



Hundredth Legislature - First Session - 2007
Introducer's Statement of Intent
LB 116

Chairperson: Rich Pahls
Committee: Banking, Commerce and Insurance
Date of Hearing: February 6, 2007

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 116 would amend the provisions of Uniform Commercial Code, Section 9-324(d), to define “possession” for purposes of that subsection, to include (a) possession by the debtor; or (b) possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.

Under Uniform Commercial Code Section 9-324(d), in order for a secured party to retain a purchase money security interest (PMSI) in livestock, it must send authenticated notification of the PMSI to any holder of a prior perfected security interest prior to the debtor receiving “possession” of the livestock. In a decision rendered by the Texas Court of Appeals, (*First National Bank in Munday v. Lubbock Feeders, LP*), the court determined that a feedlot, which held a PMSI in livestock, did not lose its PMSI priority over a lender’s prior perfected security interest, despite not having notified the lender of its claimed PMSI. The decision was based on the court’s determination that the cattle purchased by the debtor were delivered directly from the sellers of livestock to the feedlot that had financed the purchase and the debtor therefore was not deemed to have obtained “possession” of the livestock, thereby eliminating the need to notify holders of prior perfected security interests.

The provisions of the Uniform Commercial Code requiring secured parties claiming PMSI status to give notification to holders of prior perfected security interests are designed to avoid the creation of “hidden liens” and to avoid misleading prior perfected security interest holders to their detriment. By defining what constitutes “possession” for purposes of Uniform Commercial Code Section 9-324(d), LB 116 would avoid a decision similar to that rendered in the *Lubbock Feeders* case from applying to cases involving disputes between competing holders of PMSIs and holders of prior perfected security interests in Nebraska.

Principal Introducer:

Senator Rich Pahls