

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4 By: Senator Walters

# A Bill

SENATE BILL 22

## For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE §§ 4-2-326, 4-9-114, AND  
§ 4-9-403 TO PROVIDE FOR NOTICE TO THE PUBLIC AND TO  
CREDITORS CONCERNING A CONSIGNOR'S INTEREST IN GOODS FOR  
SALE UNDER THE UNIFORM COMMERCIAL CODE; AND FOR OTHER  
PURPOSES."

## Subtitle

"TO PROVIDE FOR NOTICE TO THE PUBLIC AND  
TO CREDITORS CONCERNING CONSIGNMENT  
SALES CONTRACTS UNDER THE U.C.C."

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

SECTION 1. Arkansas Code § 4-2-326 is amended to read as follows:

"4-2-326. Sale on approval and sale or return - Consignment sales and  
rights of creditors.

(1) Unless otherwise agreed, if delivered goods may be returned by the  
buyer even though they conform to the contract, the transaction is:

(a) A \_sale on approval\_ if the goods are delivered primarily for  
use; and

(b) A \_sale or return\_ if the goods are delivered primarily for  
resale.

(2) Except as provided in subsection (3), goods held on approval are  
not subject to the claims of the buyer's creditors until acceptance; goods  
held on sale or return are subject to such claims while in the buyer's  
possession.

(3) Where goods are delivered to a person for sale and such person  
maintains a place of business at which he deals in goods of the kind involved,  
under a name other than the name of the person making delivery, then with

1 respect to claims of creditors of the person conducting the business the goods  
2 are deemed to be on sale or return. The provisions of this subsection are  
3 applicable even though an agreement purports to reserve title to the person  
4 making delivery until payment or resale or uses such words as \_on consignment\_  
5 or \_on memorandum\_. However, this subsection is not applicable if the person  
6 making delivery:

7 (a) Complies with subsection (6) of this section providing for a  
8 consignor's interest or the like to be evidenced by a sign; or

9 (b) Establishes that the person conducting the business is  
10 generally known by his creditors to be substantially engaged in selling the  
11 goods of others; or

12 (c) Complies with the filing provisions of the chapter on secured  
13 transactions (chapter 9 of this title).

14 (4) Any \_or return\_ term of a contract for sale is to be treated as a  
15 separate contract for sale within the statute of frauds section of this  
16 chapter (§ 4-2-201) and as contradicting the sale aspect of the contract  
17 within the provisions of this chapter on parol or extrinsic evidence (§ 4-2-  
18 202).

19 (5) The provisions of this section shall not apply to the placement of  
20 works of fine art on consignment.

21 (6) The provisions of subsection (3) of this section shall not apply  
22 where property or goods are placed in fuel storage tank(s) on the business  
23 premises or in a refrigerated box, vending machine, or other container within  
24 a store, mercantile establishment, or other place of business by a consigning  
25 person, firm or corporation to be sold therein, where the fuel storage  
26 tank(s), refrigerated box, vending machine, or other container are plainly  
27 marked with a sign, painted or attached, and prominently displayed on a pole  
28 or other support within six (6) feet of any one (1) fuel pump on the business  
29 premises or on the box, machine, or container stating that the property or  
30 goods contained within the signed fuel tank(s), box, machine, or container  
31 belong to the consigning person, firm, or corporation and that the property or  
32 goods were placed therein by the consignor for sale."

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34 SECTION 2. Arkansas Code § 4-9-114 is amended to read as follows:

35 "4-9-114. Consignment.

36 (1) A person who delivers goods under a consignment which is not a

1 security interest and who would be required to file under this chapter by § 4-  
2 2-326(3)(c) has priority over a secured party who is or becomes a creditor of  
3 the consignee and who would have a perfected security interest in the goods if  
4 they were the property of the consignee, and also has priority with respect to  
5 identifiable cash proceeds received on or before delivery of the goods to a  
6 buyer, if:

7 (a) The consignor complies with the filing provision of the  
8 chapter on sales (chapter 2 of this title) with respect to consignments of §  
9 4-2-326(3)(c) before the consignee receives possession of the goods; and

10 (b) The consignor gives notification in writing to the holder of  
11 the security interest if the holder has filed a financial statement covering  
12 the same types of goods before the date of the filing made by the consignor;  
13 and

14 (c) The notification states that the consignor expects to deliver  
15 goods on consignment to the consignee, describing the goods by item or type.

16 (2) In the case of a consignment which is not a security interest and  
17 in which the requirements of the preceding subsection have not been met, a  
18 person who delivers goods to another is subordinate to a person who would have  
19 a perfected security interest in the goods if they were the property of the  
20 debtor."

