House Engrossed

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JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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CHAPTER 27

HOUSE BILL 2221

AN ACT

AMENDING SECTIONS 11-480, 12-1521, 12-1523, 12-2402, 44-6704, 47-1105 AND 47-2403, ARIZONA REVISED STATUTES; REPEALING TITLE 47, CHAPTER 6, ARIZONA REVISED STATUTES; RELATING TO BULK SALES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-480, Arizona Revised Statutes, is amended to read:

11-480. Requirements for form of instruments

A. Only an instrument which upon presentation to a county recorder for recordation fails to meet any of the following conditions may be rejected for recordation at the time of presentation for recordation:

1. Each instrument shall have a caption briefly stating the nature of the instrument, such as warranty deed, release of mortgage~~, notice of bulk sale~~ and like captions. The county recorder shall have no obligation to index any instrument under any subject index category maintained by the county recorder unless that category is included in the caption to the instrument.

2. Each instrument shall be an original or a copy of the original and shall be sufficiently legible for the recorder to make certified copies from the photographic or micrographic record.

3. Each instrument shall have original signatures except when otherwise provided by law.

4. Each instrument dated and executed on or after January 1, 1991, shall be no larger than eight and one-half inches in width and no longer than fourteen inches and shall have a print size no smaller than ten point type.

B. Each instrument dated and executed on or after January 1, 1991, shall have at least a one-half inch margin across the top, bottom and the left and right sides from the top to the bottom. Any markings, entries or text which are within the one-half inch margin shall be deemed not to impart the notice otherwise imparted by recordation unless such markings, entries or text appear in the reproduction produced under the direction and control of the county recorder. Failure to meet the one-half inch margin requirement of this subsection may affect notice imparted by the document but shall not constitute grounds for rejection for recordation pursuant to subsection A.

C. The first page shall have a top margin of at least two inches which shall be reserved for recording information. The left three and one-half inches of the top margin of the first page or sheet may be used by the public to show the name of the person requesting recording and the name and address to which the document is to be returned following recording. If the first page of the instrument does not comply with the top margin requirements, a separate sheet that meets the requirements and that reflects the title of the document as required by subsection A, paragraph 1 shall be attached to the front of the document by the party requesting recording.

D. Any instrument presented to a county recorder for recordation which modifies in any way the provisions of a previously recorded document must state the date of recordation and the docket and page of the document being modified.

E. Any instrument accepted for recordation is not subject to a later claim of invalidity for failure to comply with the requirements of this section.

Sec. 2. Section 12-1521, Arizona Revised Statutes, is amended to read:

12-1521. Attachment of property of defendant

A plaintiff, after complying with the provisions of chapter 14 of this title, may in the following cases have the property of the defendant attached as security for satisfaction of any judgment which may be recovered, unless the defendant gives security to pay such judgment:

1. In an action upon a contract, express or implied, for payment of money which is not fully secured by real or personal property, or, if originally so secured, the value of such security has, without any act of the plaintiff or the person to whom the security was given, substantially diminished below the balance owed.

2. When an action is pending for damages and the defendant is about to dispose of or remove his property beyond the jurisdiction of the court in which the action is pending.

3. In an action for damages or upon contract, express or implied, against a defendant not residing in this state or a foreign corporation doing business in this state.

4. In an action upon a judgment of any state.

~~5. When a plaintiff has received a bulk sale's notice pursuant to section 47-6105 dealing with the property of the defendant and such bulk sale does not provide for full payment of the plaintiff's debt.~~

Sec. 3. Section 12-1523, Arizona Revised Statutes, is amended to read:

12-1523. Issuance of writ for debt or demand not due; affidavit; trial; judgment

A. After entry of an order pursuant to the requirements of chapter 14 of this title, a writ of attachment may issue although the plaintiff's debt or demand is not due, but final judgment shall not be rendered against the defendant until the debt or demand is due.

B. To obtain an attachment for a debt or demand not due, the plaintiff may file with the clerk or justice of the peace a complaint and shall file an affidavit showing:

1. That the defendant is indebted to the plaintiff upon a contract, express or implied, for the direct payment of money, stating the amount, and that the debt is not due.

