

HOUSE BILL NO. 44

Introduced: 01/03/83

Referred to Committee on Judiciary: 01/03/83

Hearing: 1/12/83

Died in Committee

HOUSE BILL NO. 44

INTRODUCED BY HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE A SUPPLIER OF DATED GOODS THAT ARE ROTATED IN INVENTORY ON A REGULAR BASIS AN INTEREST IN THE GOODS HIGHER IN PRIORITY THAN THE CREDITORS OF THE BUYER; AMENDING SECTION 30-2-326, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-2-326, MCA, is amended to read:

"30-2-326. 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 except as provided in subsection (5).

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

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

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

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202).

(5) Whenever goods are of a type that are dated and

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1 are removed from inventory and replaced at least once every
2 60 days, the supplier has an interest in the goods higher in
3 priority than any creditor of the buyer, even though the
4 agreement between the supplier and buyer is of a "sale or
5 return" nature."

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