

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Cassady

SENATE BILL 212

"AN ACT TO AMEND SECTION 3-305 OF ACT 185 OF 1961 [ARK. STAT. 85-3-305] TO PROVIDE THAT A HOLDER IN DUE COURSE OF A NOTE TAKES SUBJECT TO PRIOR PAYMENT DEFENSES OF THE ORIGINAL DEBTOR; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 3-305 of Act 185 of 1961, the same being Arkansas Statute 85-3-305, is hereby amended to read as follows:

"Section 3-305. To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument; and

(f) if the instrument is a note, a holder in due course takes the instrument subject to all defenses of the original debtor as to payments made prior to receiving notice that the holder is in possession of the note."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 3. Emergency. It is hereby found and determined by the General Assembly that the present law expressing the rights of a holder in due course of a note is unjust as to the original debtor; that the unjustness will continue until this Act becomes effective; and that this Act will not become effective until ninety days after the adjournment of the General Assembly unless this emergency clause is adopted. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

