

UNIFORM COMMERCIAL CODE

CHAPTER 352

HOUSE BILL NO. 1070

(Agriculture Committee)

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

UCC SECURED TRANSACTION REVISIONS

AN ACT to create and enact a new subsection to section 41-09-29 of the North Dakota Century Code, relating to perfection of security interests; and to amend and reenact subdivision e of subsection 1 of section 41-09-02, subdivision vv of subsection 1 of section 41-09-02, subdivision a of subsection 2 of section 41-09-24, and subsection 1 of section 41-09-31 of the North Dakota Century Code, relating to definitions, the jurisdiction of banks, and perfection of security interests in certain property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷² **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

e. "Agricultural lien" means an interest; ~~other than a security interest,~~ in farm products:

(1) That secures payment or performance of an obligation for:

(a) Goods or services furnished in connection with a debtor's farming operation or in connection with processing, production, or entrustment of the farm products; or

(b) Rent on real property leased by a debtor in connection with the debtor's farming operation;

(2) That is created by statute in favor of a person that:

(a) Finished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(b) Leased real property to a debtor in connection with the debtor's farming operation; and

¹⁷² Section 41-09-02 was also amended by section 2 of House Bill No. 1070, chapter 352, and section 31 of Senate Bill No. 2046, chapter 48.

- (3) Of which the effectiveness does not depend on the person's possession of the personal property.

¹⁷³ **SECTION 2. AMENDMENT.** Subdivision vv of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. AMENDMENT. Subdivision a of subsection 2 of section 41-09-24 of the North Dakota Century Code is amended and reenacted as follows:

- a. If an agreement between the bank and ~~the debtor~~ its customer governing the deposit account or certificate of deposit expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the bank's jurisdiction.

SECTION 4. A new subsection to section 41-09-29 of the North Dakota Century Code is created and enacted as follows:

A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SECTION 5. AMENDMENT. Subsection 1 of section 41-09-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
 - a. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection 1 of section 41-09-30;
 - b. Section 35-01-05.1; or
 - c. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property; ~~or~~
 - d. ~~Section 35-01-05.~~

Approved March 26, 2003
Filed March 26, 2003

¹⁷³ Section 41-09-02 was also amended by section 1 of House Bill No. 1070, chapter 352, and section 31 of Senate Bill No. 2046, chapter 48.

CHAPTER 353

HOUSE BILL NO. 1379

(Representative Klemin)

REAL ESTATE LAW PRIORITY

AN ACT to amend and reenact subsection 2 of section 41-09-09, subsection 2 of section 41-09-11, and subsection 7 of section 41-09-13 of the North Dakota Century Code, relating to priority of state real estate statutes over related provisions of the Uniform Commercial Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

2. ~~The~~ Except as provided in section 47-19-41, the application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

SECTION 2. AMENDMENT. Subsection 2 of section 41-09-11 of the North Dakota Century Code is amended and reenacted as follows:

2. A transaction, although subject to this chapter, is also subject to section 47-19-41 and chapters 13-03.1, 35-05, 49-09, and 51-13. In the case of conflict between this chapter and any of those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect that is specified therein.

SECTION 3. AMENDMENT. Subsection 7 of section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~The~~ Except as provided in section 47-19-41, the attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 354

HOUSE BILL NO. 1185 (Representative Klemin)

UCC FINANCING AND TERMINATION STATEMENTS

AN ACT to amend and reenact subsection 6 of section 41-09-73 and section 41-09-84 of the North Dakota Century Code, relating to financing statements and termination statements under the Uniform Commercial Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Subsection 6 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~Effective January 1, 2002, any~~ A social security number or federal tax identification number submitted under subdivision e of subsection 1 as a central indexing filing is not a public an exempt record as defined by subsection 5 of section 44-04-17.1 and, for documents submitted after January 1, 2002, may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record.

SECTION 2. AMENDMENT. Section 41-09-84 of the North Dakota Century Code is amended and reenacted as follows:

41-09-84. Termination statement - Remedies - Fees.

1. If a financing statement covering consumer goods is filed after December 31, 1973, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which must be identified by file number. In other cases when there is no outstanding secured obligation and no written commitment between the secured party and the debtor to make advances, incur obligations, or otherwise give value, the secured party, unless requested by the debtor in writing to continue the filing, must send to each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement nor under the central notice system, which shall be identified by file number. ~~A termination statement submitted by a person other than the secured party of record must be accompanied by a separate written statement of assignment complying with section 41-09-85, including payment of the required fee, if any.~~ If the affected secured party fails to file a

¹⁷⁴ Section 41-09-73 was also amended by section 6 of House Bill No. 1092, chapter 382.

termination statement as required by this subsection within sixty days of when the secured obligation is fully satisfied, and the debtor has not requested in writing that the filing be continued, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure. The debtor's written request for a filing to be continued may be made at any time and be effective under this section. If the affected secured party fails to file a termination statement within ten days after proper written demand by the debtor, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure.

2. On presentation to the filing officer of a termination statement, the filing officer shall note the termination statement in the index. If the filing officer receives the termination statement in duplicate, the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt of the termination statement. If the filing officer has a microfilm or other photographic record or an optical disk of the financing statement, and of any related continuation statement, statement of assignment, and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, the filing officer may remove the originals from the files at any time after one year after receipt of the termination statement.
3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, is five dollars. For any financing statement filed after April 8, 1991, the fee must be paid at the time the fee for filing the financing statement is paid.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 355

HOUSE BILL NO. 1360 (Representative Klemin)

FINANCING STATEMENT FILING DURATION

AN ACT to amend and reenact section 41-09-86 of the North Dakota Century Code, relating to the duration of filed financing statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-86 of the North Dakota Century Code is amended and reenacted as follows:

41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of lapsed financing statement.

1. Except as otherwise provided in subsections 5, 6, and 7, a ~~filed~~ financing statement filed in the personal property records or recorded in real property records is effective for a period of five years after the date of filing.
2. ~~(Reserved)~~ Except as otherwise provided in subsections 5, 6, and 7, a financing statement recorded as a fixture filing against real property is effective for a period of five years after the date of recording.
3. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.
4. A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection 1.
5. Except as otherwise provided in section 41-09-81, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection 3, unless, before the lapse, another continuation statement is filed pursuant to subsection 4. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.
6. If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

7. A record of a mortgage that is effective as a financing statement filed as a fixture filing under subsection 3 of section 41-09-73 remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Approved April 4, 2003

Filed April 4, 2003