

FIRST REGULAR SESSION

SENATE BILL NO. 359

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

0927S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 400.3-309, RSMo, and to enact in lieu thereof one new section relating to the enforcement of instruments by persons not in possession.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 400.3-309, RSMo, is repealed and one
2 new section enacted in lieu thereof, to be known as section
3 400.3-309, to read as follows:

400.3-309. (a) A person not in possession of an
2 instrument is entitled to enforce the instrument if [(i) the
3 person was in possession of the instrument and entitled to
4 enforce it when loss of possession occurred, (ii) the loss
5 of possession was not the result of a transfer by the person
6 or a lawful seizure, and (iii) the person cannot reasonably
7 obtain possession of the instrument because the instrument
8 was destroyed, its whereabouts cannot be determined, or it
9 is in the wrongful possession of an unknown person or a
10 person that cannot be found or is not amenable to service of
11 process.]:

12 (i) the person seeking to enforce the instrument:

13 (A) was entitled to enforce the instrument when loss
14 of possession occurred; or

15 (B) has directly or indirectly acquired ownership of
16 the instrument from a person who was entitled to enforce the
17 instrument when loss of possession occurred;

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (ii) the loss of possession was not the result of a
19 transfer by the person or a lawful seizure; and

20 (iii) the person cannot reasonably obtain possession
21 of the instrument because the instrument was destroyed, its
22 whereabouts cannot be determined, or it is in the wrongful
23 possession of an unknown person or a person that cannot be
24 found or is not amenable to service of process.

25 (b) A person seeking enforcement of an instrument
26 under subsection (a) must prove the terms of the instrument
27 and the person's right to enforce the instrument. If that
28 proof is made, Section 400.3-308 applies to the case as if
29 the person seeking enforcement had produced the instrument.
30 The court may not enter judgment in favor of the person
31 seeking enforcement unless it finds that the person required
32 to pay the instrument is adequately protected against loss
33 that might occur by reason of a claim by another person to
34 enforce the instrument. Adequate protection may be provided
35 by any reasonable means.

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