

UNIFORM COMMERCIAL CODE

CHAPTER 388

H. B. No. 337
(Bunker, R. Peterson)

WARRANTIES NOT APPLICABLE TO SALE OF HUMAN BLOOD, TISSUE, AND ORGANS

AN ACT

To amend and reenact subsection 3 of section 41-02-33 of the North Dakota Century Code, to provide that certain warranties shall not apply to the sale of human blood and certain other tissues and organs.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Subsection 3 of section 41-02-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Notwithstanding subsection 2

- a. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
- b. When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods, there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
- c. An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

- d. The implied warranties of merchantability and fitness shall not be applicable to a contract for the sale of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma, or tissue or organs shall not for the purposes of this chapter be considered commodities subject to sale or barter, but shall be considered as medical services.

Approved March 13, 1969.

CHAPTER 389

H. B. No. 138
(Freeman, Hoghaug)

PERSONAL PROPERTY SECURITY INTERESTS
UNDER UNIFORM COMMERCIAL CODE

AN ACT

To amend and reenact section 35-01-05.1 of the 1967 Supplement, relating to security interests in motor vehicles, and sections 41-09-05 (9-105), 41-09-10 (9-110), 41-09-23 (9-302), 41-09-34 (9-313), 41-09-40 (9-401), 41-09-41 (9-402) 41-09-42 (9-403), and 41-09-44 (9-405), of the North Dakota Century Code, relating to security interests in certain personal property under the Uniform Commercial Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 35-01-05.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-01-05.1. When Security Interest in Motor Vehicle Valid.) No security interest in a motor vehicle which is not inventory held for sale shall be valid as against subsequent purchasers and encumbrances of the property in good faith and for value unless the security interest is clearly indicated upon the certificate of title to the motor vehicle or unless such certificate of title is in the possession of the secured party.

Section 2. Amendment.) Section 41-09-05 (9-105) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-05. (9-105) Definitions and Index of Definitions.)

1. In this chapter unless the context otherwise requires:
 - a. "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;
 - b. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security

interest in or a lease of specific goods; a charter or other contract involving the use or hire of a vessel is not a chattel paper. When a transaction is evidence both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

- c. "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;
- d. "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- e. "Document" means document of title as defined in the general definitions of chapter 41-01 (section 41-01-11);
- f. "Encumbrance" includes real estate mortgages and other liens on real estate;
- g. "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 41-09-34), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;
- h. "Instrument" means a negotiable instrument (defined in section 41-03-04), or a security (defined in section 41-08-02) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type

which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

- i. "Mortgage" means a real estate mortgage or a similar consensual interest such as a trust deed on real estate, however denominated;
 - j. "Security agreement" means an agreement which creates or provides for a security interest;
 - k. "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;
1. "Transmitting utility" means any person primarily engaged in the railroad or street railway business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this chapter and the sections in which they appear are:

"Account".	Section 41-09-06.
"Consumer goods".	Section 41-09-09(1).
"Contract rights".	Section 41-09-06.
"Equipment".	Section 41-09-09(2).
"Farm products".	Section 41-09-09(3).
"Fixtures".	Section 41-09-34.
"Fixture filing".	Section 41-09-34.

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| “General intangibles”. | Section 49-09-06. |
| “Inventory”. | Section 41-09-09(4). |
| “Lien creditor”. | Section 41-09-22(3). |
| “Proceeds”. | Section 41-09-27(1). |
| “Purchase money security interest.”. | Section 41-09-07. |
| “Real estate interest”. | Section 41-09-34. |
3. The following definitions in other chapters apply to this chapter:
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| “Check”. | Section 41-03-04. |
| “Contract for sale”. | Section 41-02-06. |
| “Holder in due course”. | Section 41-03-32. |
| “Note”. | Section 41-03-04. |
| “Sale”. | Section 41-02-06. |
4. In addition chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 3. Amendment.) Section 41-09-10 (9-110) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-10. (9-110) Sufficiency of Description.) Except as provided in section 41-09-41 on formal requirements of a financing statement, any description of personal property or real estate whether or not it is specific is sufficient for the purposes of this chapter if it reasonably identifies what is described.

Section 4. Amendment.) Section 41-09-23 (9-302) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-23. (9-302) When Filing is Required to Perfect Security Interest—Security Interests To Which Filing Provisions of This Chapter Do Not Apply.)