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22 SECTION 3. Arkansas Code § 4-9-403 is amended to read as follows:

23 "4-9-403. What constitutes filing - Duration of filing - Effect of  
24 lapsed filing - Duties of filing officer.

25 (1) Presentation for filing of a financing statement and tender of the  
26 filing fee or acceptance of the statement by the filing officer constitutes  
27 filing under this chapter.

28 (2) Except as provided in subsection (6) a filed financing statement is  
29 effective for a period of five (5) years from the date of filing. The  
30 effectiveness of a filed financing statement lapses on the expiration of the  
31 five-year period unless a continuation statement is filed prior to the lapse.  
32 If a security interest perfected by filing exists at the time insolvency  
33 proceedings are commenced by or against the debtor, the security interest  
34 remains perfected until termination of the insolvency proceedings and  
35 thereafter for a period of sixty (60) days or until expiration of the five-  
36 year period, whichever occurs later. Upon lapse the security interest becomes

1 unperfected, unless it is perfected without filing. If the security interest  
2 becomes unperfected upon lapse, it is deemed to have been unperfected as  
3 against a person who became a purchaser or lien creditor before lapse.

4       (3) A continuation statement may be filed by the secured party within  
5 six (6) months prior to the expiration of the five-year period specified in  
6 subsection (2). Any such continuation statement must be signed by the secured  
7 party, identify the original statement by file number, and state that the  
8 original statement is still effective. A continuation statement signed by a  
9 person other than the secured party of record must be accompanied by a  
10 separate written statement of assignment signed by the secured party of record  
11 and complying with § 4-9-405, including payment of the required fee. Upon  
12 timely filing of the continuation statement, the effectiveness of the original  
13 statement is continued for five (5) years after the last date to which the  
14 filing was effective whereupon it lapses in the same manner as provided in  
15 subsection (2) unless another continuation statement is filed prior to such  
16 lapse. Succeeding continuation statements may be filed in the same manner to  
17 continue the effectiveness of the original statement. Unless a statute on  
18 disposition of public records provides otherwise, the filing officer may  
19 remove a lapsed statement from the files and destroy it immediately if he has  
20 retained a microfilm or other photographic record, or in other cases after one  
21 (1) year after the lapse. The filing officer shall so arrange matters by  
22 physical annexation of financing statements to continuation statements or  
23 other related filings, or by other means, that if he physically destroys the  
24 financing statements of a period more than five (5) years past, those which  
25 have been continued by a continuation statement or which are still effective  
26 under subsection (6) shall be retained.

27       (4) Except as provided in subsection (7) a filing officer shall mark  
28 each statement with a file number and with the date and hour of filing and  
29 shall hold the statement or a microfilm or other photographic copy thereof for  
30 public inspection. In addition the filing officer shall index the statement  
31 according to the name of the debtor and shall note in the index the file  
32 number and the address of the debtor given in the statement.

33       (5) The uniform fee for filing and indexing and for stamping a copy  
34 furnished by the secured party to show the date and place of filing for an  
35 original financing statement or for a continuation statement shall not exceed  
36 six dollars (\$6.00).

1           (6) If the debtor is a transmitting utility (§ 4-9-401(5)) and a filed  
2 financing statement so states, or if a consignor complies with the filing  
3 provision with respect to consignments under § 4-2-326(3)(c) and the filing  
4 states it is between consignment parties, it is effective until a termination  
5 statement is filed. A real estate mortgage which is effective as a fixture  
6 filing under § 4-9-402(6) remains effective as a fixture filing until the  
7 mortgage is released or satisfied of record or its effectiveness otherwise  
8 terminates as to the real estate.

9           (7) When a financing statement covers timber to be cut or covers  
10 minerals or the like (including oil and gas) or accounts subject to § 4-9-  
11 103(5), or is filed as a fixture filing, it shall be filed for record and the  
12 filing officer shall index it under the names of the debtor and any owner of  
13 record shown on the financing statement in the same fashion as if they were  
14 the mortgagors in a mortgage of the real estate described, and, to the extent  
15 that the law of this state provides for indexing of mortgages under the name  
16 of the mortgagee, under the name of the secured party as if he were the  
17 mortgagee thereunder, or where indexing is by description in the same fashion  
18 as if the financing statement were a mortgage of the real estate described."

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20           SECTION 4. All provisions of this act of general and permanent nature  
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
22 Revision Commission shall incorporate the same in the Code.

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24           SECTION 5. If any provisions of this act or the application thereof to  
25 any person or circumstance is held invalid, the invalidity shall not affect  
26 other provisions or applications of the act which can be given effect without  
27 the invalid provisions or application, and to this end the provisions of this  
28 act are declared to be severable.

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30           SECTION 6. All laws and parts of laws in conflict with this act are  
31 hereby repealed.

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