lease; and
5 (3) Section 41-02.1-48 applies to the promises of the lessee in a finance lease
6 to the extent the promises are consideration for the right to possession and
7 use of the leased goods; and
8 b. If the lease-of-goods aspects predominate, this chapter applies to the
9 transaction, but does not preclude application in appropriate circumstances of
10 other law to aspects of the lease which do not relate to the lease of goods.

11 **SECTION 13. AMENDMENT.** Subsection 1 of section 41-02.1-03 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 1. In this chapter unless the context otherwise requires:
- 14 a. "Buyer in ordinary course of business" means a person who in good faith and
15 without knowledge that the sale is in violation of the ownership rights or security
16 interest or leasehold interest of a third party in the goods buys in ordinary course
17 from a person in the business of selling goods of that kind but does not include a
18 pawnbroker. "Buying" may be for cash or by exchange of other property or on
19 secured or unsecured credit and includes acquiring goods or documents of title
20 under a pre-existing contract for sale but does not include a transfer in bulk or as
21 security for or in total or partial satisfaction of a money debt.
- 22 b. "Cancellation" occurs when either party puts an end to the lease contract for
23 default by the other party.
- 24 c. "Commercial unit" means such a unit of goods as by commercial usage is a
25 single whole for purposes of lease and division of which materially impairs its
26 character or value on the market or in use. A commercial unit may be a single
27 article, as a machine, or a set of articles, as a suite of furniture or a line of
28 machinery, or a quantity, as a gross or carload, or any other unit treated in use or
29 in the relevant market as a single whole.
- 30 d. "Conforming" goods or performance under a lease contract means goods or
31 performance that is in accordance with the obligations under the lease contract.

- 1 e. "Consumer lease" means a lease that a lessor regularly engaged in the business
2 of leasing or selling makes to a lessee who is an individual and who takes under
3 the lease primarily for a personal, family, or household purpose if the total
4 payments to be made under the lease contract, excluding payments for options
5 to renew or buy, do not exceed twenty-five thousand dollars.
- 6 f. "Fault" means wrongful act, omission, breach, or default.
- 7 g. "Finance lease" means a lease in which:
- 8 (1) The lessor does not select, manufacture, or supply the goods;
- 9 (2) The lessor acquires the goods or the right to possession and use of the
10 goods in connection with the lease; and
- 11 (3) (a) The lessee receives a copy of the contract by which the lessor
12 acquired the goods or the right to possession and use of the goods
13 before signing the lease contract;
- 14 (b) The lessee's approval of the contract by which the lessor acquired the
15 goods or the right to possession and use of the goods is a condition to
16 effectiveness of the lease contract;
- 17 (c) The lessee, before signing the lease contract, receives an accurate
18 and complete statement designating the promises and warranties,
19 and any disclaimers of warranties, limitations, or modifications of
20 remedies, or liquidated damages, including those of any third party
21 such as the manufacturer of the goods, provided to the lessor by the
22 person supplying the goods in connection with or as part of the
23 contract by which the lessor acquired the goods or the right to
24 possession and use of the goods; or
- 25 (d) Only if the lease is not a consumer lease, before the lessee signs the
26 lease contract the lessor informs the lessee in writing of the identity of
27 the person supplying the goods to the lessor, unless the lessee has
28 selected that person and directed the lessor to acquire the goods or
29 the right to possession and use of the goods from that person, that the
30 lessee is entitled under this chapter to the promises and warranties,
31 including those of any third party, provided to the lessor by the person

1 supplying the goods in connection with or as part of the contract by
2 which the lessor acquired the goods or the right to possession and
3 use of the goods, and that the lessee may contact the person
4 supplying the goods to the lessor and receive an accurate and
5 complete statement of those promises and warranties, including any
6 disclaimers and limitations of them or of remedies.

7 h. "Goods" means all things that are movable at the time of identification to the
8 lease contract, or are fixtures (section 41-02.1-39), but the term does not include
9 money, documents, instruments, accounts, chattel paper, general intangibles, or
10 minerals or the like, including oil and gas, before extraction. The term also
11 includes the unborn young of animals.

12 i. "Hybrid lease" means a single transaction involving a lease of goods and:

13 (1) The provision of services;

14 (2) A sale of other goods; or

15 (3) A sale, lease, or license of property other than goods.

16 j. "Installment lease contract" means a lease contract that authorizes or requires
17 the delivery of goods in separate lots to be separately accepted, even though the
18 lease contract contains a clause "each delivery is a separate lease" or its
19 equivalent.

20 j.k. "Lease" means a transfer of the right to possession and use of goods for a term
21 in return for consideration, but a sale, including a sale on approval or a sale or
22 return, or retention or creation of a security interest is not a lease. Unless the
23 context clearly indicates otherwise, the term includes a sublease.

24 k.l. "Lease agreement" means the bargain, with respect to the lease, of the lessor
25 and the lessee in fact as found in their language or by implication from other
26 circumstances, including course of dealing or usage of trade or course of
27 performance (as provided in this chapter). Unless the context clearly indicates
28 otherwise, the term includes a sublease agreement.

29 t.m. "Lease contract" means the total legal obligation that results from the lease
30 agreement as affected by this chapter and any other applicable rules of law.

1 Unless the context clearly indicates otherwise, the term includes a sublease
2 contract.

3 m-n. "Leasehold interest" means the interest of the lessor or the lessee under a lease
4 contract.

5 n-o. "Lessee" means a person who acquires the right to possession and use of goods
6 under a lease. Unless the context clearly indicates otherwise, the term includes a
7 sublessee.

8 o-p. "Lessee in ordinary course of business" means a person who, in good faith and
9 without knowledge that the lease is in violation of the ownership rights or security
10 interest or leasehold interest of a third party in the goods, leases in ordinary
11 course from a person in the business of selling or leasing goods of that kind, but
12 does not include a pawnbroker. "Leasing" may be for cash or by exchange of
13 other property or on secured or unsecured credit and includes acquiring goods or
14 documents of title under a pre-existing lease contract but does not include a
15 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

16 p-q. "Lessor" means a person who transfers the right to possession and use of goods
17 under a lease. Unless the context clearly indicates otherwise, the term includes a
18 sublessor.

19 q-r. "Lessor's residual interest" means the lessor's interest in the goods after
20 expiration, termination, or cancellation of the lease contract.

21 r-s. "Lien" means a charge against or interest in goods to secure payment of a debt
22 or performance of an obligation, but the term does not include a security interest.

23 s-t. "Lot" means a parcel or a single article that is the subject matter of a separate
24 lease or delivery, regardless of whether it is sufficient to perform the lease
25 contract.

26 t-u. "Merchant lessee" means a lessee that is a merchant with respect to goods of
27 the kind subject to the lease.

28 u-v. "Present value" means the amount as of a date certain of one or more sums
29 payable in the future, discounted to the date certain. The discount is determined
30 by the interest rate specified by the parties if the rate was not manifestly
31 unreasonable at the time the transaction was entered into; otherwise, the

1 discount is determined by a commercially reasonable rate that takes into account
2 the facts and circumstances of each case at the time the transaction was entered
3 into.

4 ~~v.w.~~ "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,
5 gift, or any other voluntary transaction creating an interest in goods.

6 ~~w.x.~~ "Sublease" means a lease of goods the right to possession and use of which was
7 acquired by the lessor as a lessee under an existing lease.

8 ~~x.y.~~ "Supplier" means a person from whom a lessor buys or leases goods to be
9 leased under a finance lease.

10 ~~y.z.~~ "Supply contract" means a contract under which a lessor buys or leases goods to
11 be leased.

12 ~~z.aa.~~ "Termination" occurs when either party under a power created by agreement or
13 law puts an end to the lease contract otherwise than for default.

14 **SECTION 14. AMENDMENT.** Section 41-02.1-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **41-02.1-07. (2A-107) Waiver or renunciation of claim or right after default.**

17 Any claim or right arising out of an alleged default or breach of warranty may be discharged
18 in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed
19 ~~and~~record delivered by the aggrieved party.

20 **SECTION 15. AMENDMENT.** Section 41-02.1-10 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **41-02.1-10. (2A-201) Statute of frauds.**

- 23 1. A lease contract is not enforceable by way of action or defense unless:
- 24 a. The total payments to be made under the lease contract, excluding payments for
25 options to renew or buy, are less than one thousand dollars; or
- 26 b. There is a ~~writing~~record, signed by the party against whom enforcement is sought
27 or by that party's authorized agent, sufficient to indicate that a lease contract has
28 been made between the parties and to describe the goods leased and the lease
29 term.

- 1 2. Any description of leased goods or of the lease term is sufficient and satisfies
2 subdivision b of subsection 1, whether or not it is specific, if it reasonably identifies
3 what is described.
- 4 3. A writingrecord is not insufficient because it omits or incorrectly states a term agreed
5 upon, but the lease contract is not enforceable under subdivision b of subsection 1
6 beyond the lease term and the quantity of goods shown in the writingrecord.
- 7 4. A lease contract that does not satisfy the requirements of subsection 1, but which is
8 valid in other respects, is enforceable:
- 9 a. If the goods are to be specially manufactured or obtained for the lessee and are
10 not suitable for lease or sale to others in the ordinary course of the lessor's
11 business, and the lessor, before notice of repudiation is received and under
12 circumstances that reasonably indicate that the goods are for the lessee, has
13 made either a substantial beginning of their manufacture or commitments for their
14 procurement;
- 15 b. If the party against whom enforcement is sought admits in that party's pleading,
16 testimony, or otherwise in court that a lease contract was made, but the lease
17 contract is not enforceable under this provision beyond the quantity of goods
18 admitted; or
- 19 c. With respect to goods that have been received and accepted by the lessee.
- 20 5. The lease term under a lease contract referred to in subsection 4 is:
- 21 a. If there is a writingrecord signed by the party against whom enforcement is
22 sought or by that party's authorized agent specifying the lease term, the term so
23 specified;
- 24 b. If the party against whom enforcement is sought admits in that party's pleading,
25 testimony, or otherwise in court a lease term, the term so admitted; or
- 26 c. A reasonable lease term.

27 **SECTION 16. AMENDMENT.** Section 41-02.1-11 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **41-02.1-11. (2A-202) Final written expression - Parol or extrinsic evidence.**

30 Terms with respect to which the confirmatory memoranda of the parties agree or which are
31 otherwise set forth in a writingrecord intended by the parties as a final expression of their

1 agreement with respect to such terms as are included therein may not be contradicted by
2 evidence of any prior agreement or of a contemporaneous oral agreement but may be
3 explained or supplemented by ~~course~~:

- 4 1. Course of dealing or usage of trade or by course of performance; and ~~by evidence~~
- 5 2. Evidence of consistent additional terms unless the court finds the writingrecord to have
6 been intended also as a complete and exclusive statement of the terms of the
7 agreement.

8 **SECTION 17. AMENDMENT.** Section 41-02.1-12 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **41-02.1-12. (2A-203) Seals inoperative.**

11 The affixing of a seal to a writingrecord evidencing a lease contract or an offer to enter into
12 a lease contract does not render the writingrecord a sealed instrument and the law with respect
13 to sealed instruments does not apply to the lease contract or offer.

14 **SECTION 18. AMENDMENT.** Section 41-02.1-14 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **41-02.1-14. (2A-205) Firm offers.**

17 An offer by a merchant to lease goods to or from another person in a signed writingrecord
18 that by its terms gives assurance it will be held open is not revocable, for lack of consideration,
19 during the time stated or, if no time is stated, for a reasonable time, but in no event may the
20 period of irrevocability exceed three months. Any such term of assurance on a form supplied by
21 the offeree must be separately signed by the offeror.

22 **SECTION 19. AMENDMENT.** Subsection 2 of section 41-02.1-17 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 2. A signed lease agreement that excludes modification or rescission except by a signed
25 writingrecord may not be otherwise modified or rescinded, but, except as between
26 merchants, such a requirement on a form supplied by a merchant must be separately
27 signed by the other party.

28 **SECTION 20. AMENDMENT.** Subsection 1 of section 41-03-04 of the North Dakota Century
29 Code is amended and reenacted as follows:

- 1 1. "Negotiable instrument" means an unconditional promise or order to pay a fixed
2 amount of money, with or without interest or other charges described in the promise or
3 order, if it:
- 4 a. Is payable to bearer or to order at the time it is issued or first comes into
5 possession of a holder;
- 6 b. Is payable on demand or at a definite time; and
- 7 c. Does not state any other undertaking or instruction by the person promising or
8 ordering payment to do any act in addition to the payment of money, except that
9 the promise or order may contain an undertaking or power to give, maintain, or
10 protect collateral to secure payment, an authorization or power to the holder to
11 confess judgment or realize on or dispose of collateral, ~~or a waiver of the benefit~~
12 of any law intended for the advantage or protection of any obligor, a term that
13 specifies the law that governs the promise or order, or an undertaking to resolve
14 in a specified forum a dispute concerning the promise or order.

15 **SECTION 21. AMENDMENT.** Subsection 1 of section 41-03-05 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 1. "Issue" means ~~the~~:
- 18 a. The first delivery of an instrument by the maker or drawer, whether to a holder or
19 nonholder, for the purpose of giving rights on the instrument to any person; ~~or~~
- 20 b. If agreed by the payee, the first transmission by the drawer to the payee of an
21 image of an item and information derived from the item which enables the
22 depository bank to collect the item by transferring or presenting under federal law
23 an electronic check.

24 **SECTION 22. AMENDMENT.** Section 41-03-38 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **41-03-38. (3-401) Signature.**

27 4. A person is not liable on an instrument unless the person signed the instrument or the
28 person is represented by an agent or representative who signed the instrument and the
29 signature is binding on the represented person under section 41-03-39.

- 30 2. ~~A signature may be made manually or by means of a device or machine and by the~~
31 ~~use of any name, including any trade or assumed name, or by any word, mark, or~~

1 symbol executed or adopted by a person with present intention to authenticate a
2 writing.

3 **SECTION 23. AMENDMENT.** Section 41-03-66 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-03-66. (3-604) Discharge by cancellation or renunciation.**

- 6 1. A person entitled to enforce an instrument may, with or without consideration,
7 discharge the obligation of a party to pay the instrument by an intentional voluntary act
8 such as surrender of the instrument to the party, destruction, mutilation, or cancellation
9 of the instrument, cancellation or striking out of the party's signature, or the addition of
10 words to the instrument indicating discharge or by agreeing not to sue or otherwise
11 renouncing rights against the party by a signed writing record. The obligation of a party
12 to pay a check is not discharged solely by destruction of the check in connection with
13 a process in which information is extracted from the check and an image of the check
14 is made and, subsequently, the information and image are transmitted for payment.
15 2. Cancellation or striking out of an endorsement under subsection 1 does not affect the
16 status and rights of a party derived from the endorsement.

17 **SECTION 24. AMENDMENT.** Section 41-04.1-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **41-04.1-03. (4A-103) Payment order - Definitions.**

- 20 1. In this chapter:
21 a. "Beneficiary" means the person to be paid by the beneficiary's bank.
22 b. "Beneficiary's bank" means the bank identified in a payment order in which an
23 account of the beneficiary is to be credited pursuant to the order or which
24 otherwise is to make payment to the beneficiary if the order does not provide for
25 payment to an account.
26 c. "Payment order" means an instruction of a sender to a receiving bank,
27 transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause
28 another bank to pay, a fixed or determinable amount of money to a beneficiary if:
29 (1) The instruction does not state a condition to payment to the beneficiary
30 other than time of payment.

- 1 (2) The receiving bank is to be reimbursed by debiting an account of, or
2 otherwise receiving payment from, the sender.
- 3 (3) The instruction is transmitted by the sender directly to the receiving bank or
4 to an agent, funds-transfer system, or communication system for transmittal
5 to the receiving bank.
- 6 d. "Receiving bank" means the bank to which the sender's instruction is addressed.
- 7 e. "Sender" means the person giving the instruction to the receiving bank.
- 8 2. If an instruction complying with subdivision a of subsection 1 is to make more than one
9 payment to a beneficiary, the instruction is a separate payment order with respect to
10 each payment.
- 11 3. A payment order is issued when it is sent to the receiving bank.

12 **SECTION 25. AMENDMENT.** Section 41-04.1-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **41-04.1-09. (4A-201) Security procedure.**

15 "Security procedure" means a procedure established by agreement of a customer and a
16 receiving bank for the purpose of verifying that a payment order or communication amending or
17 canceling a payment order is that of the customer or detecting error in the transmission or the
18 content of the payment order or communication. A security procedure may impose an obligation
19 on the receiving bank or the customer and may require the use of algorithms or other codes,
20 identifying words or numbers, symbols, sounds, biometrics, encryption, callback procedures, or
21 similar security devices. Comparison of a signature on a payment order or communication with
22 an authorized specimen signature of the customer or requiring a payment order to be sent from
23 a known electronic mail address, internet protocol address, or telephone number is not by itself
24 a security procedure.

25 **SECTION 26. AMENDMENT.** Section 41-04.1-10 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **41-04.1-10. (4A-202) Authorized and verified payment orders.**

- 28 1. A payment order received by the receiving bank is the authorized order of the person
29 identified as sender if that person authorized the order or is otherwise bound by it
30 under the law of agency.

- 1 2. If a bank and its customer have agreed that the authenticity of payment orders issued
2 to the bank in the name of the customer as sender will be verified under a security
3 procedure, a payment order received by the receiving bank is effective as the order of
4 the customer, whether or not authorized, if the security procedure is a commercially
5 reasonable method of providing security against unauthorized payment orders, and
6 the bank proves that it accepted the payment order in good faith and in compliance
7 with the bank's obligations under the security procedure and any ~~written~~ agreement or
8 instruction of the customer, evidenced by a record, restricting acceptance of payment
9 orders issued in the name of the customer. The bank is not required to follow an
10 instruction that violates a ~~written~~ agreement with the customer, evidenced by a
11 record, or notice of which is not received at a time and in a manner affording the bank
12 a reasonable opportunity to act on it before the payment order is accepted.
- 13 3. Commercial reasonableness of a security procedure is a question of law to be
14 determined by considering the wishes of the customer expressed to the bank, the
15 circumstances of the customer known to the bank, including the size, type, and
16 frequency of payment orders normally issued by the customer to the bank, alternative
17 security procedures offered to the customer, and security procedures in general use
18 by customers and receiving banks similarly situated. A security procedure is deemed
19 to be commercially reasonable if the security procedure was chosen by the customer
20 after the bank offered, and the customer refused, a security procedure that was
21 commercially reasonable for that customer, and the customer expressly agreed in
22 writing a record to be bound by any payment order, whether or not authorized, issued
23 in its name and accepted by the bank in compliance with the bank's obligations under
24 the security procedure chosen by the customer.
- 25 4. In this chapter the term "sender" includes the customer in whose name a payment
26 order is issued if the order is the authorized order of the customer under subsection 1
27 or is effective as the order of the customer under subsection 2.
- 28 5. This section applies to amendments and cancellations of payment orders to the same
29 extent it applies to payment orders.

1 6. Except as provided in this section and in subdivision a of subsection 1 of section
2 41-04.1-11, rights and obligations arising under this section or section 41-04.1-11 may
3 not be varied by agreement.

4 **SECTION 27. AMENDMENT.** Section 41-04.1-11 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **41-04.1-11. (4A-203) Unenforceability of certain verified payment orders.**

- 7 1. If an accepted payment order is not, under subsection 1 of section 41-04.1-10, an
8 authorized order of a customer identified as sender, but is effective as an order of the
9 customer under subsection 2 of section 41-04.1-10, the following rules apply:
- 10 a. By express ~~written~~ agreement evidenced by a record, the receiving bank may
11 limit the extent to which it is entitled to enforce or retain payment of the payment
12 order.
- 13 b. The receiving bank is not entitled to enforce or retain payment of the payment
14 order if the customer proves that the order was not caused, directly or indirectly,
15 by a person entrusted at any time with duties to act for the customer with respect
16 to payment orders or the security procedure or by a person who obtained access
17 to transmitting facilities of the customer or who obtained, from a source controlled
18 by the customer and without authority of the receiving bank, information
19 facilitating breach of the security procedure, regardless of how the information
20 was obtained or whether the customer was at fault. Information includes any
21 access device, computer software, or the like.
- 22 2. This section applies to amendments of payment orders to the same extent it applies to
23 payment orders.