2. That such contract was made or is payable in this state.

3. That payment of the debt has not been secured by a mortgage, pledge or lien.

4. The character of the debt sued for.

5. That there are no legal setoffs or counterclaims against the debt.

6. That the defendant is about to remove permanently from the state and has refused to secure the debt, or that he has secreted his property for the purpose of defrauding his creditors, or that he is about to remove his

property from the state without leaving sufficient property remaining for payment of his debts, or that he has disposed of his property wholly or in part with intent to defraud his creditors, or that he is about to dispose of his property with intent to defraud his creditors.

~~7. That the plaintiff has received from the defendant a bulk sale's notice pursuant to section 47-6105 dealing with the property of the defendant and such bulk sale does not provide for full payment of the plaintiff's debt.~~

C. The affidavit shall further state that the attachment is not sued out for the purpose of injuring or harassing the defendant and that the plaintiff will probably lose his debt unless the attachment is issued.

D. The facts set forth in the affidavit filed under this section may be denied by the defendant, and the issue so formed shall be tried as other questions of fact.

E. If judgment is for the defendant, the court shall fix and include in the judgment a reasonable attorney's fee and shall enter judgment therefor against the sureties upon the attachment bond.

Sec. 4. Section 12-2402, Arizona Revised Statutes, is amended to read:

12-2402. Provisional remedies without notice; grounds for issuance

A. Any provisional remedy may be issued by any judge of the superior court or justice of the peace of this state before judgment and without prior notice to the party against whom it will operate in any of the following cases:

1. When the party against whom the provisional remedy is sought is about to remove permanently from the state and has refused to secure the debt, or when such party has secreted property for the purpose of defrauding creditors, or that such party has disposed of property, wholly or in part, with intent to defraud creditors, or that such party is about to dispose of property with intent to defraud creditors.

2. When the moving party is the owner or lessor or otherwise is lawfully entitled to the possession of the property claimed, has satisfied the requirements of sections 12-1301 and 12-1303, and is seeking a provisional remedy in the nature of replevin, except that a provisional remedy under this section may not be obtained to enforce a security interest in consumer goods which is not a purchase money security interest.

3. When any provisional remedy is required to obtain jurisdiction.

~~4. When the party seeking any provisional remedy has received a bulk sale's notice pursuant to section 47-6105 dealing with the property of the party against whom the provisional remedy is sought and such bulk sale will not provide for full payment of the party seeking the provisional remedy.~~

B. Before any provisional remedy shall issue, the party seeking such remedy shall establish with particularity by affidavit to the court's satisfaction sufficient facts supporting the party's claim and establish that one of the requirements of subsection A of this section has been met and that

such party will file such other pleadings or affidavits as are required by law as a prerequisite to the issuance of any provisional remedy sought.

C. When a provisional remedy is issued, the party against whom it will operate may immediately move to quash such order and the court or justice of the peace shall hear such motion within five days, exclusive of weekends and holidays. The issues at such hearing shall be limited to the following:

1. The probable validity of the claim or claims of the party seeking the provisional remedy and any defenses and claims of personal property exemptions of the party against whom such provisional remedy will operate.

2. The existence of any statutory requirement for the issuance of any provisional remedy sought, plus the existence of any grounds in subsection A of this section.

D. The party seeking the provisional remedy shall at the time of the seizure, attachment or garnishment, or within three days thereafter, exercise reasonable diligence to serve the party against whom a provisional remedy is sought with notice of the seizure, the impound or such other act ordered by the court and of said party's right to an immediate hearing contesting the same.

E. Upon the filing of an application as provided in this section, the justice of the peace or any clerk of the superior court shall issue a notice directed to any party against whom any provisional remedy would operate, substantially in the following form:

"Notice

You are hereby notified that your (property) is being taken away from you by (party seeking provisional remedy), who says that you owe (such party) a debt of $ (amount). (Party seeking provisional remedy) is taking your property because (such party) says:

(a) That you were about to remove permanently from the state and refused to secure the debt, or

(b) That you had secreted property for the purpose of defrauding creditors, or

(c) That you had disposed of property, wholly or in part, with intent to defraud creditors, or were about to dispose of property with intent to defraud creditors, or

~~(d) That your assets will not provide for full payment of your debt after a bulk sale.~~

~~(e)~~ (d) That (party seeking provisional remedy) claims the right of possession to your property under a purchase money security interest.

