

UNIFORM COMMERCIAL CODE

CHAPTER 468

SENATE BILL NO. 2321
(Senators Adams, Bakewell, Thane)
(Representatives B. Larson, Gorder)

SECURITY INTEREST PROTECTION AND RESPONSIBILITY

AN ACT to amend and reenact section 41-09-28 of the North Dakota Century Code, relating to protection and responsibility given buyers of goods and commission merchants selling livestock or agricultural products.

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

SECTION 1. AMENDMENT. Section 41-09-28 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-28. (9-307) Protection of buyers of goods.

1. A buyer in ordinary course of business (subsection 9 of section 41-01-11) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.
2. In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.
3. A buyer other than a buyer in ordinary course of business (subsection 1 of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five-day period.

4. Before a merchant who purchases or a commission merchant who sells farm products for another for a fee or commission issues a check or draft to the seller in payment for farm products, the merchant must require the seller to execute a certificate of ownership, on the form as prescribed by the commissioner of agriculture, disclosing the names, social security numbers, addresses and home counties of the owners for five years prior thereto, the county of location of the property prior to the sale, and the names of the parties to whom security interests have been given against the farm products or representing that security interests do not exist. The merchant is required to enter on the check or draft the name of the secured party disclosed in the certificate, or actually known by the merchant at the time, as payee with the seller. The certificate must include a warning to the seller that an untrue statement as to any portion of the certificate constitutes a class C felony if the value of the property exceeds five hundred dollars, or a class A misdemeanor if the property does not exceed five hundred dollars in value.
5. A lender who relies upon a security interest shall advise the borrower at the time the loan is made that the law requires the borrower to disclose to the purchasers or merchants of the collateral the names of the secured parties, and that the purchasers or commission merchants are required to enter the names of the secured parties on the check or draft issued in payment for the farm products, and that failure to make the disclosure will constitute a crime.
6. A lender shall make a good faith effort against the borrower of funds, where farm products are used as collateral, for collection of any loss sustained by the lender through the transaction, before the lender pursues collection from the merchant.
7. A merchant who purchases from or a commission merchant who sells farm products for another for a fee or commission takes free of security interest created by the seller if:
 - a. The merchant has complied with the requirements of subsection 4 of this section, and
 - b. In the case where the seller disclosed no security interests, the merchant has requested information from the register of deeds in the counties of the sellers' residences over the five years prior thereto, as disclosed in the certificate, (or from the office of secretary of state if section 41-09-40 provides for filing in that office) as to the existence of financing statements naming the seller, and has received from the filing officer a certificate

verifying disclosures obtained by such inquiry, and has entered on the check or draft the names of any secured parties named in the certificate as payees with the seller, and

c. The merchant does not have actual knowledge at the time of transaction of the existence of security interests, and

d. The merchant maintains records of such actions to support any criminal proceedings against the seller for violation of section 12.1-23-08.

8. In order to comply with the provisions of subsection 7, inquiry need not be made of the register of deeds office one year after the effective date of the Act which provides for filing in the office of the secretary of state. Certified copies of security documents filed with the register of deeds may be filed with the secretary of state and the priority of filing of such documents will be based on the original filing date with the register of deeds.

Approved April 8, 1983

CHAPTER 469

SENATE BILL NO. 2111
(Committee on Industry, Business, and Labor)
(At the request of the Secretary of State)

UCC FILING AND RECORDING FEES

AN ACT to amend and reenact subsection 3 of section 41-09-43, sections 41-09-44 and 41-09-45, and subsection 2 of section 41-09-46 of the North Dakota Century Code, relating to secretary of state fees for filing and recording Uniform Commercial Code instruments.

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

SECTION 1. AMENDMENT. Subsection 3 of section 41-09-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, shall be as provided by section ~~11-18-05~~ three dollars.

SECTION 2. AMENDMENT. Section 41-09-44 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 financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself of a copy thereof on the face or back of the statement. 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 fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be as provided by section ~~11-18-05~~ 41-09-42.
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, a filing covering timber to be cut, minerals, or the like (including oil and gas), or accounts subject to subsection 5 of section 41-09-03, he shall 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 fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be as provided by section ~~11-18-05~~ 41-09-42. 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.

SECTION 3. AMENDMENT. Section 41-09-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-45. (9-406) Release of collateral - Duties of filing officer - Fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection 2 of section 41-09-44, including payment of the required fee. Upon presentation of such a statement of release to the filing officer, he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The fee for filing and noting such a statement of release shall be as provided by section ~~11-18-05~~ 41-09-42.

SECTION 4. AMENDMENT. Subsection 2 of section 41-09-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for such a certificate shall be as provided by section ~~11-18-05~~ 41-09-42. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a fee as provided by section ~~11-18-05~~ 41-09-42.

Approved March 4, 1983