1. A financing statement must be filed to perfect all security interests except the following:
 - a. A security interest in collateral in possession of the secured party under section 41-09-26;
 - b. A security interest temporarily perfected in instruments or documents without delivery under section 41-09-25 or in proceeds for a ten-day period under section 41-09-27;
 - c. A purchase money security interest in farm equipment having a purchase price not in excess of two thousand five hundred dollars; but filing is required for a motor vehicle required to be licensed and fixture filing is required for priority over a conflicting real estate interest in a fixture as provided in section 41-09-34;
 - d. A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be licensed and fixture filing is required for priority over a conflicting real estate interest in a fixture as provided in section 41-09-34;
 - e. An assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;
 - f. A security interest of a collecting bank (section 41-04-18) or arising under the chapter on sales (see section 41-09-13) or covered in subsection 3 of this section.
2. If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

3. The filing provisions of this chapter do not apply to a security interest in property subject to a statute
 - a. Of the United States which provides for a national registration or filing of all security interests in such property; or
 - b. Of this state which provides for central filing of security interests in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.
4. A security interest in property covered by a statute described in subsection 3 can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Section 5. Amendment.) Section 41-09-34 (9-313) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-34. (9-313) Priority of Security Interests in Fixtures.)

1. a. This section governs the priority between a security interest in goods, including fixtures, and a real estate interest in the goods. The declaration in this section that certain goods are not fixtures is only for the purpose of the priority rules stated in this section, and does not determine whether an interest in the goods passes under a conveyance or mortgage of the real estate or whether the goods are part of real estate under the law of this state other than this title.
- b. For the purpose of this section and the provisions in part 4 of this chapter referring to fixture filing, the following definitions apply:

- (1) Goods are "fixtures" when they are so related to particular real estate that under the law of this state other than this title an interest in the goods would pass as part of the real estate under a conveyance or mortgage thereof without specific mention of the goods, except as stated in this paragraph. Where ordinary building materials are incorporated in an improvement upon land, which improvement is itself not a fixture, the materials are real estate and not a fixture. An improvement upon land is not a fixture unless it is readily removable from the land. Readily removable factory and office machines and readily removable replacements of domestic appliances are not fixtures. Where the debtor is a tenant, goods which he has a right to remove are not fixtures but are personal property. Standing timber and growing crops and oil, gas and minerals before severance are not fixtures.
- (2) The term "ordinary building materials" includes lumber, millwork, brick, tile, siding, roofing, cement, glass, wiring, piping and structural members, other than readily removable items of special value such as ornamental metal work, ornamental mantels and carved panelling.
- (3) A "real estate interest" in goods including a fixture is an interest held solely by virtue of an interest in real estate and is not a security interest under this chapter.
- (4) A mortgage of real estate is a "construction mortgage" if it secures an obligation incurred for the construction or improvement of real estate or to the extent that it is a refinancing of a construction mortgage, and the record so indicates.
- (5) A "fixture filing" is the filing of a financing statement in the office where a mortgage on

the related real estate would be filed or recorded, which conforms to the requirements of subsection 6 of section 41-09-41.

2. Nothing in this title prevents the creation of a real estate interest in a fixture pursuant to the law of this state other than this title. A writing which as a real estate mortgage creates a real estate interest in a fixture may also provide for a security interest in the fixture, but the validity, perfection and priority of the security interest are governed by the provisions of this chapter.
3. There can be no security interest in ordinary building materials after they become so related to real estate as to be a part thereof, unless the structure of which they form a part is a fixture.
4. Any security interest in goods which are not fixtures under this section (other than goods wrongfully removed from real estate) has priority over any real estate interest in the goods.
5. A real estate interest in a fixture of any encumbrancer or owner of the real estate who is not the debtor has priority over a conflicting security interest except as follows:
 - a. The security interest has priority over a lien upon the fixture by legal or equitable proceedings obtained after the security interest was perfected by fixture filing or otherwise.
 - b. The security interest has priority over the real estate interest (other than a construction mortgage to finance a construction or improvement including the fixture which is of record before the goods become a fixture) if the security interest is a purchase money security interest, the debtor has an interest of record in the real estate, and the security interest is perfected by a fixture filing before the goods become a fixture or within ten days thereafter.
 - c. The security interest has priority over an encumbrance if the debtor has an interest of record in the

real estate and the security interest is perfected by a fixture filing before the encumbrance is recorded.

