

SENATE BILL NO. 256

BY SENATOR CHAISSON

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AN ACT

To enact Part IV of Chapter 4 of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:3131.1 through 3131.9, relative to the Louisiana Exchange Sale of Receivables Act; to provide for legislative intent; to provide for definitions; to provide for the scope; to provide for the true sale status of sales of receivables over exchanges located in Louisiana; to provide for the binding effectiveness of Louisiana law to the sales of receivables; to provide for buyer ownership rights; to provide for relationship with the Uniform Commercial Code; to prohibit the filing or maintaining of certain actions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV of Chapter 4 of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3131.1 through 3131.9, is hereby enacted to read as follows:

PART IV. LOUISIANA EXCHANGE SALE OF RECEIVABLES ACT

§3131.1. Short title

This Part shall be known and may be cited as the "Louisiana Exchange Sale of Receivables Act".

§3131.2. Legislative intent

A. It is the intent of the legislature to encourage and promote businesses to offer sellers the ability to sell their receivables to qualified buyers over electronic and other types of exchanges located in this state, thereby availing themselves of Louisiana civil law principles not found in common law jurisdictions, and further availing themselves of the true sale provisions of this Part and R.S. 10:9-109(e).

B. The legislature declares the following actions to be the public policy

1 of this state.

2 (1) All sales of receivables over exchanges located in Louisiana shall be
3 subject to Louisiana law, and specifically subject to this Part and to R.S. 10:9-
4 109(e).

5 (2) Such sales shall result in true sales for all purposes and not be limited
6 to a bankruptcy context.

7 (3) Such sales shall not be subject to recharacterization as a simulated
8 sale or as a loan, extension of credit, or other credit accommodation by the
9 buyer to the seller, notwithstanding that the seller may be obligated to
10 repurchase the receivable, or the buyer may have other recourse against the
11 seller, if the receivable is not timely paid, and further notwithstanding that the
12 seller may be entitled to receive a portion of the collection proceeds.

13 C. This Part and R.S. 10:9-109(e) specifically reject common law legal
14 theories under which recourse sales of receivables have been recharacterized as
15 loans or credit accommodations, as being contrary to Louisiana civil law
16 principles that apply to sales of receivables over exchanges located in this state.

17 §3131.3. Definitions

18 A. For the purposes of this Part, the following terms shall have the
19 following meanings unless the context clearly indicates otherwise.

20 (1) "Buyer" means the person buying a receivable over an exchange
21 located in this state.

22 (2) "Collection proceeds" means any amounts received or otherwise
23 collected from the person owing the receivable, including the account debtor or
24 a guarantor of the payment obligation.

25 (3) "Consummate" means to complete all agreements, steps and actions
26 necessary for a sale of receivables to be deemed to be complete under Louisiana
27 law, with ownership of the purchased receivable passing from the seller to the
28 buyer.

29 (4) "Exchange" means an electronic or other marketplace over which
30 sellers may offer and sell their receivables to qualified buyers.

1 (5) "Operational employees" means and refers to employees whose work
2 responsibilities are primarily devoted to performing operations-related
3 functions related to the exchange and persons transacting business over the
4 exchange, as compared to employees whose primary work responsibilities are
5 devoted to managerial, marketing, sales, internal accounting and other non-
6 operational functions.

7 (6) "Receivable" means an account, general intangible, payment
8 intangible, chattel paper or instrument as defined under the UCC. Receivables
9 shall also include third-party payment obligations that are not subject to the
10 UCC. Receivables shall not be limited to United States domestic payment
11 obligations, and shall include receivables owed by non-United States persons
12 and entities as well as receivables originating out of non-United States
13 transactions.

14 (7) "Seller" means the person offering a receivable for sale over an
15 exchange located in this state.

16 (8) "True sale" means a consummated sale of all rights, title and
17 interests that the seller may have in a receivable sold over an exchange located
18 in this state, with the buyer acquiring all of the seller's rights and interests, and
19 with the seller not retaining a legal or equitable interest in the receivables sold.

