

BILL ANALYSIS

Senate Research Center

S.B. 505
By: Harris
Jurisprudence
2-17-97
As Filed

DIGEST

Currently, Chapter 9, Business & Commerce Code, relating to secured transactions, does not provide that the parties' characterization of a transaction as a sale of accounts or chattel paper is conclusive that the transaction is a sale and not a secured transaction. A recent federal case addressed the issue of whether the property of the bankruptcy estate of a debtor includes accounts receivable which were transferred under an agreement characterizing the transaction as a sale. The federal court held that "a debtor's sale of an account, prior to filing for bankruptcy, does not necessarily place the account beyond the reach of the bankruptcy trustee." This holding creates a high level of uncertainty for purchasers of accounts receivable. This bill would require the characterization of the transaction as a sale to be conclusive that the transaction is a sale and is not a secured transaction and that the title has passed to the party characterized as the purchaser of the accounts or chattel paper.

PURPOSE

As proposed, S.B. 505 requires the parties' characterization of a transaction as a sale of accounts or chattel paper as conclusive that the transaction is a sale and not a secured transaction.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 9.102, Business & Commerce Code, by adding Subsection (d), to require the parties' characterization of a transaction as a sale of accounts or chattel paper to be conclusive that the transaction is a sale and is not a secured transaction and that the title has passed to the party characterized as the purchaser of the accounts or chattel paper, regardless of whether the secured party has any recourse against the debtor, whether the debtor is entitled to any surplus, or any other term of the parties' agreement.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.