24 **SECTION 28. AMENDMENT.** Subsection 3 of section 41-04.1-15 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 3. If a payment order described in subsection 2 is accepted, the originator's payment
27 order described the beneficiary inconsistently by name and number, and the
28 beneficiary's bank pays the person identified by number as permitted by subdivision a
29 of subsection 2, the following rules apply:
- 30 a. If the originator is a bank, the originator is obliged to pay its order.

1 b. If the originator is not a bank and proves that the person identified by number
2 was not entitled to receive payment from the originator, the originator is not
3 obliged to pay its order unless the originator's bank proves that the originator,
4 before acceptance of the originator's order, had notice that payment of a payment
5 order issued by the originator might be made by the beneficiary's bank on the
6 basis of an identifying or bank account number even if it identifies a person
7 different from the named beneficiary. Proof of notice may be made by any
8 admissible evidence. The originator's bank satisfied the burden of proof if it
9 proves that the originator, before the payment order was accepted, signed a
10 writingrecord stating the information to which the notice relates.

11 **SECTION 29. AMENDMENT.** Subdivision b of subsection 2 of section 41-04.1-16 of the
12 North Dakota Century Code is amended and reenacted as follows:

13 b. If the sender is not a bank and the receiving bank proves that the sender, before
14 the payment order was accepted, had notice that the receiving bank might rely on
15 the number as the proper identification of the intermediary or beneficiary's bank
16 even if it identifies a person different from the bank identified by name, the rights
17 and obligations of the sender and the receiving bank are governed by
18 subdivision a of subsection 2, as though the sender were a bank. Proof of notice
19 may be made by any admissible evidence. The receiving bank satisfies the
20 burden of proof if it proves that the sender, before the payment order was
21 accepted, signed a writingrecord stating the information to which the notice
22 relates.

23 **SECTION 30. AMENDMENT.** Subsection 1 of section 41-04.1-18 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 1. A payment order is rejected by the receiving bank by a notice of rejection transmitted
26 to the sender orally, ~~electronically~~, or in writinga record. A notice of rejection need not
27 use any particular words and is sufficient if it indicates that the receiving bank is
28 rejecting the order or will not execute or pay the order. Rejection is effective when the
29 notice is given if transmission is by a means that is reasonable in the circumstances. If
30 notice of rejection is given by a means that is not reasonable, rejection is effective
31 when the notice is received. If an agreement of the sender and receiving bank

1 establishes the means to be used to reject a payment order, any means complying
2 with the agreement is reasonable, and any means not complying is not reasonable
3 unless no significant delay in receipt of the notice resulted from the use of the
4 noncomplying means.

5 **SECTION 31. AMENDMENT.** Subsection 1 of section 41-04.1-19 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 1. A communication of the sender of a payment order canceling or amending the order
8 may be transmitted to the receiving bank orally, ~~electronically~~, or in writing a record. If a
9 security procedure is in effect between the sender and the receiving bank, the
10 communication is not effective to cancel or amend the order unless the communication
11 is verified pursuant to the security procedure or the bank agrees to the cancellation or
12 amendment.

13 **SECTION 32. AMENDMENT.** Section 41-04.1-25 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **41-04.1-25. (4A-305) Liability for late or improper execution or failure to execute**
16 **payment order.**

17 1. If a funds transfer is completed but execution of a payment order by the receiving bank
18 in breach of section 41-04.1-22 results in delay in payment to the beneficiary, the bank
19 is obliged to pay interest to either the originator or the beneficiary of the funds transfer
20 for the period of delay caused by the improper execution. Except as provided in
21 subsection 3, additional damages are not recoverable.

22 2. If execution of a payment order by a receiving bank in breach of section 41-04.1-22
23 results in noncompletion of the funds transfer, failure to use an intermediary bank
24 designated by the originator, or issuance of a payment order that does not comply with
25 the terms of the payment order of the originator, the bank is liable to the originator for
26 its expenses in the funds transfer and for incidental expenses and interest losses, to
27 the extent not covered by subsection 1, resulting from the improper execution. Except
28 as provided in subsection 3, additional damages are not recoverable.

29 3. In addition to the amounts payable under subsections 1 and 2, damages, including
30 consequential damages, are recoverable to the extent provided in an express ~~written~~
31 agreement of the receiving bank, evidenced by a record.

- 1 4. If a receiving bank fails to execute a payment order it was obliged by express
2 agreement to execute, the receiving bank is liable to the sender for its expenses in the
3 transaction and for incidental expenses and interest losses resulting from the failure to
4 execute. Additional damages, including consequential damages, are recoverable to
5 the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced
6 by a record, but are not otherwise recoverable.
- 7 5. Reasonable attorney's fees are recoverable if demand for compensation under
8 subsection 1 or 2 is made and refused before an action is brought on the claim. If a
9 claim is made for breach of an agreement under subsection 4 and the agreement does
10 not provide for damages, reasonable attorney's fees are recoverable if demand for
11 compensation under subsection 4 is made and refused before an action is brought on
12 the claim.
- 13 6. Except as stated in this section, the liability of a receiving bank under subsections 1
14 and 2 may not be varied by agreement.

15 **SECTION 33. AMENDMENT.** Section 41-05-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-05-04. (5-104) Formal requirements.**

18 A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued
19 in any form that is a signed record ~~and is authenticated~~:

- 20 1. ~~By a signature; or~~
21 2. ~~In accordance with the agreement of the parties or the standard practice referred to in~~
22 ~~subsection 5 of section 41-05-08.~~

23 **SECTION 34. AMENDMENT.** Section 41-05-16 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-05-16. (5-116) Choice of law and forum.**

- 26 1. The liability of an issuer, nominated person, or adviser for action or omission is
27 governed by the law of the jurisdiction chosen by an agreement in the form of a record
28 signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in~~
29 ~~section 41-05-04~~ or by a provision in the person's letter of credit, confirmation, or other
30 undertaking. The jurisdiction whose law is chosen need not bear any relation to the
31 transaction.

1 2. Unless subsection 1 applies, the liability of an issuer, nominated person, or adviser for
2 action or omission is governed by the law of the jurisdiction in which the person is
3 located. The person is considered to be located at the address indicated in the
4 person's undertaking. If more than one address is indicated, the person is considered
5 to be located at the address from which the person's undertaking was issued.

6 3. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of
7 credit, but not enforcement of a judgment, all branches of a bank are considered
8 separate juridical entities and a bank is considered to be located at the place where its
9 relevant branch is considered to be located under ~~this~~ subsection 4.

10 ~~3.4.~~ A branch of a bank is considered to be located at the address indicated in the branch's
11 undertaking. If more than one address is indicated, the branch is considered to be
12 located at the address from which the undertaking was issued.

13 5. Except as otherwise provided in this subsection, the liability of an issuer, nominated
14 person, or adviser is governed by any rules of custom or practice, such as the uniform
15 customs and practice for documentary credits, to which the letter of credit,
16 confirmation, or other undertaking is expressly made subject. If:

- 17 a. This chapter would govern the liability of an issuer, nominated person, or adviser
18 under subsection 1 or 2;
- 19 b. The relevant undertaking incorporates rules of custom or practice; and
- 20 c. There is conflict between this chapter and those rules as applied to that
21 undertaking, those rules govern except to the extent of any conflict with the
22 nonvariable provisions specified in subsection 3 of section 41-05-03.

23 4.6. If there is conflict between this chapter and chapter 41-03, 41-04, 41-04.1, or 41-09,
24 this chapter governs.

25 ~~5.7.~~ The forum for settling disputes arising out of an undertaking within this chapter may be
26 chosen in the manner and with the binding effect that governing law may be chosen in
27 accordance with subsection 1.

28 **SECTION 35. AMENDMENT.** Section 41-07-02 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **41-07-02. (7-102) Definitions and index of definitions.**

31 1. In this chapter, unless the context otherwise requires:

- 1 a. "Bailee" means a person that by a warehouse receipt, bill of lading, or other
2 document of title acknowledges possession of goods and contracts to deliver
3 them.
- 4 b. "Carrier" means a person that issues a bill of lading.
- 5 c. "Consignee" means a person named in a bill of lading to which or to whose order
6 the bill promises delivery.
- 7 d. "Consignor" means a person named in a bill of lading as the person from which
8 the goods have been received for shipment.
- 9 e. "Delivery order" means a record that contains an order to deliver goods directed
10 to a warehouse, carrier, or other person that in the ordinary course of business
11 issues warehouse receipts or bills of lading.
- 12 f. "Good faith" means honesty in fact and the observance of reasonable
13 commercial standards of fair dealing.
- 14 g. "Goods" means all things that are treated as movable for the purposes of a
15 contract for storage or transportation.
- 16 h. "Issuer" means a bailee that issues a document of title or, in the case of an
17 unaccepted delivery order, the person that orders the possessor of goods to
18 deliver. The term includes a person for which an agent or employee purports to
19 act in issuing a document if the agent or employee has real or apparent authority
20 to issue documents, even if the issuer did not receive any goods, the goods were
21 misdescribed, or in any other respect the agent or employee violated the issuer's
22 instructions.
- 23 i. "Person entitled under the document" means the holder, in the case of a
24 negotiable document of title, or the person to which delivery of the goods is to be
25 made by the terms of, or pursuant to instructions in a record under, a
26 non-negotiable document of title.
- 27 ~~j. "Record" means information that is inscribed on a tangible medium or that is~~
28 ~~stored in an electronic or other medium and is retrievable in perceivable form.~~
- 29 k. "Shipper" means a person that enters into a contract of transportation with a
30 carrier.
- 31 ~~l. "Sign" means, with present intent to authenticate or adopt a record:~~

- 1 e. Each copy of the authoritative copy and any copy of a copy is readily identifiable
2 as a copy that is not the authoritative copy; and
- 3 f. Any amendment of the authoritative copy is readily identifiable as authorized or
4 unauthorized.
- 5 3. A system satisfies subsection 1, and a person has control of an electronic document of
6 title, if an authoritative electronic copy of the document, a record attached to or
7 logically associated with the electronic copy, or a system in which the electronic copy
8 is recorded:
- 9 a. Enables the person readily to identify each electronic copy as either an
10 authoritative copy or a nonauthoritative copy;
- 11 b. Enables the person readily to identify itself in any way, including by name,
12 identifying number, cryptographic key, office, or account number, as the person to
13 which each authoritative electronic copy was issued or transferred; and
- 14 c. Gives the person exclusive power, subject to subsection 4, to:
- 15 (1) Prevent others from adding or changing the person to which each
16 authoritative electronic copy has been issued or transferred; and
- 17 (2) Transfer control of each authoritative electronic copy.
- 18 4. Subject to subsection 5, a power is exclusive under subdivision c of subsection 3,
19 even if:
- 20 a. The authoritative electronic copy, a record attached to or logically associated with
21 the authoritative electronic copy, or a system in which the authoritative electronic
22 copy is recorded limits the use of the document of title or has a protocol that is
23 programmed to cause a change, including a transfer or loss of control; or
- 24 b. The power is shared with another person.
- 25 5. A power of a person is not shared with another person under subdivision b of
26 subsection 4 and the person's power is not exclusive if:
- 27 a. The person can exercise the power only if the power also is exercised by the
28 other person; and
- 29 b. The other person:
- 30 (1) Can exercise the power without exercise of the power by the person; or
31 (2) Is the transferor to the person of an interest in the document of title.

- 1 6. If a person has the powers specified in subdivision c of subsection 3, the powers are
2 presumed to be exclusive.
- 3 7. A person has control of an electronic document of title if another person, other than the
4 transferor to the person of an interest in the document:
- 5 a. Has control of the document and acknowledges that it has control on behalf of
6 the person; or
- 7 b. Obtains control of the document after having acknowledged that it will obtain
8 control of the document on behalf of the person.
- 9 8. A person that has control under this section is not required to acknowledge that it has
10 control on behalf of another person.
- 11 9. If a person acknowledges that it has or will obtain control on behalf of another person,
12 unless the person otherwise agrees or law other than this chapter or chapter 41-09
13 otherwise provides, the person does not owe any duty to the other person and is not
14 required to confirm the acknowledgment to any other person.

15 **SECTION 37. AMENDMENT.** Section 41-08-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-08-02. (8-102) Definitions.**

- 18 1. In this chapter:
- 19 a. "Adverse claim" means a claim that a claimant has a property interest in a
20 financial asset and that it is a violation of the rights of the claimant for another
21 person to hold, transfer, or deal with the financial asset.
- 22 b. "Bearer form", as applied to a certificated security, means a form in which the
23 security is payable to the bearer of the security certificate according to its terms
24 but not by reason of an endorsement.
- 25 c. "Broker" means a person defined as a broker or dealer under the federal
26 securities laws, but without excluding a bank acting in that capacity.
- 27 d. "Certificated security" means a security that is represented by a certificate.
- 28 e. "Clearing corporation" means:
- 29 (1) A person registered as a "clearing agency" under the federal securities laws;
- 30 (2) A federal reserve bank; or

- 1 (3) Any other person that provides clearance or settlement services with
2 respect to financial assets that would require it to register as a clearing
3 agency under the federal securities laws but for an exclusion or exemption
4 from the registration requirement, if its activities as a clearing corporation,
5 including promulgation of rules, are subject to regulation by a federal or
6 state governmental authority.
- 7 f. "Communicate" means to:
- 8 (1) Send a signed writing record; or
9 (2) Transmit information by any mechanism agreed upon by the persons
10 transmitting and receiving the information.
- 11 g. "Endorsement" means a signature that alone or accompanied by other words is
12 made on a security certificate in registered form or on a separate document for
13 the purpose of assigning, transferring, or redeeming the security or granting a
14 power to assign, transfer, or redeem it.
- 15 h. "Entitlement holder" means a person identified in the records of a securities
16 intermediary as the person having a security entitlement against the securities
17 intermediary. If a person acquires a security entitlement by virtue of subdivision b
18 or c of subsection 2 of section 41-08-41, that person is the entitlement holder.
- 19 i. "Entitlement order" means a notification communicated to a securities
20 intermediary directing transfer or redemption of a financial asset to which the
21 entitlement holder has a security entitlement.
- 22 j. "Financial asset", except as otherwise provided in section 41-08-03, means:
- 23 (1) A security;
24 (2) An obligation of a person or a share, participation, or other interest in a
25 person or in property or an enterprise of a person, which is, or is of a type,
26 dealt in or traded on financial markets, or which is recognized in any area in
27 which it is issued or dealt in as a medium for investment; or
28 (3) Any property that is held by a securities intermediary for another person in a
29 securities account if the securities intermediary has expressly agreed with
30 the other person that the property is to be treated as a financial asset under
31 this chapter.

1 As context requires, the term means either the interest itself or the means by
2 which a person's claim to it is evidenced, including a certificated or uncertificated
3 security, a security certificate, or a security entitlement.

4 k. ~~Reserved.~~

5 l. "Instruction" means a notification communicated to the issuer of an uncertificated
6 security which directs that the transfer of the security be registered or that the
7 security be redeemed.

8 m.l. "Registered form", as applied to a certificated security, means a form in which:

- 9 (1) The security certificate specifies a person entitled to the security; and
10 (2) A transfer of the security may be registered upon books maintained for that
11 purpose by or on behalf of the issuer, or the security certificate so states.

12 n.m. "Securities intermediary" means:

- 13 (1) A clearing corporation; or
14 (2) A person, including a bank or broker, that in the ordinary course of its
15 business maintains securities accounts for others and is acting in that
16 capacity.

17 o.n. "Security", except as otherwise provided in section 41-08-03, means an
18 obligation of an issuer or a share, participation, or other interest in an issuer or in
19 property or an enterprise of an issuer:

- 20 (1) Which is represented by a security certificate in bearer or registered form, or
21 the transfer of which may be registered upon books maintained for that
22 purpose by or on behalf of the issuer;
23 (2) Which is one of a class or series or by its terms is divisible into a class or
24 series of shares, participations, interests, or obligations; and
25 (3) Which:
26 (a) Is, or is of a type, dealt in or traded on securities exchanges or
27 securities markets; or
28 (b) Is a medium for investment and by its terms expressly provides that it
29 is a security governed by this chapter.

30 p.o. "Security certificate" means a certificate representing a security.

- 1 ~~e-p.~~ "Security entitlement" means the rights and property interest of an entitlement
2 holder with respect to a financial asset specified in sections 41-08-41 through
3 41-08-51.
- 4 ~~f-g.~~ "Uncertificated security" means a security that is not represented by a certificate.
- 5 2. ~~Other~~The following definitions ~~applying to~~in this chapter and the sections in which they
6 ~~appear are:~~other chapters apply to this chapter:
- 7 a. "Appropriate person". Section 41-08-07.
- 8 b. "Control". Section 41-08-06.
- 9 c. "Controllable account". Section 41-09-02.
- 10 d. "Controllable electronic record". Section 41-12-02.
- 11 e. "Controllable payment intangible". Section 41-09-02.
- 12 f. "Delivery". Section 41-08-24.
- 13 ~~d-g.~~ "Investment company security". Section 41-08-03.
- 14 e-h. "Issuer". Section 41-08-17.
- 15 f-i. "Overissue". Section 41-08-26.
- 16 g-j. "Protected purchaser". Section 41-08-29.
- 17 h-k. "Securities account". Section 41-08-41.
- 18 3. In addition, chapter 41-01 contains general definitions and principles of construction
19 and interpretation applicable throughout this chapter.
- 20 4. The characterization of a person, business, or transaction for purposes of this chapter
21 does not determine the characterization of the person, business, or transaction for
22 purposes of any other law, regulation, or rule.

23 **SECTION 38.** A new subsection to section 41-08-03 of the North Dakota Century Code is
24 created and enacted as follows:

25 A controllable account, controllable electronic record, or controllable payment
26 intangible is not a financial asset unless paragraph 3 of subdivision j of subsection 1 of
27 Section 41-08-02 applies.

28 **SECTION 39. AMENDMENT.** Section 41-08-06 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **41-08-06. (8-106) Control.**

2 1. A purchaser has "control" of a certificated security in bearer form if the certificated
3 security is delivered to the purchaser.

4 2. A purchaser has "control" of a certificated security in registered form if the certificated
5 security is delivered to the purchaser and:

6 a. The certificate is endorsed to the purchaser or in blank by an effective
7 endorsement; or

8 b. The certificate is registered in the name of the purchaser, upon original issue or
9 registration of transfer by the issuer.

10 3. A purchaser has "control" of an uncertificated security if:

11 a. The uncertificated security is delivered to the purchaser; or

12 b. The issuer has agreed that it will comply with instructions originated by the
13 purchaser without further consent by the registered owner.

14 4. A purchaser has "control" of a security entitlement if:

15 a. The purchaser becomes the entitlement holder;

16 b. The securities intermediary has agreed that it will comply with entitlement orders
17 originated by the purchaser without further consent by the entitlement holder; or

18 c. ~~Another person has control of the security entitlement on behalf of the purchaser~~
19 ~~or, having previously acquired control of the security entitlement, acknowledges~~
20 ~~that it has control on behalf of the purchaser, other than the transferor to the~~
21 purchaser of an interest in the security entitlement:

22 (1) Has control of the security entitlement and acknowledges that it has control
23 on behalf of the purchaser; or

24 (2) Obtains control of the security entitlement after having acknowledged that it
25 will obtain control of the security entitlement on behalf of the purchaser.

26 5. If an interest in a security entitlement is granted by the entitlement holder to the
27 entitlement holder's own securities intermediary, the securities intermediary has
28 control.

29 6. A purchaser who has satisfied the requirements of subsection 3 or 4 has control, even
30 if the registered owner in the case of subsection 3 or the entitlement holder in the case
31 of subsection 4 retains the right to make substitutions for the uncertificated security or

1 security entitlement, to originate instructions or entitlement orders to the issuer or
2 securities intermediary, or otherwise to deal with the uncertificated security or security
3 entitlement.

4 7. An issuer or a securities intermediary may not enter into an agreement of the kind
5 described in subdivision b of subsection 3 or subdivision b of subsection 4 without the
6 consent of the registered owner or entitlement holder, but an issuer or a securities
7 intermediary is not required to enter into such an agreement even though the
8 registered owner or entitlement holder so directs. An issuer or securities intermediary
9 that has entered into such an agreement is not required to confirm the existence of the
10 agreement to another party unless requested to do so by the registered owner or
11 entitlement holder.