If you disagree and think you do not owe (party seeking provisional remedy), or that you have not done any of the things which (party seeking provisional remedy) said you did or were about to do, then you can ask a court to hear your side of the story and give your property back to you. If you want such a hearing, it will be given to you within five working days after you ask for it. Just check the box at the bottom of this notice and mail it or take it to the court or division of the court, at the following

address: (address of court or division of the court). You must also send a copy to (party seeking provisional remedy) at (address), so that (party seeking provisional remedy) knows you want the hearing."

Sec. 5. Section 44-6704, Arizona Revised Statutes, is amended to read:

44-6704. Surplus parts inventory; credits

A. Unless this section is specifically waived in writing by the dealer, a supplier shall allow a dealer to periodically, or at least once every twelve months, return a portion of the dealer's surplus parts inventory for credit. The supplier shall notify the dealer of a time period when a dealer may submit the dealer's surplus parts list and return this inventory. The designated return period shall be at least ninety days. A supplier may stagger return periods for its dealers.

B. If a supplier has not notified its dealer of a specific time period for returning surplus parts within the preceding twelve months, it shall allow the dealer to return surplus parts within sixty days of receiving the dealer's request to make this return.

C. A supplier shall allow surplus parts return on a dollar value of parts equal to ten per cent of the total dollar value of all parts purchased by the dealer from the supplier during either the twelve month period immediately preceding the supplier's notification to the dealer of the supplier's return program or, if subsection B applies, the month the dealer makes a return request. The dealer may elect to return a dollar value of the surplus parts equal to less than ten per cent of the total dollar value of the parts the dealer purchased during the preceding twelve months.

D. A dealer may not return obsolete or superseded parts. However, a dealer may return for credit a part found in the supplier's current returnable parts list or a superseded part that is not the subject of either the supplier's parts return program as of the date the supplier notifies the dealer or, if subsection B applies, as of the date the equipment dealer made a return request.

E. A dealer shall return only new and unused parts to the supplier of these parts.

F. The minimum credit allowed for returned parts is ninety-five per cent of the net price as listed in the supplier's current returnable parts list as of the date that the supplier provides notice of its return program or, if subsection B applies, the date that the dealer submits a request for return.

G. A supplier shall issue credit within ninety days after receiving a return part.

H. This section does not prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods.

~~I. A repurchase made pursuant to this section is not subject to the provisions of the bulk sales law pursuant to title 47, chapter 6.~~

Sec. 6. Section 47-1105, Arizona Revised Statutes, is amended to read:

47-1105. Territorial application of the title; parties' power to choose applicable law

A. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

B. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

1. Rights of creditors against sold goods. Section 47-2402.

2. Applicability of the chapter on leases. Sections 47-2A105 and 47-2A106.

3. Applicability of the chapter on bank deposits and collections. Section 47-4102.

4. Governing law in the chapter on funds transfers. Section 47-4A507.

5. Letters of credit. Section 47-5116.

~~6. Bulk sales subject to the chapter on bulk sales. Section 47-6103.~~

~~7.~~ 6. Applicability of the chapter on investment securities. Section 47-8110.

~~8.~~ 7. Law governing perfection, the effect of perfection or nonperfection and the priority of security interests and agricultural liens. Sections 47-9301 through 47-9307.

Sec. 7. Section 47-2403, Arizona Revised Statutes, is amended to read:

47-2403. Power to transfer; good faith purchase of goods; "entrusting"

A. A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

1. The transferor was deceived as to the identity of the purchaser, or

2. The delivery was in exchange for a check which is later dishonored, or

3. It was agreed that the transaction was to be a "cash sale", or

4. The delivery was procured through fraud punishable as larcenous under the criminal law.

B. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

C. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

D. The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9 of this title)~~, bulk sales (chapter 6 of this title)~~ and documents of title (chapter 7 of this title).

Sec. 8. Repeal

Title 47, chapter 6, Arizona Revised Statutes, is repealed.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.