

HOUSE BILL NO. 22
INTRODUCED BY HARPER

IN THE HOUSE

January 5, 1987	Introduced and referred to Committee on Business and Labor.
January 8, 1987	Committee recommend bill do pass as amended. Report adopted.
January 9, 1987	Printing report.
January 10, 1987	Second reading, do pass.
January 12, 1987	Engrossing report. Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 13, 1987	Introduced and referred to Committee on Business and Industry.
January 21, 1987	Committee recommend bill be concurrent in. Report adopted.
January 24, 1987	Second reading, concurrent in.
January 27, 1987	Third reading, concurrent in. Ayes, 50; Noes, 0. Returned to House.

IN THE HOUSE

January 28, 1987	Received from Senate. Sent to enrolling.
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1 HOUSE BILL NO. 22
2 INTRODUCED BY HARPER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY NOTICE
5 REQUIREMENTS RELATING TO SALE, RETENTION, OR OTHER
6 DISPOSITION OF COLLATERAL AFTER DEFAULT; AMENDING SECTIONS
7 30-9-504 AND 30-9-505, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 30-9-504, MCA, is amended to read:

11 "30-9-504. Secured party's right to dispose of
12 collateral after default -- effect of disposition. (1) A
13 secured party after default may sell, lease, or otherwise
14 dispose of any or all of the collateral in its then
15 condition or following any commercially reasonable
16 preparation or processing. Any sale of goods is subject to
17 the chapter on sales (chapter 2). The proceeds of
18 disposition shall be applied in the order following to:

19 (a) the reasonable expenses of retaking, holding,
20 preparing for sale or lease, selling, leasing, and the like
21 and, to the extent provided for in the agreement and not
22 prohibited by law, the reasonable attorneys' fees and legal
23 expenses incurred by the secured party;

24 (b) the satisfaction of indebtedness secured by the
25 security interest under which the disposition is made;

1 (c) the satisfaction of indebtedness secured by any
2 subordinate security interest in the collateral if written
3 notification of demand therefor is received before
4 distribution of the proceeds is completed. If requested by
5 the secured party, the holder of a subordinate security
6 interest must seasonably furnish reasonable proof of his
7 interest, and unless he does so, the secured party need not
8 comply with his demand.

9 (2) If the security interest secures an indebtedness,
10 the secured party must account to the debtor for any
11 surplus, and, unless otherwise agreed, the debtor is liable
12 for any deficiency. But if the underlying transaction was a
13 sale of account or chattel paper, the debtor is entitled to
14 any surplus or is liable for any deficiency only if the
15 security agreement so provides.

16 (3) (a) Disposition of the collateral may be by public
17 or private proceedings and may be made by way of one or more
18 contracts. Sale or other disposition may be as a unit or in
19 parcels and at any time and place and on any terms, but
20 every aspect of the disposition including the method,
21 manner, time, place, and terms must be commercially
22 reasonable. Unless collateral is perishable or threatens to
23 decline speedily in value or is of a type customarily sold
24 on a recognized market, reasonable notification of the time
25 and place of any public sale or reasonable notification of



1 the time after which any private sale or other intended
 2 disposition is to be made shall be sent by the secured party
 3 to the debtor if he has not signed after default a statement
 4 renouncing or modifying his right to notification of sale.
 5 In the case of consumer goods no other notification need be
 6 sent. In other cases notification shall be sent to any other
 7 secured party from whom the secured party has received
 8 (before sending his notification to the debtor or before the
 9 debtor's renunciation of his rights) written notice of a
 10 claim of an interest in the collateral. The secured party
 11 may buy at any public sale, and if the collateral is of a
 12 type customarily sold in a recognized market or is of a type
 13 which is the subject of widely distributed standard price
 14 quotations, he may buy at private sale.

15 (b) Notification by the secured party is reasonable
 16 under subsection (3)(a) and constitutes steps reasonably
 17 required to inform another in the ordinary course under
 18 30-1-201(26) if it is sent to the most recent address
 19 provided by the debtor or another secured party as follows:

20 (i) the address stated on the security agreement or
 21 other applicable loan document in the case of a debtor or on
 22 the written notice of claim in the case of another secured
 23 party; or

24 (ii) such other address of which the secured party
 25 receives notice in writing from the debtor or other secured

1 party prior to the time notification is sent to the most
 2 recent address previously given under subsection (3)(b)(i)
 3 or this subsection (3)(b)(ii).