12 8. A person that has control under this section is not required to acknowledge that it has
13 control on behalf of a purchaser.

14 9. If a person acknowledges that it has or will obtain control on behalf of a purchaser,
15 unless the person otherwise agrees or law other than this chapter or chapter 41-09
16 otherwise provides, the person does not owe any duty to the purchaser and is not
17 required to confirm the acknowledgment to any other person.

18 **SECTION 40.** A new subsection to section 41-08-10 of the North Dakota Century Code is
19 created and enacted as follows:

20 The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction
21 governs a matter or transaction specified in subsection 1 or 2 even if the matter or
22 transaction does not bear any relation to the jurisdiction.

23 **SECTION 41. AMENDMENT.** Section 41-08-29 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-08-29. (8-303) Protected purchaser.**

- 26 1. "Protected purchaser" means a purchaser of a certificated or uncertificated security, or
27 of an interest therein, who:
- 28 a. Gives value;
 - 29 b. Does not have notice of any adverse claim to the security; and
 - 30 c. Obtains control of the certificated or uncertificated security.

- 1 2. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires
2 its interest in the security free of any adverse claim.

3 **SECTION 42. AMENDMENT.** Section 41-09-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-09-02. (9-102) Definitions and index of definitions.**

6 1. In this chapter:

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

9 b. "Account", except as used in "account for", "account statement", "account to",
10 "commodity account" in subdivision p, "customer's account", "deposit account" in
11 subdivision gg, "on account of", and "statement of account", means:

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

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

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

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

18 (d) For a secondary obligation incurred or to be incurred;

19 (e) For energy provided or to be provided;

20 (f) For the use or hire of a vessel under a charter or other contract;

21 (g) Arising out of the use of a credit or charge card or information
22 contained on or for use with the card; or

23 (h) As winnings in a lottery or other game of chance operated or
24 sponsored by a state, governmental unit of a state, or person licensed
25 or authorized to operate the game by a state or governmental unit of a
26 state.

27 (2) The term includes controllable accounts and a health care insurance
28 receivable. The term does not include:

29 (a) ~~Right to payment evidenced by chattel~~Chattel paper or an instrument;

30 (b) Commercial tort claim;

31 (c) Deposit account;

- 1 (d) Investment property;
- 2 (e) Letter-of-credit right or letters of credit;
- 3 (f) Right to payment for any money or fund advanced or sold, other than
- 4 a right arising out of the use of a credit or charge card or information
- 5 contained on or for use with the card; or
- 6 (g) Certificate of deposit; or
- 7 (h) Rights to payment evidenced by an instrument.
- 8 c. "Account debtor" means a person obligated on an account, chattel paper, or
- 9 general intangible. The term does not include a person obligated to pay a
- 10 negotiable instrument, even if the negotiable instrument ~~constitutes part-~~
- 11 ~~of~~evidences chattel paper.
- 12 d. "Accounting", except as used in "accounting for", means a record:
- 13 (1) ~~Authenticated~~Signed by a secured party;
- 14 (2) Indicating the aggregate unpaid secured obligations as of a date not more
- 15 than thirty-five days earlier or thirty-five days later than the date of the
- 16 record; and
- 17 (3) Identifying the components of the obligations in reasonable detail.
- 18 e. "Agricultural lien" means an interest in farm products:
- 19 (1) That secures payment or performance of an obligation for:
- 20 (a) Goods or services furnished in connection with a debtor's farming
- 21 operation or in connection with processing, production, or entrustment
- 22 of the farm products; or
- 23 (b) Rent on real property leased by a debtor in connection with the
- 24 debtor's farming operation;
- 25 (2) That is created by statute in favor of a person that:
- 26 (a) Furnished goods or services in connection with processing,
- 27 production, or entrustment of the farm product or in the ordinary
- 28 course of that person's business furnished goods or services to a
- 29 debtor in connection with a debtor's farming operation; or
- 30 (b) Leased real property to a debtor in connection with the debtor's
- 31 farming operation; and

- 1 (3) Of which the effectiveness does not depend on the person's possession of
2 the personal property.
- 3 f. "As-extracted collateral" means:
- 4 (1) Oil, gas, or other mineral that is subject to a security interest that:
- 5 (a) Is created by a debtor having an interest in the mineral before
6 extraction; and
- 7 (b) Attaches to the mineral as extracted; or
- 8 (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or
9 other mineral in which the debtor had an interest before extraction.
- 10 g. "Authenticate" means:
- 11 (1) ~~To sign; or~~
- 12 (2) ~~With present intent to adopt or accept a record, to attach to or logically~~
13 ~~associate with the record an electronic sound, symbol, or process.~~
- 14 h. "Assignee", except as used in "assignee for benefit of creditors", means a person
15 in whose favor a security interest that secures an obligation is created or
16 provided for under a security agreement, whether or not the obligation is
17 outstanding or to which an account, chattel paper, payment intangible, or
18 promissory note has been sold. The term includes a person to which a security
19 interest has been transferred by a secured party.
- 20 h. "Assignor" means a person that under a security agreement creates or provides
21 for a security interest that secures an obligation or sells an account, chattel
22 paper, payment intangible, or promissory note. The term includes a secured party
23 that has transferred a security interest to another person.
- 24 i. "Bank" means an organization engaged in the business of banking. The term
25 includes a savings bank, savings and loan association, credit union, and trust
26 company.
- 27 j. "Cash proceeds" means proceeds that are money, checks, deposit accounts,
28 certificates of deposit, or the like.
- 29 j.k. "Certificate of deposit" means a bank record of a sum of money which has been
30 received by the bank and a promise made by the bank to repay the sum of

1 money. The term does not include a deposit account. A certificate of deposit may
2 be negotiable, non-negotiable, nontransferable, certificated, or uncertificated.

3 k.l. "Certificate of title" means a certificate of title with respect to which a statute
4 provides for the security interest in question to be indicated on the certificate as a
5 condition or result of the security interest's obtaining priority over the rights of a
6 lien creditor with respect to the collateral. The term includes another record
7 maintained as an alternative to a certificate of title by the governmental unit that
8 issues certificates of title if a statute permits the security interest in question to be
9 indicated on the record as a condition or result of the security interest's obtaining
10 priority over the rights of a lien creditor with respect to the collateral.

11 l.m. "Certificated certificate of deposit" means a certificate of deposit that is
12 represented by a certificate.

13 m.n. ~~"Chattel paper" means a record or records that evidence both a monetary
14 obligation and a security interest in specific goods, a security interest in specific
15 goods and software used in the goods, a security interest in specific goods and
16 license of software used in the goods, a lease of specific goods, or a lease of
17 specific goods and license of software used in the goods. In this subdivision,
18 "monetary obligation" means a monetary obligation secured by the goods or
19 owed under a lease of the goods and includes a monetary obligation with respect
20 to software used in the goods. The term does not include charters or other
21 contracts involving the use or hire of a vessel or records that evidence a right to
22 payment arising out of the use of a credit or charge card or information contained
23 on or for use with the card. If a transaction is evidenced by records that include
24 an instrument or series of instruments, the group of records taken together
25 constitutes chattel paper~~

26 (1) Means:

27 (a) A right to payment of a monetary obligation secured by specific goods,
28 if the right to payment and security agreement are evidenced by a
29 record; or

30 (b) A right to payment of a monetary obligation owed by a lessee under a
31 lease agreement with respect to specific goods and a monetary

1 obligation owed by the lessee in connection with the transaction giving
2 rise to the lease, if:

3 [1] The right to payment and lease agreement are evidenced by a
4 record; and

5 [2] The predominant purpose of the transaction giving rise to the
6 lease was to give the lessee the right to possession and use of
7 the goods.

8 (2) Does not include a right to payment arising out of a charter or other contract
9 involving the use or hire of a vessel or a right to payment arising out of the
10 use of a credit or charge card or information contained on or for use with the
11 card.

12 n.o. "Collateral" means the property subject to a security interest or agricultural lien.
13 The term includes:

- 14 (1) Proceeds to which a security interest attaches;
15 (2) Accounts, chattel paper, payment intangibles, and promissory notes that
16 have been sold; and
17 (3) Goods that are the subject of a consignment.

18 e.p. "Commercial tort claim" means a claim arising in tort with respect to which:

- 19 (1) The claimant is an organization; or
20 (2) The claimant is an individual and the claim:
21 (a) Arose in the course of the claimant's business or profession; and
22 (b) Does not include damages arising out of personal injury to or the
23 death of an individual.

24 p.q. "Commodity account" means an account maintained by a commodity
25 intermediary in which a commodity contract is carried for a commodity customer.

26 e.r. "Commodity contract" means a commodity futures contract, an option on a
27 commodity futures contract, a commodity option, or another contract if the
28 contract or option is:

- 29 (1) Traded on or subject to the rules of a board of trade that has been
30 designated as a contract market for such a contract pursuant to federal
31 commodities laws; or

1 (2) Traded on a foreign commodity board of trade, exchange, or market and is
2 carried on the books of a commodity intermediary for a commodity
3 customer.

4 r.s. "Commodity customer" means a person for which a commodity intermediary
5 carries a commodity contract on the intermediary's books.

6 s.t. "Commodity intermediary" means a person that:

7 (1) Is registered as a futures commission merchant under federal commodities
8 law; or

9 (2) In the ordinary course of the person's business provides clearance or
10 settlement services for a board of trade that has been designated as a
11 contract market pursuant to federal commodities law.

12 t.u. "Communicate" means:

13 (1) To send a written or other tangible record;

14 (2) To transmit a record by any means agreed upon by the persons sending
15 and receiving the record; or

16 (3) In the case of transmission of a record to or by a filing office, to transmit a
17 record by any means prescribed by filing-office rule.

18 u.v. "Consignee" means a merchant to which goods are delivered in a consignment.

19 v.w. "Consignment" means a transaction, regardless of form, in which a person
20 delivers goods to a merchant for the purpose of sale and:

21 (1) The merchant:

22 (a) Deals in goods of that kind under a name other than the name of the
23 person making delivery;

24 (b) Is not an auctioneer; and

25 (c) Is not generally known by its creditors to be substantially engaged in
26 selling the goods of others;

27 (2) With respect to each delivery, the aggregate value of the goods is one
28 thousand dollars or more at the time of delivery;

29 (3) The goods are not consumer goods immediately before delivery; and

30 (4) The transaction does not create a security interest that secures an
31 obligation.

- 1 w-x. "Consignor" means a person that delivers goods to a consignee in a
2 consignment.
- 3 x-y. "Consumer debtor" means a debtor in a consumer transaction.
- 4 y-z. "Consumer goods" means goods that are used or bought for use primarily for
5 personal, family, or household purposes.
- 6 z-aa. "Consumer-goods transaction" means a consumer transaction in which:
7 (1) An individual incurs an obligation primarily for personal, family, or household
8 purposes; and
9 (2) A security interest in consumer goods secures the obligation.
- 10 aa-bb. "Consumer obligor" means an obligor who is an individual and who incurred the
11 obligation as part of a transaction entered into primarily for personal, family, or
12 household purposes.
- 13 bb-cc. "Consumer transaction" means a transaction in which:
14 (1) An individual incurs an obligation primarily for personal, family, or household
15 purposes;
16 (2) A security interest secures the obligation; and
17 (3) The collateral is held or acquired primarily for personal, family, or household
18 purposes. The term includes consumer-goods transactions.
- 19 cc-dd. "Continuation statement" means an amendment of a financing statement which:
20 (1) Identifies, by its file number, the initial financing statement to which it
21 relates; and
22 (2) Indicates that it is a continuation statement for, or that it is filed to continue
23 the effectiveness of, the identified financing statement.
- 24 dd-ee. "Controllable account" means an account evidenced by a controllable electronic
25 record that provides that the account debtor undertakes to pay the person that
26 has control under section 41-12-05 of the controllable electronic record.
- 27 ff. "Controllable payment intangible" means a payment intangible evidenced by a
28 controllable electronic record that provides that the account debtor undertakes to
29 pay the person that has control under section 41-12-05 of the controllable
30 electronic record.
- 31 gg. "Debtor" means:

1 (1) A person having an interest, other than a security interest or other lien, in
2 the collateral, regardless of whether the person is an obligor;

3 (2) A seller of accounts, chattel paper, payment intangibles, or promissory
4 notes; or

5 (3) A consignee.

6 ~~ee-hh.~~ "Deposit account" means a demand, time, savings, passbook, or similar account
7 maintained with a bank. The term does not include investment property or an
8 account evidenced by a certificate of deposit or an instrument.

9 ~~ff-ii.~~ "Document" means a document of title or a receipt of the type described in
10 subsection 2 of section 41-07-07.

11 ~~gg.~~ "~~Electronic chattel paper~~" means ~~chattel paper evidenced by a record consisting~~
12 ~~of information stored in an electronic medium.~~

13 ~~hh-jj.~~ "Electronic money" means money in an electronic form.

14 ~~kk.~~ "Encumbrance" means a right, other than an ownership interest, in real property.
15 The term includes mortgages and other liens on real property.

16 ~~ii-ll.~~ "Equipment" means goods other than inventory, farm products, or consumer
17 goods.

18 ~~jj-mm.~~ "Farm products" means goods, other than standing timber, subject to a lien
19 created under chapter 35-17, 35-30, or 35-31, or with respect to which the debtor
20 is engaged in a farming operation and which are:

21 (1) Crops grown, growing, or to be grown, including:

22 (a) Crops produced on trees, vines, and bushes; and

23 (b) Aquatic goods produced in aquacultural operations;

24 (2) Livestock, born or unborn, including aquatic goods produced in aquacultural
25 operations;

26 (3) Supplies used or produced in a farming operation; or

27 (4) Products of crops or livestock in their unmanufactured states.

28 ~~kk-nn.~~ "Farming operation" means raising, cultivating, propagating, fattening, grazing, or
29 any other farming, livestock, or aquacultural operation.

30 ~~ll-oo.~~ "File number" means the number assigned to an initial financing statement
31 pursuant to subsection 1 of section 41-09-90.

1 ~~mm.pp.~~ "Filing office" means an office designated in section 41-09-72 as the place to file
2 a financing statement.

3 ~~nn.qq.~~ "Filing-office rule" means a rule adopted under section 41-09-97.

4 ~~oo.rr.~~ "Financing statement" means a record composed of an initial financing statement
5 and any filed record relating to the initial financing statement.

6 ~~pp.ss.~~ "Fixture filing" means the filing of a financing statement covering goods that are
7 or are to become fixtures and satisfying subsections 1 and 2 of section 41-09-73.
8 The term includes the filing of a financing statement covering goods of a
9 transmitting utility which are or are to become fixtures.

10 ~~qq.tt.~~ "Fixtures" means goods that have become so related to particular real property
11 that an interest in them arises under real property law.

12 ~~rr.uu.~~ "General intangible" means any personal property, including things in action,
13 other than accounts, certificates of deposit, chattel paper, commercial tort claims,
14 deposit accounts, documents, goods, instruments, investment property,
15 letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals
16 before extraction. The term includes controllable electronic records, payment
17 intangibles, and software.

18 ~~ss.~~ ~~Reserved.~~

19 ~~tt.vv.~~ "Goods" means all things that are movable when a security interest attaches.

20 (1) The term includes:

21 (a) Fixtures;

22 (b) Standing timber that is to be cut and removed under a conveyance or
23 contract for sale;

24 (c) The unborn young of animals;

25 (d) Crops grown, growing, or to be grown, even if the crops are produced
26 on trees, vines, or bushes; and

27 (e) Manufactured homes.

28 (2) The term also includes a computer program embedded in goods and any
29 supporting information provided in connection with a transaction relating to
30 the program if:

1 (a) The program is associated with the goods in such a manner that the
2 program is customarily considered part of the goods; or

3 (b) By becoming the owner of the goods, a person acquires a right to use
4 the program in connection with the goods.

5 (3) The term does not include a computer program embedded in goods that
6 consist solely of the medium in which the program is embedded. The term
7 also does not include accounts, certificates of deposit, chattel paper,
8 commercial tort claims, deposit accounts, documents, general intangibles,
9 instruments, investment property, letter-of-credit rights, letters of credit,
10 money, or oil, gas, or other minerals before extraction.

11 ~~tt-ww.~~ "Governmental unit" means a subdivision, agency, department, county, parish,
12 municipality, or other unit of the government of the United States, a state, or a
13 foreign country. The term includes an organization having a separate corporate
14 existence if the organization is eligible to issue debt on which interest is exempt
15 from income taxation under the laws of the United States.

16 ~~vv-xx.~~ "Health care insurance receivable" means an interest in or claim under a policy of
17 insurance which is a right to payment of a monetary obligation for health care
18 goods or services provided or to be provided.

19 ~~ww-yy.~~ "Instrument" means a negotiable instrument or any other writing that evidences a
20 right to the payment of a monetary obligation, is not itself a security agreement or
21 lease, and is of a type that in ordinary course of business is transferred by
22 delivery with any necessary indorsement or assignment. The term does not
23 include:

24 (1) Certificates of deposit;

25 (2) Investment property;

26 (3) Letters of credit; ~~or~~

27 (4) Writings that evidence a right to payment arising out of the use of a credit or
28 charge card or information contained on or for use with the card; or

29 (5) Writings that evidence chattel paper.

30 ~~xx-zz.~~ "Inventory" means goods, other than farm products, that:

31 (1) Are leased by a person as lessor;

1 (2) Are held by a person for sale or lease or to be furnished under a contract of
2 service;

3 (3) Are furnished by a person under a contract of service; or

4 (4) Consist of raw materials, work in process, or materials used or consumed in
5 a business.

6 ~~yy.aaa.~~ "Investment property" means a security, whether certificated or uncertificated,
7 security entitlement, securities account, commodity contract, or commodity
8 account.

9 ~~zz.bbb.~~ "Jurisdiction of organization", with respect to a registered organization, means
10 the jurisdiction under whose law the organization is organized.

11 ~~aaa.ccc.~~ "Letter-of-credit right" means a right to payment or performance under a
12 letter of credit, regardless of whether the beneficiary has demanded or is at the
13 time entitled to demand payment or performance. The term does not include the
14 right of a beneficiary to demand payment or performance under a letter of credit.

15 ~~bbb.ddd.~~ "Lien creditor" means:

16 (1) A creditor that has acquired a lien on the property involved by attachment,
17 levy, or the like;

18 (2) An assignee for benefit of creditors from the time of assignment;

19 (3) A trustee in bankruptcy from the date of the filing of the petition; or

20 (4) A receiver in equity from the time of appointment.

21 ~~eee.eee.~~ "Manufactured home" means a structure, transportable in one or more
22 sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in
23 width or forty body feet [12.19 meters] or more in length, or, when erected on site,
24 is three hundred twenty square feet [29.73 square meters] or more, and which is
25 built on a permanent chassis and designed to be used as a dwelling with or
26 without a permanent foundation when connected to the required utilities, and
27 includes the plumbing, heating, air-conditioning, and electrical systems contained
28 therein. The term includes any structure that meets all of the requirements of this
29 subdivision except the size requirements and with respect to which the
30 manufacturer voluntarily files a certification required by the United States

1 secretary of housing and urban development and complies with the standards
2 established under title 42 of the United States Code.

3 ~~ddd.fff.~~ "Manufactured-home transaction" means a secured transaction:

- 4 (1) Which creates a purchase-money security interest in a manufactured home,
5 other than a manufactured home held as inventory; or
6 (2) In which a manufactured home, other than a manufactured home held as
7 inventory, is the primary collateral.

8 ~~eee.ggg.~~ "Money" has the meaning in subsection 2 of section 41-01-09, but does
9 not include a deposit account or money in an electronic form that cannot be
10 subjected to control under section 41-09-05.1.

11 hhh. "Mortgage" means a consensual interest in real property, including fixtures, that
12 secures payment or performance of an obligation.

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

16 ~~ggg.jjj.~~ "New value" means:

- 17 (1) Money;
18 (2) Money's worth in property, services, or new credit; or
19 (3) Release by a transferee of an interest in property previously transferred to
20 the transferee.