20 (9) "UCC" means the Uniform Commercial Code of any state and the
21 comparable laws of foreign non-United States jurisdictions. In Louisiana,
22 "UCC" means and refers to Chapter 9 of the Louisiana Uniform Commercial
23 Code, R.S. 10:9-101, et seq.

24 B. All terms used, but not defined in this Part, shall have the meanings
25 found in the UCC, the Louisiana Revised Statutes of 1950, and the Civil Code.
26 §3131.4. Scope

27 A. This Part shall apply to all sales of receivables over exchanges located
28 in this state irrespective of whether the buyer or the seller of the receivable is
29 a Louisiana resident, business organization or other entity, provided that the
30 buyer and the seller contractually agree that such sales shall be deemed to be

1 consummated in Louisiana subject to Louisiana law, and contractually agree
2 that the sales of receivables result in true sales for all purposes.

3 B. An exchange shall be conclusively deemed to be located in this state
4 when the exchange is owned and operated by a Louisiana business organization
5 having fifty percent or more of its operational employees located in this state,
6 and such Louisiana business organization declares in an affidavit filed in the
7 conveyance office of the parish in which the organization has its principal place
8 of business, that the affiant maintains its principal place of business in that
9 parish. An exchange owner or operator located in this state may have
10 additional sales and other offices, as well as managerial, sales, marketing,
11 accounting and other operational and non-operational employees located in
12 other jurisdictions, so long as the company has fifty percent or more of its
13 operational employees in Louisiana. In the case of an electronic exchange
14 conducting exchange business over the Internet or other electronic media, the
15 servers and electronic interchanges of the company need not be physically
16 located in Louisiana.

17 §3131.5. True sales of receivables; not subject to recharacterization; simulation
18 articles not applicable

19 A. All sales of receivables over exchanges subject to the scope of this
20 Part as provided by R.S. 9:3131.4(A) shall conclusively result in consummated
21 true sales for all purposes, and not be limited to a bankruptcy context, with the
22 buyer acquiring all of the seller's rights, title and interests in and to the traded
23 receivables and the collection proceeds thereof, and with the seller retaining no
24 vestiges of legal or equitable interest in the receivables sold.

25 B. As true sales, sales of receivables over exchanges located in this state
26 shall not be subject to recharacterization as loans, extensions of credit, or other
27 credit accommodations by the seller to the buyer, notwithstanding that the
28 seller may be obligated to repurchase the receivable, or the buyer may
29 otherwise have recourse against the seller if the receivable is not paid when due,
30 and further notwithstanding that the seller may be entitled to receive a portion

1 of the collection proceeds. Furthermore, sales of receivables over exchanges
2 located in this state shall not be construed, under any circumstance, to be a
3 simulated sale under the simulation articles of the Civil Code.

4 C. (1) The seller's written agreement in the underlying documents that
5 the seller absolutely, unconditionally, and irrevocably intends that sales of the
6 seller's receivables over an exchange located in this state result in true sales of
7 such receivables for all purposes, shall be definitive and binding on the seller,
8 and may not be subsequently disavowed or refuted by any of the following
9 persons:

10 (a) The seller.

11 (b) The seller's successors or assigns, or any person acquiring rights
12 from or through the seller, including the buyer.

13 (c) Past and future owners, directors, officers, employees, agents,
14 representatives and attorneys of the seller, or of its successors or assigns, or any
15 person acquiring rights from or through the seller.

16 (d) The account debtor or any other person obligated to pay the
17 receivable.

18 (e) All other third persons.

19 (2) Any person, including anyone listed in Paragraph (1) of this
20 Subsection, attempting to recharacterize a sale of a receivable over an exchange
21 located in this state as anything other than a true sale under Louisiana law, shall
22 be personally liable and obligated by operation of law to reimburse the buyer
23 and the buyer's agents for attorney fees, court costs, arbitration costs, expert
24 fees, and out-of-pocket expenses, including but not limited to travel expenses,
25 expended in defense of the status of such sale as a true sale under Louisiana law.

