

## **BILL ANALYSIS**

Senate Research Center

S.B. 505  
By: Harris  
Jurisprudence  
2-25-97  
Committee Report (Amended)

### **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 amending Subsection (a) and adding Subsection (d), to provide that except as otherwise provided in Section 9.104, this chapter applies to any sale of accounts or chattel paper, provided that the application of this chapter to the sale of accounts or chattel paper is not to recharacterize the sale of accounts or chattel paper as a secured transaction but to protect purchasers of accounts or chattel paper by providing a notice filing system. Requires 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 title, legal and equitable, 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.

### **SUMMARY OF COMMITTEE CHANGES**

Committee Amendment No. 1:

(1) Strikes the proposed section heading of SECTION 1 (page 1, lines 4-5) and substitutes with: "SECTION 1. Section 9.102, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows."

(2) Amends SECTION 1, Section 9.102 (page 1, line 6), to revise Subsection (a).

(3) Amends SECTION 1, Section 9.102(d) (page 1, line 9), to strike "the title" and to substitute with "title, legal and equitable."