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

22 ~~hhh.kkk.~~ "Noncash proceeds" means proceeds other than cash proceeds.

23 ~~iii.III.~~ "Non-negotiable certificate of deposit" means a bank record that contains an
24 acknowledgment that a sum of money has been received by the issuer and a
25 promise by the issuer to repay the sum of money other than a deposit account or
26 negotiable instrument.

27 ~~jjj.mmm.~~ "Nontransferable certificate of deposit" means a non-negotiable certificate
28 of deposit which may be transferred only on the books of the issuer, with the
29 consent of the issuer, or subject to other restrictions or considerations of the
30 issuer on transfer. The term does not include a deposit account.

1 ~~kkk-nnn.~~ "Obligor" means a person that, with respect to an obligation secured by a
2 security interest in or an agricultural lien on the collateral:

- 3 (1) Owes payment or other performance of the obligation;
4 (2) Has provided property other than the collateral to secure payment or other
5 performance of the obligation; or
6 (3) Is otherwise accountable in whole or in part for payment or other
7 performance of the obligation.

8 The term does not include issuers or nominated persons under a letter of credit.

9 ~~##-ooo.~~ "Original debtor", except as used in subsection 3 of section 41-09-30, means a
10 person that, as debtor, entered into a security agreement to which a new debtor
11 has become bound under subsection 4 of section 41-09-13.

12 ~~mmm-ppp.~~ "Payment intangible" means a general intangible under which the account
13 debtor's principal obligation is a monetary obligation. The term includes a
14 controllable payment intangible.

15 ~~nnn-qqq.~~ "Person related to", with respect to an individual, means:

- 16 (1) The spouse of the individual;
17 (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
18 (3) An ancestor or lineal descendant of the individual or the individual's spouse;
19 or
20 (4) Any other relative, by blood or marriage, of the individual or the individual's
21 spouse who shares the same home with the individual.

22 ~~ooo-rrr.~~ "Person related to", with respect to an organization, means:

- 23 (1) A person directly or indirectly controlling, controlled by, or under common
24 control with the organization;
25 (2) An officer or director of, or a person performing similar functions with
26 respect to, the organization;
27 (3) An officer or director of, or a person performing similar functions with
28 respect to, a person described in paragraph 1;
29 (4) The spouse of an individual described in paragraph 1, 2, or 3; or
30 (5) An individual who is related by blood or marriage to an individual described
31 in paragraph 1, 2, 3, or 4 and shares the same home with the individual.

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

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

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

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

22 ~~sss-vvv.~~ "Public organic record" means a record that is available to the public for
23 inspection and which is:

- 24 (1) A record consisting of the record initially filed with or issued by a state or the
25 United States to form or organize an organization and any record filed with
26 or issued by the state or the United States which amends or restates the
27 initial record;
28 (2) An organic record of a business trust consisting of the record initially filed
29 with a state and any record filed with the state which amends or restates the
30 initial record, if a statute of the state governing business trusts requires that
31 the record be filed with the state; or

1 (3) A record consisting of legislation enacted by the legislature of a state or the
2 Congress of the United States which forms or organizes an organization,
3 any record amending the legislation, and any record filed with or issued by
4 the state or United States which amends or restates the name of the
5 organization.

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

11 ~~ttt.xxx.~~ "Record", except as used in "for record", "of record", "record or legal title",
12 and "record owner", means information that is inscribed on a tangible medium or
13 which is stored in an electronic or other medium and is retrievable in perceivable
14 form.

15 ~~www.yyy.~~ "Registered organization" means an organization formed or organized solely
16 under the law of a single state or the United States by the filing of a public
17 organic record with, the issuance of a public organic record by, or the enactment
18 of legislation by the state or United States. The term includes a business trust
19 that is formed or organized under the law of a single state if a statute of the state
20 governing business trusts requires that the business trust's organic record be
21 filed with the state.

22 ~~www.zzz.~~ "Secondary obligor" means an obligor to the extent that:

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

26 ~~xxx.aaaa.~~ "Secured party" means:

- 27 (1) A person in whose favor a security interest is created or provided for under
28 a security agreement, regardless of whether any obligation to be secured is
29 outstanding;
30 (2) A person that holds an agricultural lien;
31 (3) A consignor;

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

9 ~~yyy-bbbb.~~ "Security agreement" means an agreement that creates or provides for a
10 security interest.

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

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

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

21 ~~bbbb-dddd.~~ "State" means a state of the United States, the District of Columbia, the
22 Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory
23 or insular possession subject to the jurisdiction of the United States.

24 ~~eeee-eeee.~~ "Supporting obligation" means a letter-of-credit right or secondary
25 obligation that supports the payment or performance of an account, chattel paper,
26 a document, a general intangible, an instrument, or investment property.

27 ~~dddd.~~ "Tangible chattel paper" means chattel paper evidenced by a record or records
28 consisting of information that is inscribed on a tangible medium.

29 ~~eeee.ffff.~~ "Tangible money" means money in a tangible form.

30 ~~gggg.~~ "Termination statement" means an amendment of a financing statement which:

1 (1) Identifies, by the amendment's file number, the initial financing statement to
2 which it relates; and

3 (2) Indicates either that the amendment is a termination statement or that the
4 identified financing statement is no longer effective.

5 ~~fff.hhhh.~~ "Transmitting utility" means a person primarily engaged in the business of:

6 (1) Operating a railroad, subway, street railway, or trolley bus;

7 (2) Transmitting communications electrically, electromagnetically, or by light;

8 (3) Transmitting goods by pipeline or sewer; or

9 (4) Transmitting or producing and transmitting electricity, steam, gas, or water.

10 ~~gggg.ijii.~~ "Uncertificated certificate of deposit" means an obligation of a bank to

11 repay a sum of money that it has received which is not represented by a

12 certificate, but only by an entry on the books of the bank and any documentation

13 given to the customer by the bank. The term does not include a deposit account.

14 2. "Control" as provided under section 41-07-06 and the following definitions in other
15 chapters apply to this chapter:

16 a. "Applicant". Section 41-05-02.

17 b. "Beneficiary". Section 41-05-02.

18 c. "Broker". Section 41-08-02.

19 d. "Certificated security". Section 41-08-02.

20 e. "Check". Section 41-03-04.

21 f. "Clearing corporation". Section 41-08-02.

22 g. "Contract for sale". Section 41-02-06.

23 h. "Controllable electronic record". Section 41-12-02.

24 i. "Customer". Section 41-04-04.

25 i.j. "Entitlement holder". Section 41-08-02.

26 j.k. "Financial asset". Section 41-08-02.

27 k.l. "Holder in due course". Section 41-03-28.

28 l.m. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section
29 41-05-02.

30 m.n. "Issuer" (with respect to a security). Section 41-08-17.

31 n.o. "Issuer" (with respect to documents of title). Section 41-07-02.

Sixty-eighth
Legislative Assembly

- 1 o-p. "Lease". Section 41-02.1-03.
2 p-q. "Lease agreement". Section 41-02.1-03.
3 q-r. "Lease contract". Section 41-02.1-03.
4 r-s. "Leasehold interest". Section 41-02.1-03.
5 s-t. "Lessee". Section 41-02.1-03.
6 t-u. "Lessee in ordinary course of business". Section 41-02.1-03.
7 u-v. "Lessor". Section 41-02.1-03.
8 v-w. "Lessor's residual interest". Section 41-02.1-03.
9 w-x. "Letter of credit". Section 41-05-02.
10 x-y. "Merchant". Section 41-02-04.
11 y-z. "Negotiable instrument". Section 41-03-04.
12 z-aa. "Nominated person". Section 41-05-02.
13 aa-bb. "Note". Section 41-03-04.
14 bb-cc. "Proceeds of a letter of credit". Section 41-05-14.
15 cc-dd. "Protected purchaser". Section 41-08-29.
16 ee. "Prove". Section 41-03-03.
17 dd-ff. "Qualifying purchaser". Section 41-12-02.
18 gg. "Sale". Section 41-02-06.
19 ee-hh. "Securities account". Section 41-08-41.
20 ff-ii. "Securities intermediary". Section 41-08-02.
21 gg-ii. "Security". Section 41-08-02.
22 hh-kk. "Security certificate". Section 41-08-02.
23 ii-ll. "Security entitlement". Section 41-08-02.
24 jj-mm. "Uncertificated security". Section 41-08-02.

25 3. Chapter 41-01 contains general definitions and principles of construction and
26 interpretation applicable throughout this chapter.

27 **SECTION 43. AMENDMENT.** Section 41-09-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **41-09-04. (9-104) Control of deposit account or uncertificated certificate of deposit.**

- 30 1. A secured party has control of a deposit account or uncertificated certificate of deposit
31 if:

- 1 a. The secured party is the bank with which the deposit account or uncertificated
2 certificate of deposit is maintained;
- 3 b. The debtor, secured party, and bank have agreed in ~~an authenticated~~ a signed
4 record that the bank will comply with instructions originated by the secured party
5 directing disposition of the funds in the deposit account or uncertificated
6 certificate of deposit without further consent by the debtor; or
- 7 c. The secured party becomes the bank's customer with respect to the deposit
8 account or uncertificated certificate of deposit.
- 9 d. Another person, other than the debtor:
 - 10 (1) Has control of the deposit account and acknowledges that it has control on
11 behalf of the secured party; or
 - 12 (2) Obtains control of the deposit account after having acknowledged that it will
13 obtain control of the deposit account on behalf of the secured party.
- 14 2. A secured party that has satisfied subsection 1 has control, even if the debtor retains
15 the right to direct the disposition of funds from the deposit account or uncertificated
16 certificate of deposit.

17 **SECTION 44. AMENDMENT.** Section 41-09-05 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **41-09-05. (9-105) Control of electronic copy of record evidencing chattel paper.**

- 20 1. ~~A secured party has control of electronic chattel paper if a system employed for~~
21 ~~evidencing the transfer of interests in the chattel paper reliably establishes the secured~~
22 ~~party as the person to which the chattel paper was assigned~~ A purchaser has control of
23 an authoritative electronic copy of a record evidencing chattel paper if a system
24 employed for evidencing the assignment of interests in the chattel paper reliably
25 establishes the purchaser as the person to which the authoritative electronic copy was
26 assigned.
- 27 2. A system satisfies subsection 1, ~~and a secured party has control of electronic chattel~~
28 ~~paper,~~ if the record or records ~~comprising~~ evidencing the chattel paper are created,
29 stored, and assigned in such a manner that:

- 1 a. A single authoritative copy of the record or records exists which is unique,
2 identifiable, and, except as otherwise provided in subdivisions d, e, and f,
3 unalterable;
- 4 b. The authoritative copy identifies the ~~secured party~~purchaser as the assignee of
5 the record or records;
- 6 c. The authoritative copy is communicated to and maintained by the ~~secured~~
7 partypurchaser or the ~~secured party's~~sits designated custodian;
- 8 d. Copies or amendments that add or change an identified assignee of the
9 authoritative copy can be made only with the consent of the ~~secured~~
10 partypurchaser;
- 11 e. Each copy of the authoritative copy and any copy of a copy is readily identifiable
12 as a copy that is not the authoritative copy; and
- 13 f. Any amendment of the authoritative copy is readily identifiable as an authorized
14 or unauthorized revision.
- 15 3. A system satisfies subsection 1, and a purchaser has control of an authoritative
16 electronic copy of a record evidencing chattel paper, if the electronic copy, a record
17 attached to or logically associated with the electronic copy, or a system in which the
18 electronic copy is recorded:
- 19 a. Enables the purchaser readily to identify each electronic copy as either an
20 authoritative copy or a nonauthoritative copy;
- 21 b. Enables the purchaser readily to identify itself in any way, including by name,
22 identifying number, cryptographic key, office, or account number, as the assignee
23 of the authoritative electronic copy; and
- 24 c. Gives the purchaser exclusive power, subject to subsection 4, to:
- 25 (1) Prevent others from adding or changing an identified assignee of the
26 authoritative electronic copy; and
- 27 (2) Transfer control of the authoritative electronic copy.
- 28 4. Subject to subsection 5, a power is exclusive under subdivision c of subsection 3 even
29 if:
- 30 a. The authoritative electronic copy, a record attached to or logically associated with
31 the authoritative electronic copy, or a system in which the authoritative electronic

- 1 copy is recorded limits the use of the authoritative electronic copy or has a
2 protocol programmed to cause a change, including a transfer or loss of control; or
3 b. The power is shared with another person.
4 5. A power of a purchaser is not shared with another person under subdivision b of
5 subsection 4 and the purchaser's power is not exclusive if:
6 a. The purchaser can exercise the power only if the power also is exercised by the
7 other person; and
8 b. The other person:
9 (1) Can exercise the power without exercise of the power by the purchaser; or
10 (2) Is the transferor to the purchaser of an interest in the chattel paper.
11 6. If a purchaser has the powers specified in subdivision c of subsection 3, the powers
12 are presumed to be exclusive.
13 7. A purchaser has control of an authoritative electronic copy of a record evidencing
14 chattel paper if another person, other than the transferor to the purchaser of an
15 interest in the chattel paper:
16 a. Has control of the authoritative electronic copy and acknowledges that it has
17 control on behalf of the purchaser; or
18 b. Obtains control of the authoritative electronic copy after having acknowledged
19 that it will obtain control of the electronic copy on behalf of the purchaser.

20 **SECTION 45.** Section 41-09-05.1 of the North Dakota Century Code is created and enacted
21 as follows:

22 **41-09-05.1. (9-105A) Control of electronic money.**

- 23 1. A person has control of electronic money if:
24 a. The electronic money, a record attached to or logically associated with the
25 electronic money, or a system in which the electronic money is recorded gives
26 the person:
27 (1) Power to avail itself of substantially all the benefit from the electronic
28 money; and
29 (2) Exclusive power, subject to subsection 2, to:
30 (a) Prevent others from availing themselves of substantially all the benefit
31 from the electronic money; and

- 1 (b) Transfer control of the electronic money to another person or cause
2 another person to obtain control of other electronic money as a result
3 of the transfer of the electronic money; and
- 4 b. The electronic money, a record attached to or logically associated with the
5 electronic money, or a system in which the electronic money is recorded enables
6 the person readily to identify itself in any way, including by name, identifying
7 number, cryptographic key, office, or account number, as having the powers
8 under subdivision a.
- 9 2. Subject to subsection 3, a power is exclusive under paragraph 2 of subdivision a of
10 subsection 1 even if:
- 11 a. The electronic money, a record attached to or logically associated with the
12 electronic money, or a system in which the electronic money is recorded limits the
13 use of the electronic money or has a protocol programmed to cause a change,
14 including a transfer or loss of control; or
- 15 b. The power is shared with another person.
- 16 3. A power of a person is not shared with another person under subdivision b of
17 subsection 2 and the person's power is not exclusive if:
- 18 a. The person can exercise the power only if the power also is exercised by the
19 other person; and
- 20 b. The other person:
- 21 (1) Can exercise the power without exercise of the power by the person; or
22 (2) Is the transferor to the person of an interest in the electronic money.
- 23 4. If a person has the powers specified in paragraph 2 of subdivision a of subsection 1,
24 the powers are presumed to be exclusive.
- 25 5. A person has control of electronic money if another person, other than the transferor to
26 the person of an interest in the electronic money:
- 27 a. Has control of the electronic money and acknowledges that it has control on
28 behalf of the person; or
- 29 b. Obtains control of the electronic money after having acknowledged that it will
30 obtain control of the electronic money on behalf of the person.

1 **SECTION 46.** Section 41-09-07.1 of the North Dakota Century Code is created and enacted
2 as follows:

3 **41-09-07.1. (9-107A) Control of controllable electronic record, controllable account, or**
4 **controllable payment intangible.**

5 1. A secured party has control of a controllable electronic record as provided in section
6 41-12-05.

7 2. A secured party has control of a controllable account or controllable payment
8 intangible if the secured party has control of the controllable electronic record that
9 evidences the controllable account or controllable payment intangible.

10 **SECTION 47.** Section 41-09-07.2 of the North Dakota Century Code is created and enacted
11 as follows:

12 **41-09-07.2. (9-107B) No requirement to acknowledge or confirm - No duties.**

13 1. A person that has control under section 41-09-04, 41-09-05, or 41-09-05.1 is not
14 required to acknowledge that it has control on behalf of another person.

15 2. If a person acknowledges that it has or will obtain control on behalf of another person,
16 unless the person otherwise agrees or law other than this chapter otherwise provides,
17 the person does not owe any duty to the other person and is not required to confirm
18 the acknowledgment to any other person.

19 **SECTION 48. AMENDMENT.** Subsection 2 of section 41-09-13 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 2. Except as otherwise provided in subsections 3 through 9, a security interest is
22 enforceable against the debtor and third parties with respect to the collateral only if:

23 a. Value has been given;

24 b. The debtor has rights in the collateral or the power to transfer rights in the
25 collateral to a secured party; and

26 c. One of the following conditions is met:

27 (1) The debtor has ~~authenticated~~signed a security agreement that provides a
28 description of the collateral and, if the security interest covers timber to be
29 cut, a description of the land concerned;

- 1 (2) The collateral is not a certificated security and is in the possession of the
2 secured party under section 41-09-33 pursuant to the debtor's security
3 agreement;
- 4 (3) The collateral is a certificated security in registered form and the security
5 certificate has been delivered to the secured party under section 41-08-27
6 pursuant to the debtor's security agreement; ~~or~~
- 7 (4) The collateral is controllable accounts, controllable electronic records,
8 controllable payment intangibles, deposit accounts, electronic ~~chattel-~~
9 ~~paper~~documents, electronic money, investment property, letter-of-credit
10 rights, ~~electronic documents,~~ or uncertificated certificates of deposit, and the
11 secured party has control under section 41-07-06, 41-09-04, 41-09-05,
12 41-09-05.1, 41-09-06, or 41-09-07, or 41-09-07.1 pursuant to the debtor's
13 security agreement; or
- 14 (5) The collateral is chattel paper and the secured party has possession and
15 control under section 41-09-34.1 pursuant to the debtor's security
16 agreement.

17 **SECTION 49. AMENDMENT.** Section 41-09-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **41-09-14. (9-204) After-acquired property - Future advances.**

- 20 1. Except as otherwise provided in subsection 2, a security agreement may create or
21 provide for a security interest in after-acquired collateral.
- 22 2. ASubject to subsection 4, a security interest does not attach under a term constituting
23 an after-acquired property clause to:
- 24 a. Consumer goods, other than an accession if given as additional security, unless
25 the debtor acquires rights in the consumer goods within ten days after the
26 secured party gives value; or
- 27 b. A commercial tort claim.
- 28 3. A security agreement may provide that collateral secures, or that accounts, chattel
29 paper, payment intangibles, or promissory notes are sold in connection with, future
30 advances or other value, regardless of whether the advances or value is given
31 pursuant to commitment.

- 1 4. Subsection 2 does not prevent a security interest from attaching:
2 a. To consumer goods as proceeds under subsection 1 of section 41-09-35 or
3 commingled goods under subsection 3 of section 41-09-56;
4 b. To a commercial tort claim as proceeds under subsection 1 of section 41-09-35;
5 or
6 c. Under an after-acquired property clause to property that is proceeds of consumer
7 goods or a commercial tort claim.

8 **SECTION 50. AMENDMENT.** Subsection 3 of section 41-09-17 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 3. Except as otherwise provided in subsection 4, a secured party having possession of
11 collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05,
12 41-09-5.1, 41-09-06, or 41-09-07, or 41-09-07.1:
13 a. May hold as additional security any proceeds, except money or funds, received
14 from the collateral;
15 b. Shall apply money or funds received from the collateral to reduce the secured
16 obligation, unless remitted to the debtor; and
17 c. May create a security interest in the collateral.

