

State of Misconsin 1997 - 1998 LEGISLATURE

1997 SENATE BILL 201

May 7, 1997 – Introduced by Senators CHVALA, WINEKE, C. POTTER and MOEN, cosponsored by Representatives ROBSON, GROTHMAN, FREESE, HASENOHRL, LORGE, PLOUFF and BLACK. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 AN ACT to create 402.326 (3) (d) and 402.326 (5) of the statutes; relating to: "sale

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or return" or consignment sales under the uniform commercial code.

Analysis by the Legislative Reference Bureau

Under current law, the uniform commercial code (UCC) contains a provision governing contingent sales, or sales under which the the delivered goods may be returned by the buyer even though they conform to the sales contract. If the goods are delivered to the buyer primarily for resale by the buyer, the transaction is referred to as a "sale or return" transaction. Goods delivered on "sale or return" are generally subject to claims of the deliveree's creditors while in the deliveree's possession. If certain requirements are met, these goods are subject to the claims of the deliveree's creditors even though the sales contract purports to reserve title to the deliveror until the goods are resold or paid for by the deliveree, or even though the sales contract provides that the sale is "on consignment". There are a couple of exceptions to this rule. The delivered goods may be protected from the claims of the deliveree's creditors if the deliveror: 1) files a security interest in the delivered goods under the UCC; or 2) establishes that the deliveree's creditors generally know that the deliveree is substantially engaged in selling the goods of others.

This bill creates an additional exception for goods that the deliveror had used or bought for personal, family or household purposes. These goods do not become the property of the deliveree unless the deliveree purchases and fully pays for the goods. Any payment received by the deliveree from a buyer of the delivered goods, less any amount that the deliveror expressly agreed could be deducted from the payment for commissions, fees or expenses, is the property of the deliveror and is not

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subject to the claims of the deliveree's creditors. This additional exception created by the bill does not prevent the deliveree from acting as the deliveror's agent to transfer title to these goods to a buyer who pays the full purchase price.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- **SECTION 1.** 402.326 (3) (d) of the statutes is created to read:
- 2 402.326 (3) (d) Delivers goods that the person making delivery used, or bought
- 3 for use, for personal, family or household purposes.
- 4 **SECTION 2.** 402.326 (5) of the statutes is created to read:

 $\mathbf{5}$ 402.326 (5) If a person delivers or consigns for sale goods that the person used, 6 or bought for use, for personal, family or household purposes, these goods do not 7 become the property of the deliveree or consignee unless the deliveree or consignee 8 purchases and fully pays for the goods. This subsection does not prevent the 9 deliveree or consignee from acting as the deliverer's or consignor's agent to transfer 10 title to these goods to a buyer who pays the full purchase price. Any payment 11 received by the deliveree or consignee from a buyer of these goods, less any amount 12that the deliverer or consignor expressly agreed could be deducted from the payment for commissions, fees or expenses, is the property of the deliveror or consignor and 13is not subject to the claims of the deliveree's or consignee's creditors. 14

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SECTION 3. Initial applicability.

16 (1) This act first applies to goods delivered on the effective date of this17 subsection.

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