

SB

4410

COMMITTEE REPORT

1/14/78

HOUSE

Mr. Speaker:

Date 1-10-1978

The Committee on SUBCOMMITTEE has had CSSE 400

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____
COMMITTEE

reports it back WITHOUT RECOMMENDATION

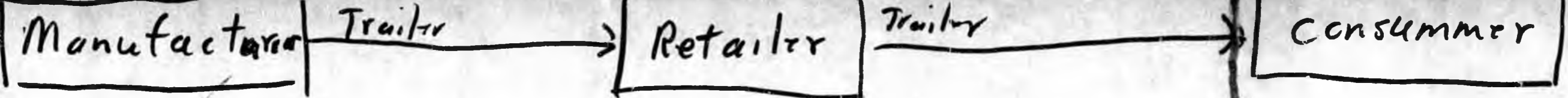
"other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:

_____ Chairman



normally bank gets security interest at this point

present wording of U.C.C. says get security interest here

period bank is presently unprotected if they comply with law

CS SB 440
clears up language in U.C.C. and tells bank to file here

House Judiciary Committee
February 11, 1976
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CSSB 440 SECURITY INTERESTS

CSSB
440

Rick Svobodny explained that this deals with the Uniform Commercial Code. As things stand now automobiles and mobile homes which are covered by certificate of title, do not require the dealer to file liens held by the bank on his inventory until it is sold. This would make it necessary for this information to be available before the article was sold. The filing must be done when the manufacturer sells the vehicles to the dealer, not when the dealer sells to the consumer.

Mr. Parr moved that CSSB 440 pass out of committee. No objection, it was done.

HB 606 VACANCIES U.S. SENATORS

HB
606

The members discussed the following amendments to CS HB 606:

Page 1, lines 27 - 29: Delete last sentence of subsection (c).

Page 2, line 6: Delete "not more than".

Mr. Cotten moved that the above amendments be adopted. No objection, so ordered.

Page 2, lines 11 - 17: Change to read:

Sec. 15.40.016. PLAN FILED WITH LIEUTENANT GOVERNOR.
Each state party central committee shall maintain on file with the office of the lieutenant governor a plan which defines the "party districts" for the purposes of Sec. 15.40.010 and Sec. 15.40.015.

Mr. Gardiner moved that the above amendment to adopted. No objection, so ordered.

Mr. Parr moved that HB 606 pass out of committee in the form of CS HB 606 with the above amendments included. No objection, so ordered.

The meeting was adjourned at 8:35 p.m.

Original sponsor: Butrovich

Offered: 5/21/75
Referred: Rules

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 440
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 NINTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the perfection of security
7 interests."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.05.734(c)(2) is amended to read:

UCC

(2) of this state which provides for central filing of, or
which requires indication on a certificate of title of, the security
interests in the property, unless the property is inventory held for
sale by a dealer, which has not been previously sold at retail and for
which no certificate of title has been issued.

*Requires
to be under
Motor Vehicle Act*

Retailers are filing

Man sell retail

retail sells to consumer

*Under
UCC*

*Motor
Vehicle
Act*

UCC says use point B

Retailers under Motor Vehicle Act

*Protects Consumer so he knows bank
has a security interest*

Notify Bankers lobby

SB 440

What is art. 9 UCC. For

What does security interest due

Filing in central area AS 40.

Filing under Title act

Bill does

Helm Buf

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WILLIAM J. DONOHUE

February 19, 1974

Mr. Robert E. Barnes
President
Alaska State Bank
P. O. Box 240
Anchorage, Alaska 99513

Re: Anchorage Trailer Sales, Inc.
Our File No. 2525.1

Dear Bob:

We have been asked to consider certain legal questions arising out of the Bank's relationship with Anchorage Trailer Sales, Inc. We have been specifically requested to direct our attention to the Bank's security position with respect to the customer's mobile home inventory. The purpose of this letter is to set forth our conclusions in light of the facts provided to us.

We understand that historically a typical transaction proceeded roughly as follows: Anchorage Trailer Sales or a manufacturer selling to it requests that the Bank issue a letter committing the Bank to pay the manufacturer the wholesale price plus shipping for a given number of mobile homes. The Bank issues such a letter and, after arrival of the units in Alaska, pays the manufacturer. Anchorage Trailer Sales then executes a promissory note to the Bank for the amount so advanced, and, in addition, executes a "flooring note" which describes the units by serial number and sets forth the amount owed the Bank with respect to each unit.

The manufacturer sends to the Bank the "Manufacturer's Certificate of Origin" with respect to each unit and that certificate is retained in the Bank's files. In addition, we are informed (although we have not reviewed the operative documents) that the Bank has sought to secure itself pursuant to the Uniform Commercial Code and to that end has taken a Security Agreement covering inventory and filed a financing statement. We under-

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stand that there is a conflicting financing statement filed prior to that of the Bank, but for the purposes of this letter we will disregard that prior filing, although, of course, steps must be taken to clarify the Bank's position with respect to that other creditor.

The Uniform Commercial Code of Alaska determines whether or not the Bank has the status of secured creditor with respect to the inventory of Anchorage Trailer Sales. The UCC (AS 45.05.734(c)) provides that filing with the Department of Administration in January of a financing statement does not perfect a security interest:

"in property subject to a statute . . . of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interest in the property."

The UCC (AS 45.05.734(d)) goes on to state that:

"A security interest in property covered by [a certificate of title statute] can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate of a certificate of title by a public official."

Mobile homes in Alaska are deemed subject to the certificate of title provisions of the Alaska Motor Vehicle Act (AS 28.10). It does not appear customary in Alaska for motor vehicle dealers, including mobile home dealers, to have their inventory "titled" prior to the first retail sale. Generally the vehicle is first "titled" after it is sold to a retail purchaser.

Nevertheless, the UCC states explicitly that a security interest in property covered by a certificate of title statute "can be perfected only by . . . indication of the security interest on a certificate of title" There is no question that the drafters of the UCC had no intention of interfering with customary business practices. (It is equally clear, however, that if Anchorage Trailer Sales went bankrupt the Trustee in bankruptcy, who by law represents the interests of unsecured creditors, would attempt to take the position that Alaska State Bank, by failing to show its lien on certificates of title, does not have the status of a secured creditor.)

*Pro-secured
creditor*

Mr. Robert E. Barnes

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We have found instances in other states in which a Trustee in Bankruptcy unsuccessfully urged that argument. It is possible, however, that a court in Alaska might reach a contrary conclusion and interpret the language of the UCC literally. The ambiguity of the law on this point has prompted a recommendation from the drafters of the UCC that it be amended to resolve this problem.

Until such an amendment becomes the law, however, it is our opinion that the Bank can eliminate the risk of being deemed unsecured only by both filing a financing statement in Juneau and also having itself shown as a lienholder on certificates of title. In that way, the Bank will have secured creditor status whichever way a court might rule.

If you have any questions concerning the above, please give me a call.

Very truly yours,

ELY, GUESS & RUDN

Herbert Berkowitz

HB/ec

cc: Mr. Ralph F. Whitmore, Jr.
Mr. Alvin E. Fleetwood
Mr. John Houlahan
Mr. J. Martin Kinnunen

Note - this should be possible