18 **SECTION 51. AMENDMENT.** Section 41-09-18 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **41-09-18. (9-208) Additional duties of secured party having control of collateral.**

- 21 1. This section applies to cases in which there is no outstanding secured obligation and
22 the secured party is not committed to make advances, incur obligations, or otherwise
23 give value.
24 2. Within ten days after receiving ~~an authenticated~~ a signed demand by the debtor:
25 a. A secured party having control of a deposit account or an uncertificated certificate
26 of deposit under subdivision b of subsection 1 of section 41-09-04 shall send to
27 the bank with which the deposit account or uncertificated certificate of deposit is
28 maintained ~~an authenticated statement~~ a signed record that releases the bank
29 from any further obligation to comply with instructions originated by the secured
30 party;

- 1 b. A secured party having control of a deposit account or an uncertificated certificate
2 of deposit under subdivision c of subsection 1 of section 41-09-04 shall:
- 3 (1) Pay the debtor the balance on deposit in the deposit account or
4 uncertificated certificate of deposit; or
- 5 (2) Transfer the balance on deposit into a deposit account or an uncertificated
6 certificate of deposit in the debtor's name;
- 7 c. A secured party, other than a buyer, having control ~~of electronic chattel paper~~
8 under section 41-09-05 of an authoritative electronic copy of a record evidencing
9 chattel paper shall:
- 10 (1) ~~Communicate the authoritative copy of the electronic chattel paper to the~~
11 ~~debtor or the electronic chattel paper's designated custodian;~~
- 12 (2) ~~If the debtor designates a custodian that is the designated custodian with~~
13 ~~which the authoritative copy of the electronic chattel paper is maintained for~~
14 ~~the secured party, communicate to the custodian an authenticated record~~
15 ~~releasing the designated custodian from any further obligation to comply~~
16 ~~with instructions originated by the secured party and instructing the~~
17 ~~custodian to comply with instructions originated by the debtor; and~~
- 18 (3) ~~Take appropriate action to enable the debtor or the debtor's designated~~
19 ~~custodian to make copies of or revisions to the authoritative copy which add~~
20 ~~or change an identified assignee of the authoritative copy without the~~
21 ~~consent of the secured party~~ transfer control of the electronic copy to the
22 debtor or a person designated by the debtor;
- 23 d. A secured party having control of investment property under subdivision b of
24 subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall send
25 to the securities intermediary or commodity intermediary with which the security
26 entitlement or commodity contract is maintained ~~an authenticated~~ a signed record
27 that releases the securities intermediary or commodity intermediary from any
28 further obligation to comply with entitlement orders or directions originated by the
29 secured party;
- 30 e. A secured party having control of a letter-of-credit right under section 41-09-07
31 shall send to each person having an unfulfilled obligation to pay or deliver

- 1 proceeds of the letter of credit to the secured party ~~an authenticated~~ a signed
2 release from any further obligation to pay or deliver proceeds of the letter of
3 credit to the secured party; and
- 4 f. A secured party having control under section 41-07-06 of an authoritative
5 electronic copy of an electronic document of title shall:
- 6 (1) ~~Give control of the electronic document to the debtor or its designated~~
7 ~~custodian;~~
- 8 (2) ~~If the debtor designates a custodian that is the designated custodian with~~
9 ~~which the authoritative copy of the electronic document is maintained for the~~
10 ~~secured party, communicate to the custodian an authenticated record~~
11 ~~releasing the designated custodian from any further obligation to comply~~
12 ~~with instructions originated by the secured party and instructing the~~
13 ~~custodian to comply with instructions originated by the debtor; and~~
- 14 (3) ~~Take appropriate action to enable the debtor or its designated custodian to~~
15 ~~make copies of or revisions to the authoritative copy which add or change~~
16 ~~an identified assignee of the authoritative copy without the consent of the~~
17 ~~secured party~~ transfer control of the electronic copy to the debtor or a
18 person designated by the debtor.
- 19 g. A secured party having control under section 41-09-05.1 of electronic money
20 shall transfer control of the electronic money to the debtor or a person designated
21 by the debtor; and
- 22 h. A secured party having control under section 41-12-05 of a controllable electronic
23 record, other than a buyer of a controllable account or controllable payment
24 intangible evidenced by the controllable electronic record, shall transfer control of
25 the controllable electronic record to the debtor or a person designated by the
26 debtor.

27 **SECTION 52. AMENDMENT.** Section 41-09-19 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **41-09-19. (9-209) Duties of secured party if account debtor has been notified of**
30 **assignment.**

- 31 1. Except as otherwise provided in subsection 3, this section applies if:

- 1 a. There is no outstanding secured obligation; and
- 2 b. The secured party is not committed to make advances, incur obligations, or
- 3 otherwise give value.
- 4 2. Within ten days after receiving an ~~authenticated~~ signed demand by the debtor, a
- 5 secured party shall send to an account debtor that has received notification under
- 6 subsection 1 of section 41-09-68 or subsection 2 of section 41-12-06 of an assignment
- 7 to the secured party as assignee ~~under subsection 1 of section 41-09-68 an~~
- 8 ~~authenticated~~ signed record that releases the account debtor from any further
- 9 obligation to the secured party.
- 10 3. This section does not apply to an assignment constituting the sale of an account,
- 11 chattel paper, or payment intangible.

12 **SECTION 53. AMENDMENT.** Section 41-09-20 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **41-09-20. (9-210) Request for accounting - Request regarding list of collateral or**
15 **statement of account.**

- 16 1. In this section:
 - 17 a. "Request" means a record of a type described in subdivision b, c, or d.
 - 18 b. "Request for an accounting" means a record ~~authenticated~~ signed by a debtor
 - 19 requesting that the recipient provide an accounting of the unpaid obligations
 - 20 secured by collateral and reasonably identifying the transaction or relationship
 - 21 that is the subject of the request.
 - 22 c. "Request regarding a list of collateral" means a record ~~authenticated~~ signed by a
 - 23 debtor requesting that the recipient approve or correct a list of what the debtor
 - 24 believes to be the collateral securing an obligation and reasonably identifying the
 - 25 transaction or relationship that is the subject of the request.
 - 26 d. "Request regarding a statement of account" means a record ~~authenticated~~ signed
 - 27 by a debtor requesting that the recipient approve or correct a statement indicating
 - 28 what the debtor believes to be the aggregate amount of unpaid obligations
 - 29 secured by collateral as of a specified date and reasonably identifying the
 - 30 transaction or relationship that is the subject of the request.

- 1 2. Subject to subsections 3 through 6, a secured party, other than a buyer of accounts,
2 chattel paper, payment intangibles, or promissory notes or a consignor, shall comply
3 with a request within fourteen days after receipt:
- 4 a. In the case of a request for an accounting, by ~~authenticating~~signing and sending
5 to the debtor an accounting; and
- 6 b. In the case of a request regarding a list of collateral or a request regarding a
7 statement of account, by ~~authenticating~~signing and sending to the debtor an
8 approval or correction.
- 9 3. A secured party that claims a security interest in all of a particular type of collateral
10 owned by the debtor may comply with a request regarding a list of collateral by
11 sending to the debtor an ~~authenticated~~signed record, including a statement to that
12 effect within fourteen days after receipt.
- 13 4. A person that receives a request regarding a list of collateral, claims no interest in the
14 collateral when that person receives the request, and claimed an interest in the
15 collateral at an earlier time shall comply with the request within fourteen days after
16 receipt by sending to the debtor an ~~authenticated~~signed record:
- 17 a. Disclaiming any interest in the collateral; and
- 18 b. If known to the recipient, providing the name and mailing address of any
19 assignee of or successor to the recipient's interest in the collateral.
- 20 5. A person that receives a request for an accounting or a request regarding a statement
21 of account, claims no interest in the obligations when it receives the request, and
22 claimed an interest in the obligations at an earlier time shall comply with the request
23 within fourteen days after receipt by sending to the debtor an ~~authenticated~~signed
24 record:
- 25 a. Disclaiming any interest in the obligations; and
- 26 b. If known to the recipient, providing the name and mailing address of any
27 assignee of or successor to the recipient's interest in the obligations.
- 28 6. A debtor is entitled without charge to one response to a request under this section
29 during any six-month period. The secured party may require payment of a charge not
30 exceeding twenty-five dollars for each additional response.

1 **SECTION 54. AMENDMENT.** Section 41-09-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **41-09-21. (9-301) Law governing perfection and priority of security interests.**

4 Except as otherwise provided in sections 41-09-23 through ~~41-09-26~~41-09-26.2, the
5 following rules determine the law governing perfection, the effect of perfection or nonperfection,
6 and the priority of a security interest in collateral:

- 7 1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction,
8 the local law of that jurisdiction governs perfection, the effect of perfection or
9 nonperfection, and the priority of a security interest in collateral.
- 10 2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs
11 perfection, the effect of perfection or nonperfection, and the priority of a possessory
12 security interest in that collateral.
- 13 3. Except as otherwise provided in subsection 4, while ~~tangible negotiable~~ tangible
14 documents, goods, instruments, or tangible money, ~~or tangible chattel paper~~ is located
15 in a jurisdiction, the local law of that jurisdiction governs:
 - 16 a. Perfection of a security interest in the goods by filing a fixture filing;
 - 17 b. Perfection of a security interest in timber to be cut; and
 - 18 c. The effect of perfection or nonperfection and the priority of a nonpossessory
19 security interest in the collateral.
- 20 4. The local law of the jurisdiction in which the wellhead or minehead is located governs
21 perfection, the effect of perfection or nonperfection, and the priority of a security
22 interest in as-extracted collateral.

23 **SECTION 55. AMENDMENT.** Subsection 1 of section 41-09-24 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. The local law of a bank's jurisdiction governs perfection, the effect of perfection or
26 nonperfection, and the priority of a security interest in a deposit account or certificate
27 of deposit maintained with that bank even if the transaction does not bear any relation
28 to the bank's jurisdiction.

29 **SECTION 56. AMENDMENT.** Subsection 1 of section 41-09-25 of the North Dakota
30 Century Code is amended and reenacted as follows:

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

- 1 a. While a security certificate is located in a jurisdiction, the local law of that
- 2 jurisdiction governs perfection, the effect of perfection or nonperfection, and the
- 3 priority of a security interest in the certificated security represented thereby.
- 4 b. The local law of the issuer's jurisdiction as specified in subsection 4 of section
- 5 41-08-10 governs perfection, the effect of perfection or nonperfection, and the
- 6 priority of a security interest in an uncertificated security.
- 7 c. The local law of the securities intermediary's jurisdiction as specified in
- 8 subsection 5 of section 41-08-10 governs perfection, the effect of perfection or
- 9 nonperfection, and the priority of a security interest in a security entitlement or
- 10 securities account.
- 11 d. The local law of the commodity intermediary's jurisdiction governs perfection, the
- 12 effect of perfection or nonperfection, and the priority of a security interest in a
- 13 commodity contract or commodity account.
- 14 e. Subdivisions b, c, and d apply even if the transaction does not bear any relation
- 15 to the jurisdiction.

16 **SECTION 57.** Section 41-09-26.1 of the North Dakota Century Code is created and enacted
17 as follows:

18 **41-09-26.1. (9-306A) Law governing perfection and priority of security interests in**
19 **chattel paper.**

- 20 1. Except as provided in subsection 4, if chattel paper is evidenced only by an
- 21 authoritative electronic copy of the chattel paper or is evidenced by an authoritative
- 22 electronic copy and an authoritative tangible copy, the local law of the chattel paper's
- 23 jurisdiction governs perfection, the effect of perfection or nonperfection, and the
- 24 priority of a security interest in the chattel paper, even if the transaction does not bear
- 25 any relation to the chattel paper's jurisdiction.
- 26 2. The following rules determine the chattel paper's jurisdiction under this section:
- 27 a. If the authoritative electronic copy of the record evidencing chattel paper, or a
- 28 record attached to or logically associated with the electronic copy and readily
- 29 available for review, expressly provides that a particular jurisdiction is the chattel
- 30 paper's jurisdiction for purposes of this section, this chapter, or this title, that
- 31 jurisdiction is the chattel paper's jurisdiction.

- 1 b. If subdivision a does not apply and the rules of the system in which the
2 authoritative electronic copy is recorded are readily available for review and
3 expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for
4 purposes of this section, this chapter, or this title, that jurisdiction is the chattel
5 paper's jurisdiction.
- 6 c. If subdivisions a and b do not apply and the authoritative electronic copy, or a
7 record attached to or logically associated with the electronic copy and readily
8 available for review, expressly provides that the chattel paper is governed by the
9 law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
- 10 d. If subdivisions a, b, and c do not apply and the rules of the system in which the
11 authoritative electronic copy is recorded are readily available for review and
12 expressly provide that the chattel paper or the system is governed by the law of a
13 particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
- 14 e. If subdivisions a, b, c, and d do not apply, the chattel paper's jurisdiction is the
15 jurisdiction in which the debtor is located.
- 16 3. If an authoritative tangible copy of a record evidences chattel paper and the chattel
17 paper is not evidenced by an authoritative electronic copy, while the authoritative
18 tangible copy of the record evidencing chattel paper is located in a jurisdiction, the
19 local law of that jurisdiction governs:
- 20 a. Perfection of a security interest in the chattel paper by possession under section
21 41-09-34.1; and
- 22 b. The effect of perfection or nonperfection and the priority of a security interest in
23 the chattel paper.
- 24 4. The local law of the jurisdiction in which the debtor is located governs perfection of a
25 security interest in chattel paper by filing.

26 **SECTION 58.** Section 41-09-26.2 of the North Dakota Century Code is created and enacted
27 as follows:

1 **41-09-26.2. (9-306B) Law governing perfection and priority of security interests in**
2 **controllable accounts, controllable electronic records, and controllable payment**
3 **intangibles.**

- 4 1. Except as provided in subsection 2, the local law of the controllable electronic record's
5 jurisdiction specified in subsections 3 and 4 of section 41-12-07 governs perfection,
6 the effect of perfection or nonperfection, and the priority of a security interest in a
7 controllable electronic record and a security interest in a controllable account or
8 controllable payment intangible evidenced by the controllable electronic record.
- 9 2. The local law of the jurisdiction in which the debtor is located governs:
- 10 a. Perfection of a security interest in a controllable account, controllable electronic
11 record, or controllable payment intangible by filing; and
- 12 b. Automatic perfection of a security interest in a controllable payment intangible
13 created by a sale of the controllable payment intangible.

14 **SECTION 59. AMENDMENT.** Section 41-09-30 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **41-09-30. (9-310) When filing required to perfect security interest or agricultural lien -**
17 **Security interests and agricultural liens to which filing provisions do not apply.**

- 18 1. Except as otherwise provided in subsection 2 and subsection 2 of section 41-09-32, a
19 financing statement must be filed to perfect all security interests and agricultural liens.
- 20 2. The filing of a financing statement is not necessary to perfect a security interest:
- 21 a. That is perfected under subsection 4, 5, 6, or 7 of section 41-09-28;
- 22 b. That is perfected under section 41-09-29 when it attaches;
- 23 c. In property subject to a statute, regulation, or treaty described in subsection 1 of
24 section 41-09-31;
- 25 d. In goods in possession of a bailee which is perfected under subdivision a or b of
26 subsection 4 of section 41-09-32;
- 27 e. In certificated securities, documents, goods, or instruments which is perfected
28 without filing, control, or possession under subsection 5, 6, or 7 of section
29 41-09-32;
- 30 f. In collateral in the secured party's possession under section 41-09-33;

- 1 g. In a certificated security which is perfected by delivery of the security certificate to
2 the secured party under section 41-09-33;
- 3 h. In controllable accounts, controllable electronic records, controllable payment
4 intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents,
5 investment property, letter-of-credit rights, or uncertificated certificates of deposit,
6 which is perfected by control under section 41-09-34;
- 7 i. In chattel paper which is perfected by possession and control under section
8 41-09-34.1;
- 9 j. In proceeds which is perfected under section 41-09-35;
- 10 ~~j.k.~~ That is perfected under section 41-09-36; or
- 11 ~~k.l.~~ In agricultural liens created by chapter 35-17, 35-30, or 35-31.
- 12 3. If a secured party assigns a perfected security interest or agricultural lien, a filing
13 under this chapter is not required to continue the perfected status of the security
14 interest against creditors of and transferees from the original debtor.

15 **SECTION 60. AMENDMENT.** Section 41-09-32 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-09-32. (9-312) Perfection of security interests in chattel paper, controllable**
18 **accounts, controllable electronic records, controllable payment intangibles, deposit**
19 **accounts, documents, goods covered by documents, instruments, investment property,**
20 **letter-of-credit rights, money, and uncertificated certificates of deposit - Perfection by**
21 **permissive filing - Temporary perfection without filing or transfer of possession.**

- 22 1. A security interest in chattel paper, ~~negotiable documents~~controllable accounts,
23 controllable electronic records, controllable payment intangibles, instruments, ~~or~~
24 investment property, or negotiable documents may be perfected by filing.
- 25 2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for proceeds:
- 26 a. A security interest in a deposit account or an uncertificated certificate of deposit
27 may be perfected only by control under section 41-09-34;
- 28 b. Except as otherwise provided in subsection 4 of section 41-09-28, a security
29 interest in a letter-of-credit right may be perfected only by control under section
30 41-09-34; ~~and~~

- 1 c. A security interest in tangible money or a certificated certificate of deposit may be
2 perfected only by the secured party's taking possession under section 41-09-33;
3 and
4 d. A security interest in electronic money may be perfected only by control under
5 section 41-09-34.
- 6 3. While goods are in the possession of a bailee that has issued a negotiable document
7 covering the goods:
8 a. A security interest in the goods may be perfected by perfecting a security interest
9 in the document; and
10 b. A security interest perfected in the document has priority over any security
11 interest that becomes perfected in the goods by another method during that time.
- 12 4. While goods are in the possession of a bailee that has issued a non-negotiable
13 document covering the goods, a security interest in the goods may be perfected by:
14 a. Issuance of a document in the name of the secured party;
15 b. The bailee's receipt of notification of the secured party's interest; or
16 c. Filing as to the goods.
- 17 5. A security interest in certificated certificates of deposit, certificated securities,
18 negotiable documents, or instruments is perfected without filing or the taking of
19 possession or control for a period of twenty days from the time it attaches to the extent
20 that it arises for new value given under ~~an authenticated~~ a signed security agreement.
- 21 6. A perfected security interest in a negotiable document or goods in possession of a
22 bailee, other than one that has issued a negotiable document for the goods, remains
23 perfected for twenty days without filing if the secured party makes available to the
24 debtor the goods or documents representing the goods for the purpose of:
25 a. Ultimate sale or exchange; or
26 b. Loading, unloading, storing, shipping, trans-shipping, manufacturing, processing,
27 or otherwise dealing with them in a manner preliminary to their sale or exchange.
- 28 7. A perfected security interest in a certificated certificate of deposit, certificated security,
29 or instrument remains perfected for twenty days without filing if the secured party
30 delivers the security certificate, certificated certificate of deposit, or instrument to the
31 debtor for the purpose of:

- 1 a. Ultimate sale or exchange; or
- 2 b. Presentation, collection, enforcement, renewal, or registration of transfer.
- 3 8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection
- 4 depends upon compliance with this chapter.

5 **SECTION 61. AMENDMENT.** Section 41-09-33 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **41-09-33. (9-313) When possession by or delivery to secured party perfects security**
8 **interest without filing.**

- 9 1. Except as otherwise provided in subsection 2, a secured party may perfect a security
10 interest in ~~tangible~~ certificated certificates of deposit, ~~negotiable documents,~~ goods,
11 instruments, negotiable tangible documents, or tangible money, ~~or tangible chattel-~~
12 paper by taking possession of the collateral. A secured party may perfect a security
13 interest in certificated securities by taking delivery of the certificated securities under
14 section 41-08-27.
- 15 2. With respect to goods covered by a certificate of title issued by this state, a secured
16 party may perfect a security interest in the goods by taking possession of the goods
17 only in the circumstances described in subsection 4 of section 41-09-36.
- 18 3. With respect to collateral other than certificated securities and goods covered by a
19 document, a secured party takes possession of collateral in the possession of a
20 person other than the debtor, the secured party, or a lessee of the collateral from the
21 debtor in the ordinary course of the debtor's business, when:
 - 22 a. The person in possession ~~authenticates~~signs a record acknowledging that it
23 holds possession of the collateral for the secured party's benefit; or
 - 24 b. The person takes possession of the collateral after having ~~authenticated~~signed a
25 record acknowledging that it will hold possession of the collateral for the secured
26 party's benefit.
- 27 4. If perfection of a security interest depends upon possession of the collateral by a
28 secured party, perfection occurs ~~no~~not earlier than the time the secured party takes
29 possession and continues only while the secured party retains possession.