4 (4) When collateral is disposed of by a secured party
 5 after default, the disposition transfers to a purchaser for
 6 value all of the debtor's rights therein, discharges the
 7 security interest under which it is made and any security
 8 interest or lien subordinate thereto. The purchaser takes
 9 free of all such rights and interests even though the
 10 secured party fails to comply with the requirements of this
 11 part or of any judicial proceedings:

12 (a) in the case of a public sale, if the purchaser has
 13 no knowledge of any defects in the sale and if he does not
 14 buy in collusion with the secured party, other bidders, or
 15 the person conducting the sale; or

16 (b) in any other case, if the purchaser acts in good
 17 faith.

18 (5) A person who is liable to a secured party under a
 19 guaranty, endorsement, repurchase agreement, or the like and
 20 who receives a transfer of collateral from the secured party
 21 or is subrogated to his rights has thereafter the rights and
 22 duties of the secured party. Such a transfer of collateral
 23 is not a sale or disposition of the collateral under this
 24 chapter."

25 Section 2. Section 30-9-505, MCA, is amended to read:

1 "30-9-505. Compulsory disposition of collateral --
 2 acceptance of the collateral as discharge of obligation. (1)
 3 If the debtor has paid 60% of the cash price in the case of
 4 a purchase money security interest in consumer goods or 60%
 5 of the loan in the case of another security interest in
 6 consumer goods and has not signed after default a statement
 7 renouncing or modifying his rights under this part, a
 8 secured party who has taken possession of collateral must
 9 dispose of it under 30-9-504, and if he fails to do so
 10 within 90 days after he takes possession the debtor at his
 11 option may recover in conversion or under 30-9-507(1) on
 12 secured party's liability.

13 (2) (a) In any other case involving consumer goods or
 14 any other collateral a secured party in possession may,
 15 after default, propose to retain the collateral in
 16 satisfaction of the obligation. Written notice of such
 17 proposal shall be sent to the debtor if he has not signed
 18 after default a statement renouncing or modifying his rights
 19 under this subsection (2). In the case of consumer goods, no
 20 other notice need be given. In other cases notice shall be
 21 sent to any other secured party from whom the secured party
 22 has received (before sending his notice to the debtor or
 23 before the debtor's renunciation of his rights) written
 24 notice of a claim of an interest in the collateral.

25 (b) Notice by the secured party is sufficient under

1 subsection (2)(a) and constitutes steps reasonably required
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9 (ii) such other address of which the secured party
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 11 party prior to the time notification is sent to the most
 12 recent address previously given under subsection (2)(b)(i)
 13 or this subsection (2)(b)(ii).

14 (c) If the secured party receives objection in writing
 15 from a person entitled to receive notification within 21
 16 days after the notice was sent, the secured party must
 17 dispose of the collateral under 30-9-504. In the absence of
 18 such written objection the secured party may retain the
 19 collateral in satisfaction of the debtor's obligation."

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APPROVED BY COMM. ON
BUSINESS AND LABOR

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dispose of any or all of the collateral in its then
condition or following any commercially reasonable
preparation or processing. Any sale of goods is subject to
the chapter on sales (chapter 2). The proceeds of
disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding,
preparing for sale or lease, selling, leasing, and the like
and, to the extent provided for in the agreement and not
prohibited by law, the reasonable attorneys' fees and legal
expenses incurred by the secured party;

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security interest under which the disposition is made;

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distribution of the proceeds is completed. If requested by
the secured party, the holder of a subordinate security
interest must seasonably furnish reasonable proof of his
interest, and unless he does so, the secured party need not
comply with his demand.

(2) If the security interest secures an indebtedness,
the secured party must account to the debtor for any
surplus, and, unless otherwise agreed, the debtor is liable
for any deficiency. But if the underlying transaction was a
sale of account or chattel paper, the debtor is entitled to
any surplus or is liable for any deficiency only if the
security agreement so provides.

(3) (a) Disposition of the collateral may be by public
or private proceedings and may be made by way of one or more
contracts. Sale or other disposition may be as a unit or in
parcels and at any time and place and on any terms, but
every aspect of the disposition including the method,
manner, time, place, and terms must be commercially
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 16 under subsection (3)(a) and constitutes steps reasonably
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 18 30-1-201(26) if it is sent BY CERTIFIED MAIL to the most
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 10 free of all such rights and interests even though the
 11 secured party fails to comply with the requirements of this
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 9 party; or

10 (ii) such other address of which the secured party
 11 receives notice in writing from the debtor or other secured
 12 party prior to the time notification is sent to the most
 13 recent address previously given under subsection (2)(b)(i)
 14 or this subsection (2)(b)(ii).

15 (c) If the secured party receives objection in writing
 16 from a person entitled to receive notification within 21
 17 days after the notice was sent, the secured party must
 18 dispose of the collateral under 30-9-504. In the absence of
 19 such written objection the secured party may retain the
 20 collateral in satisfaction of the debtor's obligation."

-End-