26 §3131.6. Binding effectiveness of Louisiana law

27 A. Louisiana law, and specifically this Part and R.S. 10:9-109(e), shall
28 apply to all sales of receivables over exchanges located in this state irrespective
29 of the domicile or other location of the buyer or the seller.

30 B. (1) The seller's written agreement and choice of law covenant in the

1 underlying documents that Louisiana law shall apply to all sales of the seller's
2 receivables over an exchange located in this state, shall be definitive for all
3 purposes, and shall be absolutely, unconditionally and irrevocably binding on
4 the seller, and shall not be subsequently disavowed or refuted by any of the
5 following persons:

6 (a) The seller.

7 (b) The seller's successors or assigns, or anyone acquiring rights from or
8 through the seller, including the buyer.

9 (c) Past and future owners, directors, officers, employees, agents,
10 representatives and attorneys of the seller, or of its successors or assigns, or
11 anyone acquiring rights from or through the seller.

12 (d) The account debtor or person obligated to pay the receivable.

13 (e) All other third persons.

14 (2) Any person, including anyone listed in Paragraph (1) of this
15 Subsection, attempting to contest the applicability of Louisiana law and to apply
16 the laws of another state or jurisdiction to the sale of the seller's receivables
17 over an exchange located in this state, shall be personally liable and obligated
18 by operation of law to reimburse the buyer and the buyer's agents for all
19 attorney fees, court costs, arbitration costs, expert fees, and out-of-pocket
20 expenses, including but not limited to travel expenses expended in defense of the
21 status of such a sale as a true sale under Louisiana law.

22 C. For the further purpose of applying relevant conflicts of law
23 principles, the legislature declares that Louisiana public policy shall be most
24 seriously impaired to the extent that the laws of another state or jurisdiction
25 might be applied to sales of receivables over exchanges located in Louisiana.

26 As sales of receivables take place in Louisiana over Louisiana-based exchanges,
27 Louisiana shall be deemed to have the most significant contact with the
28 underlying sales transaction.

29 §3131.7. Buyer ownership rights; evidence of ownership

30 A. The buyer shall be deemed for all purposes, and not be limited to a

1 bankruptcy context, to be the owner of a receivable purchased over an exchange
2 located in this state, with the buyer having the right to all of the following
3 actions:

4 (1) To collect the receivable from the account debtor or other obligated
5 person.

6 (2) To resell the receivable to a subsequent buyer.

7 (3) To pledge or otherwise grant a security interest in the receivable in
8 favor of the buyer's creditor.

9 (4) To reflect the receivable as an asset on the buyer's books and records.

10 B. To the extent that the owner or operator of an exchange located in
11 this state maintains records of sales of receivables over the exchange, such
12 records shall serve as the single authoritative record evidencing buyer
13 ownership of traded receivables for all purposes.

14 §3131.8. Relationship to the UCC

15 A. This Part supplements R.S. 10:9-109(e), and shall not be construed
16 to implicitly amend or repeal any provision of the UCC, including but not
17 limited to R.S. 10:1-201(35), 9-102(72)(D), 9-109(e), 9-301, 9-307, 9-310(a), 9-
18 312(a), 9-317 through 9-339, 9-406, 9-501, and 9-607(a)(1).

19 B. This Part and R.S. 10:9-109(e) provide for and define the true sale
20 status and the state property ownership rights of buyers of receivables
21 purchased over exchanges located in this state, and shall not independently
22 provide for rules governing perfection, the effects of perfection or
23 nonperfection, or the priority rights of buyers of receivables purchased over
24 Louisiana based exchanges within the context of R.S. 10:9-301.

25 §3131.9. Prohibition of actions

26 A seller shall not maintain an action or have any claim against an owner
27 or operator of an exchange located in this state, or against a buyer of the
28 receivables, unless there is an agreement in writing setting forth the relevant
29 terms and conditions, and the agreement is signed by the seller and the owner
30 or operator on its own behalf and as agent for the buyer.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____