- 1 5. A security interest in a certificated security in registered form is perfected by delivery
2 when delivery of the certificated security occurs under section 41-08-27 and remains
3 perfected by delivery until the debtor obtains possession of the security certificate.
- 4 6. A person in possession of collateral is not required to acknowledge that it holds
5 possession for a secured party's benefit.
- 6 7. If a person acknowledges that it holds possession for the secured party's benefit:
7 a. The acknowledgment is effective under subsection 3 or subsection 1 of section
8 41-09-21, even if the acknowledgment violates the rights of a debtor; and
9 b. Unless the person otherwise agrees or law other than this chapter otherwise
10 provides, the person does not owe any duty to the secured party and is not
11 required to confirm the acknowledgment to another person.
- 12 8. A secured party having possession of collateral does not relinquish possession by
13 delivering the collateral to a person other than the debtor or a lessee of the collateral
14 from the debtor in the ordinary course of the debtor's business if the person was
15 instructed before the delivery or is instructed contemporaneously with the delivery:
16 a. To hold possession of the collateral for the secured party's benefit; or
17 b. To redeliver the collateral to the secured party.
- 18 9. A secured party does not relinquish possession, even if a delivery under subsection 8
19 violates the rights of a debtor. A person to which collateral is delivered under
20 subsection 8 does not owe any duty to the secured party and is not required to confirm
21 the delivery to another person unless the person otherwise agrees or law other than
22 this chapter otherwise provides.

23 **SECTION 62. AMENDMENT.** Section 41-09-34 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-09-34. (9-314) Perfection by control.**

- 26 1. A security interest in ~~investment property~~controllable accounts, controllable electronic
27 records, controllable payment intangibles, deposit accounts, uncertificated certificates
28 of deposit, ~~letter-of-credit rights, electronic chattel paper, or electronic documents,~~
29 electronic money, investment property, or letter-of-credit rights may be perfected by
30 control of the collateral under section 41-07-06, 41-09-04, ~~41-09-05~~41-09-05.1,
31 41-09-06, ~~or 41-09-07,~~ or 41-09-07.1.

- 1 2. A security interest in controllable accounts, controllable electronic records, controllable
2 payment intangibles, deposit accounts, electronic chattel paper, letter-of-credit rights,
3 electronic documents, ~~or~~ uncertificated certificates of deposit, electronic money, or
4 letter-of-credit rights is perfected by control under section 41-07-06, 41-09-04,
5 41-09-05, ~~or~~ 41-09-05.1, 41-09-07 when, or 41-09-07.1 not earlier than the time the
6 secured party obtains control and remains perfected by control only while the secured
7 party retains control.
- 8 3. A security interest in investment property is perfected by control under section
9 41-09-06 ~~from~~ not earlier than the time the secured party obtains control and remains
10 perfected by control until:
- 11 a. The secured party does not have control; and
- 12 b. One of the following occurs:
- 13 (1) If the collateral is a certificated security, the debtor has or acquires
14 possession of the security certificate;
- 15 (2) If the collateral is an uncertificated security, the issuer has registered or
16 registers the debtor as the registered owner; or
- 17 (3) If the collateral is a security entitlement, the debtor is or becomes the
18 entitlement holder.

19 **SECTION 63.** Section 41-09-34.1 of the North Dakota Century Code is created and enacted
20 as follows:

21 **41-09-34.1. (9-314A) Perfection by possession and control of chattel paper.**

- 22 1. A secured party may perfect a security interest in chattel paper by taking possession
23 of each authoritative tangible copy of the record evidencing the chattel paper and
24 obtaining control of each authoritative electronic copy of the electronic record
25 evidencing the chattel paper.
- 26 2. A security interest is perfected under subsection 1 not earlier than the time the
27 secured party takes possession and obtains control and remains perfected under
28 subsection 1 only while the secured party retains possession and control.
- 29 3. Subsections 3 and 6 through 9 of section 41-09-33 applies to perfection by possession
30 of an authoritative tangible copy of a record evidencing chattel paper.

1 **SECTION 64. AMENDMENT.** Section 41-09-36 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **41-09-36. (9-316) Effect of change in governing law.**

- 4 1. A security interest perfected pursuant to the law of the jurisdiction designated in
5 subsection 1 of section 41-09-21 ~~or~~, subsection 3 of section 41-09-25, subsection 4 of
6 section 41-09-26.1, or subsection 2 of section 41-09-26.2 remains perfected until the
7 earliest of:
- 8 a. The time perfection would have ceased under the law of that jurisdiction;
9 b. The expiration of four months after a change of the debtor's location to another
10 jurisdiction; or
11 c. The expiration of one year after a transfer of collateral to a person that thereby
12 becomes a debtor and is located in another jurisdiction.
- 13 2. If a security interest described in subsection 1 becomes perfected under the law of the
14 other jurisdiction before the earliest time or event described in that subsection, it
15 remains perfected thereafter. If the security interest does not become perfected under
16 the law of the other jurisdiction before the earliest time or event, it becomes
17 unperfected and is deemed never to have been perfected as against a purchaser of
18 the collateral for value.
- 19 3. A possessory security interest in collateral, other than goods covered by a certificate of
20 title and as-extracted collateral consisting of goods, remains continuously perfected if:
- 21 a. The collateral is located in one jurisdiction and subject to a security interest
22 perfected under the law of that jurisdiction;
23 b. Thereafter the collateral is brought into another jurisdiction; and
24 c. Upon entry into the other jurisdiction, the security interest is perfected under the
25 law of the other jurisdiction.
- 26 4. Except as otherwise provided in subsection 5, a security interest in goods covered by
27 a certificate of title which is perfected by any method under the law of another
28 jurisdiction when the goods become covered by a certificate of title from this state
29 remains perfected until the security interest would have become unperfected under the
30 law of the other jurisdiction had the goods not become so covered.

- 1 5. A security interest described in subsection 4 becomes unperfected as against a
2 purchaser of the goods for value and is deemed never to have been perfected as
3 against a purchaser of the goods for value if the applicable requirements for perfection
4 under subsection 2 of section 41-09-31 or section 41-09-33 are not satisfied before
5 the earlier of:
- 6 a. The time the security interest would have become unperfected under the law of
7 the other jurisdiction had the goods not become covered by a certificate of title
8 from this state; or
- 9 b. The expiration of four months after the goods had become so covered.
- 10 6. A security interest in chattel paper, controllable accounts, controllable electronic
11 records, controllable payment intangibles, deposit accounts, certificates of deposit,
12 letter-of-credit rights, or investment property which is perfected under the law of the
13 chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's
14 jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities
15 intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable,
16 remains perfected until the earlier of:
- 17 a. The time the security interest would have become unperfected under the law of
18 that jurisdiction; or
- 19 b. The expiration of four months after a change of the applicable jurisdiction to
20 another jurisdiction.
- 21 7. If a security interest described in subsection 6 becomes perfected under the law of the
22 other jurisdiction before the earlier of the time or the end of the period described in that
23 subsection, it remains perfected thereafter. If the security interest does not become
24 perfected under the law of the other jurisdiction before the earlier of that time or the
25 end of that period, it becomes unperfected and is deemed never to have been
26 perfected as against a purchaser of the collateral for value.
- 27 8. The following rules apply to collateral to which a security interest attaches within four
28 months after the debtor changes its location to another jurisdiction:
- 29 a. A financing statement filed before the change pursuant to the law of the
30 jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of
31 section 41-09-25 is effective to perfect a security interest in the collateral if the

1 financing statement would have been effective to perfect a security interest in the
2 collateral if the debtor had not changed its location.

3 b. If a security interest that is perfected by a financing statement that is effective
4 under subdivision a becomes perfected under the law of the other jurisdiction
5 before the earlier of the time the financing statement would have become
6 ineffective under the law of the jurisdiction designated in subsection 1 of section
7 41-09-21 or subsection 3 of section 41-09-25 or the expiration of the four-month
8 period, it remains perfected thereafter. If the security interest does not become
9 perfected under the law of the other jurisdiction before the earlier time or event, it
10 becomes unperfected and is deemed never to have been perfected as against a
11 purchaser of the collateral for value.

12 9. If a financing statement naming an original debtor is filed pursuant to the law of the
13 jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section
14 41-09-25 and the new debtor is located in another jurisdiction, the following rules
15 apply:

16 a. The financing statement is effective to perfect a security interest in collateral in
17 which the new debtor has or acquires rights before or within four months after the
18 new debtor becomes bound under subsection 4 of section 41-09-13, if the
19 financing statement would have been effective to perfect a security interest in the
20 collateral if the collateral had been acquired by the original debtor.

21 b. A security interest that is perfected by the financing statement and which
22 becomes perfected under the law of the other jurisdiction before the earlier of the
23 expiration of the four-month period or the time the financing statement would
24 have become ineffective under the law of the jurisdiction designated in
25 subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains
26 perfected thereafter. A security interest that is perfected by the financing
27 statement but which does not become perfected under the law of the other
28 jurisdiction before the earlier time or event becomes unperfected and is deemed
29 never to have been perfected as against a purchaser of the collateral for value.

30 **SECTION 65. AMENDMENT.** Section 41-09-37 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **41-09-37. (9-317) Interests that take priority over or take free of security interest or**
2 **agricultural lien.**

- 3 1. A security interest or an agricultural lien is subordinate to the rights of:
- 4 a. A person entitled to priority under section 41-09-42; and
- 5 b. Except as otherwise provided in subsection 5, a person that becomes a lien
- 6 creditor before the earlier of the time:
- 7 (1) The security interest or agricultural lien is perfected; or
- 8 (2) One of the conditions specified in subdivision c of subsection 2 of section
- 9 41-09-13 is met and a financing statement covering the collateral is filed.
- 10 2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of
- 11 ~~tangible chattel paper, tangible documents,~~ goods, instruments, tangible documents,
- 12 or a certificated security takes free of a security interest or agricultural lien if the buyer
- 13 gives value and receives delivery of the collateral without knowledge of the security
- 14 interest or agricultural lien and before it is perfected.
- 15 3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a
- 16 security interest or agricultural lien if the lessee gives value and receives delivery of
- 17 the collateral without knowledge of the security interest or agricultural lien and before it
- 18 is perfected.
- 19 4. ~~Subject to subsections 6 through 9, a~~ licensee of a general intangible or a buyer,
- 20 other than a secured party, of collateral other than ~~tangible chattel paper, tangible~~
- 21 ~~documents~~electronic money, goods, instruments, tangible documents, or a certificated
- 22 security takes free of a security interest if the licensee or buyer gives value without
- 23 knowledge of the security interest and before it is perfected.
- 24 5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a
- 25 financing statement with respect to a purchase-money security interest before or
- 26 within twenty days after the debtor receives delivery of the collateral, the security
- 27 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise
- 28 between the time the security interest attaches and the time of filing.
- 29 6. A buyer, other than a secured party, of chattel paper takes free of a security interest if,
- 30 without knowledge of the security interest and before it is perfected, the buyer gives
- 31 value and:

- 1 a. Receives delivery of each authoritative tangible copy of the record evidencing the
2 chattel paper; and
- 3 b. If each authoritative electronic copy of the record evidencing the chattel paper
4 can be subjected to control under section 41-09-05, obtains control of each
5 authoritative electronic copy.
- 6 7. A buyer of an electronic document takes free of a security interest if, without
7 knowledge of the security interest and before it is perfected, the buyer gives value
8 and, if each authoritative electronic copy of the document can be subjected to control
9 under section 41-07-06, obtains control of each authoritative electronic copy.
- 10 8. A buyer of a controllable electronic record takes free of a security interest if, without
11 knowledge of the security interest and before it is perfected, the buyer gives value and
12 obtains control of the controllable electronic record.
- 13 9. A buyer, other than a secured party, of a controllable account or a controllable
14 payment intangible takes free of a security interest if, without knowledge of the
15 security interest and before it is perfected, the buyer gives value and obtains control of
16 the controllable account or controllable payment intangible.

17 **SECTION 66. AMENDMENT.** Section 41-09-43 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **41-09-43. (9-323) Future advances.**

- 20 1. Except as otherwise provided in subsection 3, for purposes of determining the priority
21 of a perfected security interest under subdivision a of subsection 1 of section
22 41-09-42, perfection of the security interest dates from the time an advance is made to
23 the extent that the security interest secures an advance that:
- 24 a. Is made while the security interest is perfected only:
- 25 (1) Under section 41-09-29 when it attaches; or
- 26 (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and
- 27 b. Is not made pursuant to a commitment entered into before or while the security
28 interest is perfected by a method other than under section 41-09-29 or
29 subsection 5, 6, or 7 of section 41-09-32.
- 30 2. Except as otherwise provided in subsection 3, a security interest is subordinate to the
31 rights of a person that becomes a lien creditor to the extent that the security interest

- 1 secures an advance made more than forty-five days after the person becomes a lien
2 creditor unless the advance is made:
- 3 a. Without knowledge of the lien; or
4 b. Pursuant to a commitment entered into without knowledge of the lien.
- 5 3. Subsections 1 and 2 do not apply to a security interest held by a secured party that is
6 a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a
7 consignor.
- 8 4. Except as otherwise provided in subsection 5, a buyer of goods ~~other than a buyer in-~~
9 ~~ordinary course of business~~ takes free of a security interest to the extent that it
10 secures advances made after the earlier of:
- 11 a. The time the secured party acquires knowledge of the buyer's purchase; or
12 b. Forty-five days after the purchase.
- 13 5. Subsection 4 does not apply if the advance is made pursuant to a commitment
14 entered into without knowledge of the buyer's purchase and before the expiration of
15 the forty-five-day period.
- 16 6. Except as otherwise provided in subsection 7, a lessee of goods, ~~other than a lessee-~~
17 ~~in ordinary course of business,~~ takes the leasehold interest free of a security interest
18 to the extent that it secures advances made after the earlier of:
- 19 a. The time the secured party acquires knowledge of the lease; or
20 b. Forty-five days after the lease contract becomes enforceable.
- 21 7. Subsection 6 does not apply if the advance is made pursuant to a commitment
22 entered into without knowledge of the lease and before the expiration of the
23 forty-five-day period.

24 **SECTION 67. AMENDMENT.** Section 41-09-44 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **41-09-44. (9-324) Priority of purchase-money security interests.**

- 27 1. Except as otherwise provided in subsection 7, a perfected purchase-money security
28 interest in goods other than inventory or livestock has priority over a conflicting
29 security interest in the same goods, and, except as otherwise provided in section
30 41-09-47, a perfected security interest in its identifiable proceeds also has priority, if

- 1 the purchase-money security interest is perfected when the debtor receives
2 possession of the collateral or within twenty days thereafter.
- 3 2. Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected
4 purchase-money security interest in inventory has priority over a conflicting security
5 interest in the same inventory, has priority over a conflicting security interest in chattel
6 paper or an instrument constituting proceeds of the inventory and in proceeds of the
7 chattel paper, if so provided in section 41-09-50, and, except as otherwise provided in
8 section 41-09-47, also has priority in identifiable cash proceeds of the inventory to the
9 extent the identifiable cash proceeds are received on or before the delivery of the
10 inventory to a buyer, if:
- 11 a. The purchase-money security interest is perfected when the debtor receives
12 possession of the inventory;
- 13 b. The purchase-money secured party sends ~~an authenticated~~ a signed notification
14 to the holder of the conflicting security interest;
- 15 c. The holder of the conflicting security interest receives the notification within five
16 years before the debtor receives possession of the inventory; and
- 17 d. The notification states that the person sending the notification has or expects to
18 acquire a purchase-money security interest in inventory of the debtor and
19 describes the inventory.
- 20 3. Subdivisions b through d of subsection 2 apply only if the holder of the conflicting
21 security interest had filed a financing statement covering the same types of inventory:
- 22 a. If the purchase-money security interest is perfected by filing, before the date of
23 the filing; or
- 24 b. If the purchase-money security interest is temporarily perfected without filing or
25 possession under subsection 6 of section 41-09-32, before the beginning of the
26 twenty-day period thereunder.
- 27 4. Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected
28 purchase-money security interest in livestock that are farm products has priority over a
29 conflicting security interest in the same livestock, and, except as otherwise provided in
30 section 41-09-47, a perfected security interest in their identifiable proceeds and
31 identifiable products in their unmanufactured states also has priority, if:

- 1 a. The purchase-money security interest is perfected when the debtor receives
- 2 possession of the livestock;
- 3 b. The purchase-money secured party sends ~~an authenticated~~ a signed notification
- 4 to the holder of the conflicting security interest;
- 5 c. The holder of the conflicting security interest receives the notification within six
- 6 months before the debtor receives possession of the livestock; and
- 7 d. The notification states that the person sending the notification has or expects to
- 8 acquire a purchase-money security interest in livestock of the debtor and
- 9 describes the livestock.
- 10 5. Subdivisions b through d of subsection 4 apply only if the holder of the conflicting
- 11 security interest had filed a financing statement covering the same types of livestock:
- 12 a. If the purchase-money security interest is perfected by filing, before the date of
- 13 the filing; or
- 14 b. If the purchase-money security interest is temporarily perfected without filing or
- 15 possession under subsection 6 of section 41-09-32, before the beginning of the
- 16 twenty-day period thereunder.
- 17 6. Except as otherwise provided in subsection 7, a perfected purchase-money security
- 18 interest in software has priority over a conflicting security interest in the same
- 19 collateral, and, except as otherwise provided in section 41-09-47, a perfected security
- 20 interest in its identifiable proceeds also has priority, to the extent that the
- 21 purchase-money security interest in the goods in which the software was acquired for
- 22 use has priority in the goods and proceeds of the goods under this section.
- 23 7. If more than one security interest qualifies for priority in the same collateral under
- 24 subsection 1, 2, 3, or 4:
- 25 a. A security interest securing an obligation incurred as all or part of the price of the
- 26 collateral has priority over a security interest securing an obligation incurred for
- 27 value given to enable the debtor to acquire rights in or the use of collateral; and
- 28 b. In all other cases, subsection 1 of section 41-09-42 applies to the qualifying
- 29 security interests.

30 **SECTION 68.** Section 41-09-46.1 of the North Dakota Century Code is created and enacted
31 as follows:

1 **41-09-46.1. (9-326A) Priority of security interest in controllable account, controllable**
2 **electronic record, and controllable payment intangible.**

3 A security interest in a controllable account, controllable electronic record, or controllable
4 payment intangible held by a secured party having control of the account, electronic record, or
5 payment intangible has priority over a conflicting security interest held by a secured party that
6 does not have control.

7 **SECTION 69. AMENDMENT.** Section 41-09-50 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **41-09-50. (9-330) Priority of purchaser of chattel paper or instrument.**

- 10 1. A purchaser of chattel paper has priority over a security interest in the chattel paper
11 which is claimed merely as proceeds of inventory subject to a security interest if:
- 12 a. In good faith and in the ordinary course of the purchaser's business, the
13 purchaser gives new value ~~and~~, takes possession of each authoritative tangible
14 copy of the record evidencing the chattel paper or, and obtains control of
15 section 41-09-05 of each authoritative electronic copy of the record evidencing
16 the chattel paper under section 41-09-05; and
- 17 b. ~~The chattel paper does~~ authoritative copies of the record evidencing the chattel
18 paper do not indicate that the chattel paper has been assigned to an identified
19 assignee other than the purchaser.
- 20 2. A purchaser of chattel paper has priority over a security interest in the chattel paper
21 which is claimed other than merely as proceeds of inventory subject to a security
22 interest if the purchaser gives new value ~~and~~, takes possession of each authoritative
23 tangible copy of the record evidencing the chattel paper or, and obtains control
24 of section 41-09-05 of each authoritative electronic copy of the record evidencing
25 the chattel paper under section 41-09-05 in good faith, in the ordinary course of the
26 purchaser's business, and without knowledge that the purchase violates the rights of
27 the secured party.
- 28 3. Except as otherwise provided in section 41-09-47, a purchaser having priority in
29 chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper
30 to the extent that:
- 31 a. Section 41-09-42 provides for priority in the proceeds; or

- 1 b. The proceeds consist of the specific goods covered by the chattel paper or cash
2 proceeds of the specific goods, even if the purchaser's security interest in the
3 proceeds is unperfected.
- 4 4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of an
5 instrument has priority over a security interest in the instrument perfected by a method
6 other than possession if the purchaser gives value and takes possession of the
7 instrument in good faith and without knowledge that the purchase violates the rights of
8 the secured party.
- 9 5. For purposes of subsections 1 and 2, the holder of a purchase-money security interest
10 in inventory gives new value for chattel paper constituting proceeds of the inventory.
- 11 6. For purposes of subsections 2 and 4, if the authoritative copies of the record
12 evidencing chattel paper or an instrument indicatesindicate that itthe chattel paper or
13 instrument has been assigned to an identified secured party other than the purchaser,
14 a purchaser of the chattel paper or instrument has knowledge that the purchase
15 violates the rights of the secured party.

