

SENATE BILL NO. 2295

Introduced by

Senators Wanzek, Klein

Representatives D. Johnson, Nicholas

1 A BILL for an Act to amend and reenact subsection 1 of section 41-09-16 and section 41-09-41
2 of the North Dakota Century Code, relating to real estate descriptions in financing statements
3 covering crops.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 41-09-16 of the 1995 Supplement
6 to the North Dakota Century Code is amended and reenacted as follows:

- 7 1. Subject to the provisions of section 41-04-22 on the security interest of the
8 collecting bank, section 41-08-36.1 on security interests in securities, and section
9 41-09-13 on a security interest arising under the chapters on sales and leases, a
10 security interest is not enforceable against the debtor or third parties with respect
11 to the collateral and does not attach unless all of the following take place:
- 12 a. The collateral is in the possession of the secured party pursuant to
 - 13 agreement, or the debtor has signed a security agreement that contains a
 - 14 description of the collateral and, in addition, if the security interest covers
 - 15 ~~crops growing or to be grown~~ or timber to be cut, a description of the land
 - 16 concerned.
 - 17 b. Value has been given.
 - 18 c. The debtor has rights in the collateral.

19 **SECTION 2. AMENDMENT.** Section 41-09-41 of the 1995 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **41-09-41. (9-402) Formal requisites of financing statement - Amendments -**
22 **Mortgage as financing statement.**

- 23 1. A financing statement is sufficient if it gives the names of the debtor and the
24 secured party, is signed by the debtor, gives an address of the secured party from

1 which information concerning the security interest may be obtained, gives a mailing
2 address of the debtor, and contains a statement indicating the types, or describing
3 the items, of collateral; except a financing statement that is to be filed to gain
4 protection under the central notice system must include any additional information
5 required by the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C.
6 1631], as prescribed by the secretary of state. The secretary of state shall
7 prescribe one form that can be used to perfect a security interest in farm products
8 or gain protection under the central notice system, or both. In addition, to be
9 sufficient a financing statement filed after July 1, 1987, must include either the
10 social security number or federal tax identification number of the debtor. A
11 financing statement may be filed before a security agreement is made or a security
12 interest otherwise attaches. ~~When the financing statement covers crops growing~~
13 ~~or to be grown, the statement must also contain a description of the real estate~~
14 ~~concerned.~~ When the financing statement covers timber to be cut or covers
15 minerals or the like (including oil and gas) or accounts subject to subsection 5 of
16 section 41-09-03, or when the financing statement is filed as a fixture filing (section
17 41-09-34), and the collateral is goods which are or are to become fixtures, the
18 statement must also comply with subsection 5. A copy of the security agreement is
19 sufficient as a financing statement if it contains the above information and is signed
20 by the debtor. A carbon, photographic, or other reproduction of a security
21 agreement or a financing statement is sufficient as a financing statement if the
22 security agreement so provides or if the original has been filed in this state.

23 2. A financing statement that otherwise complies with subsection 1 is sufficient when
24 it is signed by the secured party instead of the debtor if it is filed to perfect a
25 security interest in:

26 a. Collateral already subject to a security interest in another jurisdiction when it
27 is brought into this state, or when the debtor's location is changed to this
28 state. The financing statement must state that the collateral was brought into
29 this state or that the debtor's location was changed to this state under such
30 circumstances;

- 1 b. Proceeds under section 41-09-27 if the security interest in the original
2 collateral was perfected. Such a financing statement must describe the
3 original collateral;
4 c. Collateral as to which the filing has lapsed; or
5 d. Collateral acquired after a change of name, identity, or corporate structure of
6 the debtor (subsection 7).

7 3. A form substantially as follows is sufficient to comply with subsection 1:

8 Name of debtor (or assignor) _____

9 Address _____

10 Debtor's social security number or federal tax

11 identification number _____

12 Name of secured party (or assignee) _____

13 Address _____

14 a. This financing statement covers the following types (or items) of property:

15 (Describe) _____

16 b. ~~(If collateral is crops) The above described crops are growing or are to be~~
17 ~~grown on:~~

18 ~~(Describe real estate) _____~~

19 e. (If applicable) The above goods are to become fixtures on:

20 (Describe real estate) _____

21 and this financing statement is to be filed for record in the real estate records.

22 (If the debtor does not have an interest of record.) The name of a record

23 owner is _____.

24 e. c. (If products of collateral are claimed)

25 Products of the collateral are also covered.

26 (use) _____

27 whichever) Signature of Debtor (or Assignor)

28 is) _____

29 applicable)) Signature of Secured Party

30 (or Assignor)

- 1 4. A financing statement may be amended by filing a writing signed by both the
2 debtor and the secured party. An amendment does not extend the period of
3 effectiveness of a financing statement. If any amendment adds collateral, it is
4 effective as to the added collateral only from the filing date of the amendment. In
5 this chapter, unless the context otherwise requires, the term "financing statement"
6 means the original financing statement and any amendments.
- 7 5. A financing statement covering timber to be cut or covering minerals or the like
8 (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or a
9 financing statement filed as a fixture filing (section 41-09-34) where the debtor is
10 not a transmitting utility, must show that it covers this type of collateral, must recite
11 that it is to be filed for record in the real estate records, and the financing statement
12 must contain a description of the real estate sufficient if it were contained in a
13 mortgage of the real estate to give constructive notice of the mortgage under the
14 law of this state. If the debtor does not have an interest of record in the real estate,
15 the financing statement must show the name of a record owner.
- 16 6. A mortgage is effective as a financing statement filed as a fixture filing from the
17 date of its recording if:
- 18 a. The goods are described in the mortgage by item or type;
- 19 b. The goods are or are to become fixtures related to the real estate described in
20 the mortgage;
- 21 c. The mortgage complies with the requirements for a financing statement in this
22 section other than a recital that it is to be filed in the real estate records; and
- 23 d. The mortgage is duly recorded.
- 24 No fee with reference to the financing statement is required other than the regular
25 recording and satisfaction fees with respect to the mortgage.
- 26 7. A financing statement sufficiently shows the name of the debtor if it gives the
27 individual, limited liability company, partnership, or corporate name of the debtor,
28 whether or not it adds other trade names or the names of partners. Where the
29 debtor so changes ~~his~~ the debtor's name, or in the case of an organization, its
30 name, identity, or corporate structure that a filed financing statement becomes
31 seriously misleading, the filing is not effective to perfect a security interest in

- 1 collateral acquired by the debtor more than four months after the change, unless a
2 new appropriate financing statement is filed before the expiration of that time. A
3 filed financing statement remains effective with respect to collateral transferred by
4 the debtor even though the secured party knows of or consents to the transfer.
- 5 8. A financing statement substantially complying with the requirements of this section
6 is effective even though it contains minor errors which are not seriously misleading.
- 7 ~~9. A financing statement covering crops growing or to be grown must show that it~~
8 ~~covers crops and where the debtor is not a transmitting utility the financing~~
9 ~~statement must contain a description of the real estate sufficient if it were~~
10 ~~contained in a mortgage of the real estate to give constructive notice of the~~
11 ~~mortgage under the law of this state.~~
- 12 ~~10.~~ A financing statement filed to gain protection under the central notice system must
13 be amended within three months of a material change to reflect that change. The
14 amended financing statement must be signed by both the debtor and secured party
15 and filed in the same manner as the original financing statement.