6. When a secured party has a security interest in a fixture and the security interest has priority over all real estate interests in the fixture, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 6. Amendment.) Section 41-09-40 (9-401) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-40. (9-401) Place of Filing—Erroneous Filing—Removal of Collateral.)

1. The proper place to file in order to perfect a security interest is as follows:
 - a. When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops, as provided in subdivision b of this subsection;
 - b. When the collateral is crops growing or to be grown, or when the financing statement is filed as a fixture filing (section 41-09-34) and the collateral is goods

which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

- c. In all other cases, in the office of the secretary of state.
2. A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
3. Filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.
4. If collateral is brought into this state from another jurisdiction, the rules stated in section 41-09-03 determine whether filing is necessary in this state.
5. Notwithstanding the preceding subsections, and subject to subsection 3 of section 41-09-23, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is in the office of the secretary of state. This filing constitutes a fixture filing (section 41-09-34) as to the collateral described therein which is or is to become fixtures.

Section 7. Amendment.) Section 41-09-41 (9-402) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-41. (9-402) Formal Requisites of Financing Statement—Amendments.)

1. A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the

security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned or when the financing statement is filed as a fixture filing (section 41-09-34) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection 6. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

2. A financing statement which otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in
 - a. Collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.
 - b. Proceeds under section 41-09-27 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.
 - c. Collateral as to which a security interest once perfected by filing has lapsed, or is about to lapse, if it is still effective between the parties.

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

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

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

(Describe) _____

- b. (If collateral is crops)

The above-described crops are growing or are to be grown on:

(Describe real estate) _____

- c. (If collateral is goods which are or are to become fixtures the financing statement is to be filed as a fixture filing)

The above-described goods are affixed or to be affixed to:

(Describe real estate) _____

- d. (If proceeds or products of collateral are claimed)

Proceeds—Products of the collateral are also covered.

(use)	_____
)	
whichever)	Signature of Debtor (or Assignor)
)	
is)	_____
)	
applicable))	Signature of Secured Party (or Assignor)

- 4. The term "financing statement" as used in this chapter means the original financing statement and any amendments, but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.
- 5. A financing statement substantially complying with the requirements of this section is effective even though it

contains minor errors which are not seriously misleading.

6. A financing statement covering crops growing or to be grown or a financing statement filed as a fixture filing (section 41-09-34) must show that it covers crops or fixtures and where the debtor is not a transmitting utility the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state.
7. If (a) goods are or are to become fixtures related to the real estate described in a mortgage of the real estate, (b) the goods are described in the mortgage by item or type and the mortgage provides for a security interest in the goods, (c) the mortgage complies with the requirements for a financing statement in this section, and (d) the mortgage is duly recorded, the mortgage is effective from the date of recording as a financing statement filed as a fixture filing. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

Section 8. Amendment.) Section 41-09-42 (9-403) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-42. (9-403) What Constitutes Filing—Duration of Filing—Effect of Lapsed Filing—Duties of Filing Officer.)

1. Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.
2. Except as provided in subsection 6, a filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity

date or on the expiration of such five-year period, as the case may be unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

3. A continuation statement may be filed by the secured party (a) within six months before and sixty days after a stated maturity date of five years or less, and (b) otherwise within six months prior to the expiration of the five-year period specified in subsection 2. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection 2 unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.
4. Except as provided in subsection 7, a filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.
5. The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be two dollars. When a nonstandard form is presented for filing, an additional charge of one dollar shall be made.
6. If the debtor is a transmitting utility (subsection 5 of

section 41-09-40) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection 7 of section 41-09-41 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

7. Upon payment of the fee required for recording the same, the filing officer shall also record a financing statement filed as a fixture filing, as if it were a mortgage of the real estate described.

Section 9. Amendment) Section 41-09-44 (9-405) of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-44. (9-405) Assignment of Security Interest—Duties of Filing Officer—Fees.)

1. A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection 4 of section 41-09-42. The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be two dollars. When a nonstandard form is presented for filing, an additional charge of one dollar shall be made.
2. A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral

assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be two dollars. When a nonstandard form is presented for filing, an additional charge of one dollar shall be made. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection 7 of section 41-09-41) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this title.

3. After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Approved March 14, 1969