16 **SECTION 70. AMENDMENT.** Section 41-09-51 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **41-09-51. (9-331) Priority of rights of purchasers of instrumentscontrollable accounts,**
19 **controllable electronic records, controllable payment intangibles, documents,**
20 **instruments, and securities under other articles - Priority of interests in financial assets**
21 **and security entitlements and protection against assertion of claim under**
22 **chapterchapters 41-08 and 41-12.**

- 23 1. This chapter does not limit the rights of a holder in due course of a negotiable
24 instrument, a holder to which a negotiable document of title has been duly negotiated,
25 or a protected purchaser of a security, or a qualifying purchaser of a controllable
26 account, controllable electronic record, or controllable payment intangible. These
27 holders or purchasers take priority over an earlier security interest, even if perfected,
28 to the extent provided in chapters 41-03, 41-07, and 41-08, and 41-12.
- 29 2. This chapter does not limit the rights of or impose liability on a person to the extent
30 that the person is protected against the assertion of a claim under chapterchapters
31 41-08 and 41-12.

- 1 3. Filing under this chapter does not constitute notice of a claim or defense to the
2 holders, purchasers, or persons described in subsections 1 and 2.

3 **SECTION 71. AMENDMENT.** Section 41-09-52 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.**

- 6 1. A transferee of tangible money takes the money free of a security interest ~~unless the~~
7 ~~transferee acts~~ if the transferee receives possession of the money without acting in
8 collusion with the debtor in violating the rights of the secured party.
9 2. A transferee of funds from a deposit account takes the funds free of a security interest
10 in the deposit account ~~unless the transferee acts~~ if the transferee receives the funds
11 without acting in collusion with the debtor in violating the rights of the secured party.
12 3. A transferee of electronic money takes the money free of a security interest if the
13 transferee obtains control of the money without acting in collusion with the debtor in
14 violating the rights of the secured party.

15 **SECTION 72. AMENDMENT.** Subsection 6 of section 41-09-54 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 6. A security interest in fixtures, whether or not perfected, has priority over a conflicting
18 interest of an encumbrancer or owner of the real property if:
19 a. The encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented
20 to the security interest or disclaimed an interest in the goods as fixtures; or
21 b. The debtor has a right to remove the goods as against the encumbrancer or
22 owner.

23 **SECTION 73. AMENDMENT.** Section 41-09-61 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-09-61. (9-341) Bank's rights and duties with respect to deposit account or**
26 **certificate of deposit.**

27 Except as otherwise provided in subsection 3 of section 41-09-60, and unless the bank
28 otherwise agrees in ~~an authenticated~~ a signed record, a bank's rights and duties with respect to
29 a deposit account or certificate of deposit maintained with the bank are not terminated,
30 suspended, or modified by:

- 1 1. The creation, attachment, or perfection of a security interest in the deposit account or
- 2 certificate of deposit;
- 3 2. The bank's knowledge of the security interest; or
- 4 3. The bank's receipt of instructions from the secured party.

5 **SECTION 74. AMENDMENT.** Subdivision b of subsection 1 of section 41-09-66 of the North
6 Dakota Century Code is amended and reenacted as follows:

- 7 b. Any other defense or claim of the account debtor against the assignor which
- 8 accrues before the account debtor receives a notification of the assignment
- 9 ~~authenticated~~signed by the assignor or the assignee.

10 **SECTION 75. AMENDMENT.** Section 41-09-68 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **41-09-68. (9-406) Discharge of account debtor - Notification of assignment -**
13 **Identification and proof of assignment - Restrictions on assignment of accounts, chattel**
14 **paper, payment intangibles, and promissory notes ineffective.**

- 15 1. Subject to subsections 2 through 910, an account debtor on an account, chattel paper,
- 16 or a payment intangible may discharge its obligation by paying the assignor until, but
- 17 not after, the account debtor receives a notification, ~~authenticated~~signed by the
- 18 assignor or the assignee, that the amount due or to become due has been assigned
- 19 and that payment is to be made to the assignee. After receipt of the notification, the
- 20 account debtor may discharge its obligation by paying the assignee and may not
- 21 discharge the obligation by paying the assignor.
- 22 2. Subject to ~~subsection~~subsections 8 and 10, notification is ineffective under
- 23 subsection 1:
 - 24 a. If it does not reasonably identify the rights assigned;
 - 25 b. To the extent that an agreement between an account debtor and a seller of a
 - 26 payment intangible limits the account debtor's duty to pay a person other than the
 - 27 seller and the limitation is effective under law other than this chapter; or
 - 28 c. At the option of an account debtor, if the notification notifies the account debtor to
 - 29 make less than the full amount of any installment or other periodic payment to the
 - 30 assignee, even if:

- 1 (1) Only a portion of the account, chattel paper, or payment intangible has been
2 assigned to that assignee;
- 3 (2) A portion has been assigned to another assignee; or
- 4 (3) The account debtor knows that the assignment to that assignee is limited.
- 5 3. Subject to ~~subsection~~subsections 8 and 10, if requested by the account debtor, an
6 assignee shall seasonably furnish reasonable proof that the assignment has been
7 made. Unless the assignee complies, the account debtor may discharge its obligation
8 by paying the assignor, even if the account debtor has received a notification under
9 subsection 1.
- 10 4. In this subsection, "promissory note" includes a negotiable instrument that evidences
11 chattel paper. Except as otherwise provided in subsection 5 and sections 41-02.1-33
12 and 41-09-69, and subject to subsection 8, a term in an agreement between an
13 account debtor and an assignor or in a promissory note is ineffective to the extent that
14 it:
- 15 a. Prohibits, restricts, or requires the consent of the account debtor or person
16 obligated on the promissory note to the assignment or transfer of, or the creation,
17 attachment, perfection, or enforcement of a security interest in, the account,
18 chattel paper, payment intangible, or promissory note; or
- 19 b. Provides that the assignment or transfer or the creation, attachment, perfection,
20 or enforcement of the security interest may give rise to a default, breach, right of
21 recoupment, claim, defense, termination, right of termination, or remedy under
22 the account, chattel paper, payment intangible, or promissory note.
- 23 5. Subsection 4 does not apply to the sale of a payment intangible or promissory note,
24 other than a sale pursuant to a disposition under section 41-09-107 or an acceptance
25 of collateral under section 41-09-115.
- 26 6. Except as otherwise provided in sections 41-02.1-33 and 41-09-69 and subject to
27 subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or
28 requires the consent of a government, governmental body or official, or account debtor
29 to the assignment or transfer of, or creation of a security interest in, an account or
30 chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

- 1 a. Prohibits, restricts, or requires the consent of the government, governmental
2 body or official, or account debtor to the assignment or transfer of, or the
3 creation, attachment, perfection, or enforcement of a security interest in the
4 account or chattel paper; or
5 b. Provides that the assignment, transfer, creation, attachment, perfection, or
6 enforcement of the security interest may give rise to a default, breach, right of
7 recoupment, claim, defense, termination, right of termination, or remedy under
8 the account or chattel paper.
- 9 7. Subject to ~~subsection~~subsections 8 and 10, an account debtor may not waive or vary
10 its option under subdivision c of subsection 2.
- 11 8. This section is subject to law other than this chapter which establishes a different rule
12 for an account debtor who is an individual and who incurred the obligation primarily for
13 personal, family, or household purposes.
- 14 9. This section does not apply to an assignment of a health care insurance receivable.
- 15 10. Subsections 1, 2, 3, and 7 do not apply to a controllable account or controllable
16 payment intangible.

17 **SECTION 76.** A new subsection to section 41-09-70 of the North Dakota Century Code is
18 created and enacted as follows:

19 In this section, "promissory note" includes a negotiable instrument that evidences
20 chattel paper.

21 **SECTION 77. AMENDMENT.** Section 41-09-80 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **41-09-80. (9-509) Persons entitled to file a record.**

- 24 1. A person may file an initial financing statement, amendment that adds collateral
25 covered by a financing statement, or amendment that adds a debtor to a financing
26 statement only if:
- 27 a. The debtor authorizes the filing in ~~an authenticated~~ a signed record or pursuant to
28 subsection 2 or 3; or
- 29 b. The person holds an agricultural lien that has become effective at the time of
30 filing and the financing statement covers only collateral in which the person holds
31 an agricultural lien.

- 1 2. By authenticating ~~signing~~ or becoming bound as debtor by a security agreement, a
2 debtor or new debtor authorizes the filing of an initial financing statement, and an
3 amendment, covering:
- 4 a. The collateral described in the security agreement; and
5 b. Property that becomes collateral under subdivision b of subsection 1 of section
6 41-09-35, regardless of whether the security agreement expressly covers
7 proceeds.
- 8 3. By acquiring collateral in which a security interest or agricultural lien continues under
9 subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the filing of an
10 initial financing statement, and an amendment, covering the collateral and property
11 that becomes collateral under subdivision b of subsection 1 of section 41-09-35.
- 12 4. A person may file an amendment other than an amendment that adds collateral
13 covered by a financing statement or an amendment that adds a debtor to a financing
14 statement only if:
- 15 a. The secured party of record authorizes the filing; or
16 b. The amendment is a termination statement for a financing statement as to which
17 the secured party of record has failed to file or send a termination statement as
18 required under section 41-09-84, the debtor authorizes the filing, and the
19 termination statement indicates that the debtor authorized it to be filed. The filing
20 office shall notify the secured party of a filing under this subsection.
- 21 5. If there is more than one secured party of record for a financing statement, each
22 secured party of record may authorize the filing of an amendment under subsection 4.

23 **SECTION 78. AMENDMENT.** Subsection 2 of section 41-09-98 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 2. A secured party in possession of collateral or control of collateral under section
26 41-07-06, 41-09-04, 41-09-05, 41-09-05.1, 41-09-06, ~~or~~ 41-09-07, or 41-09-07.1 has
27 the rights and duties provided in section 41-09-17.

28 **SECTION 79. AMENDMENT.** Section 41-09-102 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **41-09-102. (9-605) Unknown debtor or secondary obligor.**

31 A

- 1 1. Except as provided in subsection 2, a secured party does not owe a duty based on its
2 status as secured party:
- 3 4. a. To a person that is a debtor or obligor, unless the secured party knows:
- 4 a. (1) That the person is a debtor or obligor;
- 5 b. (2) The identity of the person; and
- 6 c. (3) How to communicate with the person; or
- 7 2. b. To a secured party or lienholder that has filed a financing statement against a
8 person, unless the secured party knows:
- 9 a. (1) That the person is a debtor; and
- 10 b. (2) The identity of the person.
- 11 2. A secured party owes a duty based on its status as a secured party to a person if, at
12 the time the secured party obtains control of collateral that is a controllable account,
13 controllable electronic record, or controllable payment intangible or at the time the
14 security interest attaches to the collateral, whichever is later:
- 15 a. The person is a debtor or obligor; and
- 16 b. The secured party knows that the information in subdivision a of subsection 1
17 relating to the person is not provided by the collateral, a record attached to or
18 logically associated with the collateral, or the system in which the collateral is
19 recorded.

20 **SECTION 80. AMENDMENT.** Subdivision a of subsection 1 of section 41-09-105 of the
21 North Dakota Century Code is amended and reenacted as follows:

- 22 a. A secured party shall apply or pay over for application the cash proceeds of
23 collection or enforcement under section 41-09-104 in the following order to:
- 24 (1) The reasonable expenses of collection and enforcement and, to the extent
25 provided for by agreement and not prohibited by law, reasonable attorney's
26 fees and legal expenses incurred by the secured party;
- 27 (2) The satisfaction of obligations secured by the security interest or agricultural
28 lien under which the collection or enforcement is made; and
- 29 (3) The satisfaction of obligations secured by any subordinate security interest
30 in or other lien on the collateral subject to the security interest or agricultural
31 lien under which the collection or enforcement is made if the secured party

1 receives ~~an authenticated~~ a signed demand for proceeds before distribution
2 of the proceeds is completed.

3 **SECTION 81. AMENDMENT.** Section 41-09-108 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **41-09-108. (9-611) Notification before disposition of collateral.**

- 6 1. In this section, "notification date" means the earlier of the date on which:
- 7 a. A secured party sends to the debtor and any secondary obligor ~~an authenticated~~ a
8 signed notification of disposition; or
- 9 b. The debtor and any secondary obligor waive the right to notification.
- 10 2. Except as otherwise provided in subsection 4, a secured party that disposes of
11 collateral under section 41-09-107 shall send to the persons specified in subsection 3
12 a reasonable ~~authenticated~~ signed notification of disposition.
- 13 3. To comply with subsection 2, the secured party shall send ~~an authenticated~~ a signed
14 notification of disposition to:
- 15 a. The debtor;
- 16 b. Any secondary obligor;
- 17 c. Any other person from which the secured party has received, before the
18 notification date, ~~an authenticated~~ a signed notification of a claim of an interest in
19 the collateral;
- 20 d. Any other secured party or lienholder that, ten days before the notification date,
21 held a security interest in or other lien on the collateral perfected by the filing of a
22 financing statement that:
- 23 (1) Identified the collateral;
- 24 (2) Was indexed under the debtor's name as of that date; and
- 25 (3) Was filed in the office in which to file a financing statement against the
26 debtor covering the collateral as of that date; and
- 27 e. Any other secured party that, ten days before the notification date, held a security
28 interest in the collateral perfected by compliance with a statute, regulation, or
29 treaty described in subsection 1 of section 41-09-31.
- 30 4. Subsection 2 does not apply if the collateral is perishable or threatens to decline
31 speedily in value or is of a type customarily sold on a recognized market.

- 1 5. A secured party complies with the requirements for notification prescribed by
2 paragraph 2 of subdivision c of subsection 3 if:
- 3 a. Not later than twenty days or earlier than thirty days before the notification date,
4 the secured party requests, in a commercially reasonable manner, information
5 concerning financing statements indexed under the debtor's name in the office
6 indicated in paragraph 2 of subdivision c of subsection 3; and
- 7 b. Before the notification date, the secured party:
- 8 (1) Did not receive a response to the request for information; or
- 9 (2) Received a response to the request for information and sent ~~an~~
10 ~~authenticated~~ a signed notification of disposition to each secured party or
11 other lienholder named in that response whose financing statement covered
12 the collateral.

13 **SECTION 82. AMENDMENT.** Subsection 1 of section 41-09-111 of the North Dakota
14 Century Code is amended and reenacted as follows:

- 15 1. A secured party shall apply or pay over for application the cash proceeds of disposition
16 under section 41-09-107 in the following order to:
- 17 a. The reasonable expenses of retaking, holding, preparing for disposition,
18 processing, and disposing, and, to the extent provided for by agreement and not
19 prohibited by law, reasonable attorney's fees and legal expenses incurred by the
20 secured party;
- 21 b. The satisfaction of obligations secured by the security interest or agricultural lien
22 under which the disposition is made;
- 23 c. The satisfaction of obligations secured by any subordinate security interest in or
24 other subordinate lien on the collateral if:
- 25 (1) The secured party receives from the holder of the subordinate security
26 interest or other lien ~~an authenticated~~ a signed demand for proceeds before
27 distribution of the proceeds is completed; and
- 28 (2) In a case in which a consignor has an interest in the collateral, the
29 subordinate security interest or other lien is senior to the interest of the
30 consignor; and

- 1 d. A secured party that is a consignor of the collateral if the secured party receives
2 from the consignor ~~an authenticated~~ a signed demand for proceeds before
3 distribution of the proceeds is completed.

4 **SECTION 83. AMENDMENT.** Subsection 1 of section 41-09-114 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. In this section, "transfer statement" means a record ~~authenticated~~ signed by a secured
7 party stating:
8 a. That the debtor has defaulted in connection with an obligation secured by
9 specified collateral;
10 b. That the secured party has exercised its postdefault remedies with respect to the
11 collateral;
12 c. That, by reason of the exercise, a transferee has acquired the rights of the debtor
13 in the collateral; and
14 d. The name and mailing address of the secured party, debtor, and transferee.

15 **SECTION 84. AMENDMENT.** Section 41-09-115 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-09-115. (9-620) Acceptance of collateral in full or partial satisfaction of obligation -**
18 **Compulsory disposition of collateral.**

- 19 1. A secured party may accept collateral in full or partial satisfaction of the obligation it
20 secures only if:
21 a. The debtor consents to the acceptance under subsection 3;
22 b. The secured party does not receive, within the time set forth in subsection 4, a
23 notification of objection to the proposal ~~authenticated~~ signed by:
24 (1) A person to which the secured party was required to send a proposal under
25 section 41-09-116; or
26 (2) Any other person, other than the debtor, holding an interest in the collateral
27 subordinate to the security interest that is the subject of the proposal.
28 2. A purported or apparent acceptance of collateral under this section is ineffective
29 unless:
30 a. The secured party consents to the acceptance in ~~an authenticated~~ a signed
31 record or sends a proposal to the debtor; and

- 1 b. The conditions of subsection 1 are met.
- 2 3. For purposes of this section:
- 3 a. A debtor consents to an acceptance of collateral in partial satisfaction of the
- 4 obligation it secures only if the debtor agrees to the terms of the acceptance in a
- 5 record ~~authenticated~~signed after default; and
- 6 b. A debtor consents to an acceptance of collateral in full satisfaction of the
- 7 obligation it secures only if the debtor agrees to the terms of the acceptance in a
- 8 record ~~authenticated~~signed after default or the secured party:
- 9 (1) Sends to the debtor after default a proposal that is unconditional or subject
- 10 only to a condition that collateral not in the possession of the secured party
- 11 be preserved or maintained;
- 12 (2) In the proposal, proposes to accept collateral in full satisfaction of the
- 13 obligation it secures; and
- 14 (3) Does not receive a notification of objection ~~authenticated~~signed by the
- 15 debtor within twenty days after the proposal is sent.
- 16 4. To be effective under subdivision c of subsection 1, a notification of objection must be
- 17 received by the secured party:
- 18 a. In the case of a person to which the proposal was sent pursuant to section
- 19 41-09-116, within twenty days after notification was sent to that person; and
- 20 b. In other cases:
- 21 (1) Within twenty days after the last notification was sent pursuant to section
- 22 41-09-116; or
- 23 (2) If a notification was not sent, before the debtor consents to the acceptance
- 24 under subsection 3.

25 **SECTION 85. AMENDMENT.** Subdivision a of subsection 1 of section 41-09-116 of the

26 North Dakota Century Code is amended and reenacted as follows:

- 27 a. Any person from which the secured party has received, before the debtor
- 28 consented to the acceptance, ~~an authenticated~~a signed notification of a claim of
- 29 an interest in the collateral;

30 **SECTION 86. AMENDMENT.** Section 41-09-119 of the North Dakota Century Code is

31 amended and reenacted as follows:

1 **41-09-119. (9-624) Waiver.**

2 1. A debtor or secondary obligor may waive the right to notification of disposition of
3 collateral under section 41-09-108 only by an agreement to that effect entered into and
4 authenticated~~signed~~ after default.

5 2. A debtor or secondary obligor may waive the right to redeem collateral under section
6 41-09-118 only by an agreement to that effect entered into and ~~authenticated~~signed
7 after default.

8 **SECTION 87. AMENDMENT.** Section 41-09-123 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **41-09-123. (9-628) Nonliability and limitation on liability of secured party - Liability of**
11 **secondary obligor.**

12 1. ~~Unless~~Subject to subsection 5, unless a secured party knows that a person is a debtor
13 or obligor, knows the identity of the person, and knows how to communicate with the
14 person:

15 a. The secured party is not liable to the person, or to a secured party or lienholder
16 that has filed a financing statement against the person, for failure to comply with
17 this chapter; and

18 b. The secured party's failure to comply with this chapter does not affect the liability
19 of the person for a deficiency.

20 2. ~~A~~Subject to subsection 5, a secured party is not liable because of its status as secured
21 party:

22 a. To a person that is a debtor or obligor, unless the secured party knows:

23 (1) That the person is a debtor or obligor;

24 (2) The identity of the person; and

25 (3) How to communicate with the person; or

26 b. To a secured party or lienholder that has filed a financing statement against a
27 person, unless the secured party knows:

28 (1) That the person is a debtor; and

29 (2) The identity of the person.

30 3. A secured party is not liable to any person, and a person's liability for a deficiency is
31 not affected, because of any act or omission arising out of the secured party's

- 1 reasonable belief that a transaction is not a consumer-goods transaction or a
2 consumer transaction or that goods are not consumer goods, if the secured party's
3 belief is based on its reasonable reliance on:
- 4 a. A debtor's representation concerning the purpose for which collateral was to be
5 used, acquired, or held; or
 - 6 b. An obligor's representation concerning the purpose for which a secured
7 obligation was incurred.
- 8 4. A secured party is not liable under subdivision b of subsection 3 of section 41-09-120
9 more than once with respect to any one secured obligation.
- 10 5. Subsections 1 and 2 do not apply to limit the liability of a secured party to a person if,
11 at the time the secured party obtains control of collateral that is a controllable account,
12 controllable electronic record, or controllable payment intangible or at the time the
13 security interest attaches to the collateral, whichever is later:
- 14 a. The person is a debtor or obligor; and
 - 15 b. The secured party knows that the information in subdivision a of subsection 2
16 relating to the person is not provided by the collateral, a record attached to or
17 logically associated with the collateral, or the system in which the collateral is
18 recorded.

19 **SECTION 88.** Chapter 41-11 of the North Dakota Century Code is created and enacted as
20 follows:

21 **41-11-01. (A-101) Title.**

22 This chapter may be cited as Transitional Provisions for Uniform Commercial Code
23 Amendments (2022).

24 **41-11-02. (A-102) Definitions.**

- 25 1. In this chapter:
- 26 a. "Adjustment date" means July 1, 2025.
 - 27 b. "Article 12 property" means a controllable account, controllable electronic record,
28 or controllable payment intangible.
- 29 2. The following definitions in other chapters of this title of apply to this chapter.
- 30 a. "Controllable account". Section 41-09-02.
 - 31 b. "Controllable electronic record". Section 41-12-02.

1 c. "Controllable payment intangible". Section 41-09-02.

2 d. "Electronic money". Section 41-09-02.

3 e. "Financing statement". Section 41-09-02.

4 3. Chapter 41-01 contains general definitions and principles of construction and
5 interpretation applicable throughout this chapter.

6 **41-11-03. (A-201) Saving clause.**

7 Except as provided in sections 41-11-04 through 41-11-09, a transaction validly entered
8 before August 1, 2023, and the rights, duties, and interests flowing from the transaction remain
9 valid thereafter and may be terminated, completed, consummated, or enforced as required or
10 permitted by law other than this title or, if applicable, this title, as though this Act had not taken
11 effect.

12 **41-11-04. (A-301) Saving clause.**

13 1. Except as provided in sections 41-11-04 through 41-11-09, chapter 41-09 as amended
14 by this Act and chapter 41-12 apply to a transaction, lien, or other interest in property,
15 even if the transaction, lien, or interest was entered, created, or acquired before
16 August 1, 2023.

17 2. Except as provided in subsection 3 and sections 41-11-05 through 41-11-09:

18 a. A transaction, lien, or interest in property that was validly entered, created, or
19 transferred before August 1, 2023, and was not governed by this title, but would
20 be subject to chapter 41-09 as amended by this Act or chapter 41-12 if it had
21 been entered, created, or transferred after July 31, 2023, including the rights,
22 duties, and interests flowing from the transaction, lien, or interest, remains valid
23 after July 31, 2023; and

24 b. The transaction, lien, or interest may be terminated, completed, consummated,
25 and enforced as required or permitted by this Act or by the law that would apply if
26 this Act had not taken effect.

27 3. This Act does not affect an action, case, or proceeding commenced before August 1,
28 2023.

29 **41-11-05. (A-302) Security interest perfected before effective date.**

30 1. A security interest that is enforceable and perfected immediately before August 1,
31 2023, is a perfected security interest under this Act if, on August 1, 2023, the

1 requirements for enforceability and perfection under this Act are satisfied without
2 further action.

3 2. If a security interest is enforceable and perfected immediately before August 1, 2023,
4 but the requirements for enforceability or perfection under this Act are not satisfied on
5 August 1, 2023, the security interest:

6 a. Is a perfected security interest until the earlier of the time perfection would have
7 ceased under the law in effect immediately before August 1, 2023, or the
8 adjustment date;

9 b. Remains enforceable thereafter only if the security interest satisfies the
10 requirements for enforceability under section 41-09-13, as amended by this Act,
11 before the adjustment date; and

12 c. Remains perfected thereafter only if the requirements for perfection under this
13 Act are satisfied before the time specified in subdivision a.

14 **41-11-06. (A-303) Security interest unperfected before effective date.**

15 A security interest that is enforceable immediately before August 1, 2023, but is unperfected
16 at that time:

17 1. Remains an enforceable security interest until the adjustment date;

18 2. Remains enforceable thereafter if the security interest becomes enforceable under
19 section 41-09-13, as amended by this Act, on August 1, 2023, or before the
20 adjustment date; and

21 3. Becomes perfected:

22 a. Without further action, on August 1, 2023, if the requirements for perfection under
23 this Act are satisfied before or at that time; or

24 b. When the requirements for perfection are satisfied if the requirements are
25 satisfied after that time.

26 **41-11-07. (A-304) Effectiveness of actions taken before effective date.**

27 1. If action, other than the filing of a financing statement, is taken before August 1, 2023,
28 and the action would have resulted in perfection of the security interest had the
29 security interest become enforceable before August 1, 2023, the action is effective to
30 perfect a security interest that attaches under this Act before the adjustment date. An
31 attached security interest becomes unperfected on the adjustment date unless the

1 security interest becomes a perfected security interest under this Act before the
2 adjustment date.

3 2. The filing of a financing statement before August 1, 2023, is effective to perfect a
4 security interest on August 1, 2023, to the extent the filing would satisfy the
5 requirements for perfection under this Act.

6 3. The taking of an action before August 1, 2023, is sufficient for the enforceability of a
7 security interest on August 1, 2023, if the action would satisfy the requirements for
8 enforceability under this Act.

9 **41-11-08. (A-305) Priority.**

10 1. Subject to subsections 2 and 3, this Act determines the priority of conflicting claims to
11 collateral.

12 2. Subject to subsection 3, if the priorities of claims to collateral were established before
13 August 1, 2023, chapter 41-09 as in effect before August 1, 2023, determines priority.

14 3. On the adjustment date, to the extent the priorities determined by chapter 41-09 as
15 amended by this Act modify the priorities established before August 1, 2023, the
16 priorities of claims to Article 12 property and electronic money established before
17 August 1, 2023, cease to apply.

18 **41-11.1-09. (A-306) Priority of claims when priority rules of chapter 41-09 do not**
19 **apply.**

20 1. Subject to subsections 2 and 3, chapter 41-12 determines the priority of conflicting
21 claims to Article 12 property when the priority rules of chapter 41-09 as amended by
22 this Act do not apply.

23 2. Subject to subsection 3, when the priority rules of chapter 41-09 as amended by this
24 Act do not apply and the priorities of claims to Article 12 property were established
25 before August 1, 2023, law other than chapter 41-12 determines priority.

26 3. When the priority rules of chapter 41-09 as amended by this Act do not apply, to the
27 extent the priorities determined by this Act modify the priorities established before
28 August 1, 2023, the priorities of claims to Article 12 property established before
29 August 1, 2023, cease to apply on the adjustment date.

30 **SECTION 89.** Chapter 41-12 of the North Dakota Century Code is created and enacted as
31 follows:

1 **41-12-01. (12-101) Title.**

2 This chapter may be cited as Uniform Commercial Code - Controllable Electronic Records.

3 **41-12-02. (12-102) Definitions.**

4 1. In this chapter:

5 a. "Controllable electronic record" means a record stored in an electronic medium
6 that can be subjected to control under section 41-12-05. The term does not
7 include a controllable account, a controllable payment intangible, a deposit
8 account, an electronic copy of a record evidencing chattel paper, an electronic
9 document of title, electronic money, investment property, or a transferable record.

10 b. "Qualifying purchaser" means a purchaser of a controllable electronic record or
11 an interest in a controllable electronic record that obtains control of the
12 controllable electronic record for value, in good faith, and without notice of a
13 claim of a property right in the controllable electronic record.

14 c. "Transferable record" has the meaning provided for that term in:

15 (1) Section 201(a)(1) of the Electronic Signatures in Global and National
16 Commerce Act [Pub.L. 106-229; 114 Stat. 473; 15 U.S.C. Section 7021(a)
17 (1)]; or

18 (2) Subsection 1 of section 9-16-15.

19 d. "Value" has the meaning provided in subsection 1 of section 41-03-29, as if
20 references in that subsection to an "instrument" were references to a controllable
21 account, controllable electronic record, or controllable payment intangible.

22 2. The definitions in chapter 41-09 of "account debtor", "controllable account",
23 "controllable payment intangible", "chattel paper", "deposit account", "electronic
24 money", and "investment property" apply to this chapter.

25 3. Chapter 41-01 contains general definitions and principles of construction and
26 interpretation applicable throughout this title.

27 **41-12-03. (12-103) Relation to chapter 41-09 and consumer laws.**

28 1. If there is conflict between this chapter and chapter 41-09, chapter 41-09 governs.

29 2. A transaction subject to this chapter is subject to any applicable rule of law that
30 establishes a different rule for consumers and title 6, sections 13-04.1-09 through
31 13-04.1-09.3, and chapters 13-05, 13-08, 13-10, and 47-14.

1 **41-12-04. (12-104) Rights in controllable account, controllable electronic record, and**
2 **controllable payment intangible.**

- 3 1. This section applies to the acquisition and purchase of rights in a controllable account
4 or controllable payment intangible, including the rights and benefits under
5 subsections 3, 4, 5, 7, and 8 of a purchaser and qualifying purchaser, in the same
6 manner this section applies to a controllable electronic record.
- 7 2. To determine whether a purchaser of a controllable account or a controllable payment
8 intangible is a qualifying purchaser, the purchaser obtains control of the account or
9 payment intangible if it obtains control of the controllable electronic record that
10 evidences the account or payment intangible.
- 11 3. Except as provided in this section, law other than this chapter determines whether a
12 person acquires a right in a controllable electronic record and the right the person
13 acquires.
- 14 4. A purchaser of a controllable electronic record acquires all rights in the controllable
15 electronic record that the transferor had or had power to transfer, except that a
16 purchaser of a limited interest in a controllable electronic record acquires rights only to
17 the extent of the interest purchased.
- 18 5. A qualifying purchaser acquires its rights in the controllable electronic record free of a
19 claim of a property right in the controllable electronic record.
- 20 6. Except as provided in subsections 1 and 5 for a controllable account and a
21 controllable payment intangible or law other than this chapter, a qualifying purchaser
22 takes a right to payment, right to performance, or other interest in property evidenced
23 by the controllable electronic record subject to a claim of a property right in the right to
24 payment, right to performance, or other interest in property.
- 25 7. An action may not be asserted against a qualifying purchaser based on both a
26 purchase by the qualifying purchaser of a controllable electronic record and a claim of
27 a property right in another controllable electronic record, whether the action is framed
28 in conversion, replevin, constructive trust, equitable lien, or other theory.
- 29 8. Filing of a financing statement under chapter 41-09 is not notice of a claim of a
30 property right in a controllable electronic record.

1 **41-12-05. (12-105) Control of controllable electronic record.**

2 1. A person has control of a controllable electronic record if the electronic record, a
3 record attached to or logically associated with the electronic record, or a system in
4 which the electronic record is recorded:

5 a. Gives the person:

6 (1) Power to avail itself of substantially all the benefit from the electronic record;
7 and

8 (2) Exclusive power, subject to subsection 2, to:

9 (1) Prevent others from availing themselves of substantially all the benefit
10 from the electronic record; and

11 (2) Transfer control of the electronic record to another person or cause
12 another person to obtain control of another controllable electronic
13 record as a result of the transfer of the electronic record; and

14 b. Enables the person readily to identify itself in any way, including by name,
15 identifying number, cryptographic key, office, or account number, as having the
16 powers specified in subsection a.

17 2. Subject to subsection 3, a power is exclusive under paragraph 2 of subdivision a of
18 subsection 1 even if:

19 a. The controllable electronic record, a record attached to or logically associated
20 with the electronic record, or a system in which the electronic record is recorded
21 limits the use of the electronic record or has a protocol programmed to cause a
22 change, including a transfer or loss of control or a modification of benefits
23 afforded by the electronic record; or

24 b. The power is shared with another person.

25 3. A power of a person is not shared with another person under subdivision b of
26 subsection 2 and the person's power is not exclusive if:

27 a. The person can exercise the power only if the power also is exercised by the
28 other person; and

29 b. The other person:

30 (1) Can exercise the power without exercise of the power by the person; or

1 (2) Is the transferor to the person of an interest in the controllable electronic
2 record or a controllable account or controllable payment intangible
3 evidenced by the controllable electronic record.

4 4. If a person has the powers specified in paragraph 2 of subdivision a of subsection 1,
5 the powers are presumed to be exclusive.

6 5. A person has control of a controllable electronic record if another person, other than
7 the transferor to the person of an interest in the controllable electronic record or a
8 controllable account or controllable payment intangible evidenced by the controllable
9 electronic record:

10 a. Has control of the electronic record and acknowledges that it has control on
11 behalf of the person; or

12 b. Obtains control of the electronic record after having acknowledged that it will
13 obtain control of the electronic record on behalf of the person.

14 6. A person that has control under this section is not required to acknowledge that it has
15 control on behalf of another person.

16 7. If a person acknowledges that it has or will obtain control on behalf of another person,
17 unless the person otherwise agrees or law other than this chapter or chapter 41-09
18 otherwise provides, the person does not owe any duty to the other person and is not
19 required to confirm the acknowledgment to any other person.

20 **41-12-06. (12-106) Discharge of account debtor on controllable account or**
21 **controllable payment intangible.**

22 1. An account debtor on a controllable account or controllable payment intangible may
23 discharge its obligation by paying:

24 a. The person having control of the controllable electronic record that evidences the
25 controllable account or controllable payment intangible; or

26 b. Except as provided in subsection 2, a person that formerly had control of the
27 controllable electronic record.

28 2. Subject to subsection 4, the account debtor may not discharge its obligation by paying
29 a person that formerly had control of the controllable electronic record if the account
30 debtor receives a notification that:

- 1 a. Is signed by a person that formerly had control or the person to which control was
2 transferred;
- 3 b. Reasonably identifies the controllable account or controllable payment intangible;
4 c. Notifies the account debtor that control of the controllable electronic record that
5 evidences the controllable account or controllable payment intangible was
6 transferred;
- 7 d. Identifies the transferee, in any reasonable way, including by name, identifying
8 number, cryptographic key, office, or account number; and
- 9 e. Provides a commercially reasonable method by which the account debtor is to
10 pay the transferee.
- 11 3. After receipt of a notification that complies with subsection 2, the account debtor may
12 discharge its obligation by paying in accordance with the notification and may not
13 discharge the obligation by paying a person that formerly had control.
- 14 4. Subject to subsection 8, notification is ineffective under subsection 2:
- 15 a. Unless, before the notification is sent, the account debtor and the person that, at
16 that time, had control of the controllable electronic record that evidences the
17 controllable account or controllable payment intangible agree in a signed record
18 to a commercially reasonable method by which a person may furnish reasonable
19 proof that control has been transferred;
- 20 b. To the extent an agreement between the account debtor and seller of a payment
21 intangible limits the account debtor's duty to pay a person other than the seller
22 and the limitation is effective under law other than this chapter; or
- 23 c. At the option of the account debtor, if the notification notifies the account debtor
24 to:
- 25 (1) Divide a payment;
- 26 (2) Make less than the full amount of an installment or other periodic payment;
27 or
- 28 (3) Pay any part of a payment by more than one method or to more than one
29 person.
- 30 5. Subject to subsection 8, if requested by the account debtor, the person giving the
31 notification under subsection 2 seasonably shall furnish reasonable proof, using the

1 method in the agreement referred to in subdivision a of subsection 4, that control of
2 the controllable electronic record has been transferred. Unless the person complies
3 with the request, the account debtor may discharge its obligation by paying a person
4 that formerly had control, even if the account debtor has received a notification under
5 subsection 2.

6 6. A person furnishes reasonable proof under subsection 5 that control has been
7 transferred if the person demonstrates, using the method in the agreement referred to
8 in subdivision a of subsection 4, that the transferee has the power to:

9 a. Avail itself of substantially all the benefit from the controllable electronic record;

10 b. Prevent others from availing themselves of substantially all the benefit from the
11 controllable electronic record; and

12 c. Transfer the powers specified in subdivisions a and b to another person.

13 7. Subject to subsection 8, an account debtor may not waive or vary its rights under
14 subdivision a of subsection 4 and subsection 5 or its option under subdivision c of
15 subsection 4.

16 8. This section is subject to law other than this chapter which establishes a different rule
17 for an account debtor who is an individual and who incurred the obligation primarily for
18 personal, family, or household purposes.

19 **41-12-07. (12-107) Governing law.**

20 1. Except as provided in subsection 2, the local law of a controllable electronic record's
21 jurisdiction governs a matter covered by this chapter.

22 2. For a controllable electronic record that evidences a controllable account or
23 controllable payment intangible, the local law of the controllable electronic record's
24 jurisdiction governs a matter covered by section 41-12-06 unless an effective
25 agreement determines that the local law of another jurisdiction governs.

26 3. The following rules determine a controllable electronic record's jurisdiction under this
27 section:

28 a. If the controllable electronic record, or a record attached to or logically associated
29 with the controllable electronic record and readily available for review, expressly
30 provides that a particular jurisdiction is the controllable electronic record's

- 1 jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable
2 electronic record's jurisdiction.
- 3 b. If subdivision a does not apply and the rules of the system in which the
4 controllable electronic record is recorded are readily available for review and
5 expressly provide that a particular jurisdiction is the controllable electronic
6 record's jurisdiction for purposes of this chapter or title, that jurisdiction is the
7 controllable electronic record's jurisdiction.
- 8 c. If subdivisions a and b do not apply and the controllable electronic record, or a
9 record attached to or logically associated with the controllable electronic record
10 and readily available for review, expressly provides that the controllable
11 electronic record is governed by the law of a particular jurisdiction, that
12 jurisdiction is the controllable electronic record's jurisdiction.
- 13 d. If subdivisions a, b, and c do not apply and the rules of the system in which the
14 controllable electronic record is recorded are readily available for review and
15 expressly provide that the controllable electronic record or the system is
16 governed by the law of a particular jurisdiction, that jurisdiction is the controllable
17 electronic record's jurisdiction.
- 18 e. If subdivisions a through d do not apply, the controllable electronic record's
19 jurisdiction is the District of Columbia.
- 20 4. If subdivision e of subsection 3 applies and this chapter is not in effect in the District of
21 Columbia without material modification, the governing law for a matter covered by this
22 chapter is the law of the District of Columbia as though Article 12 were in effect in the
23 District of Columbia without material modification. In this subsection, "Article 12"
24 means Article 12 of Uniform Commercial Code Amendments (2022).
- 25 5. To the extent subsections 1 and 2 provide that the local law of the controllable
26 electronic record's jurisdiction governs a matter covered by this chapter, that law
27 governs even if the matter or a transaction to which the matter relates does not bear
28 any relation to the controllable electronic record's jurisdiction.
- 29 6. The rights acquired under section 41-12-04 by a purchaser or qualifying purchaser are
30 governed by the law applicable under this section at the time of purchase.