

SECOND REGULAR SESSION

SENATE BILL NO. 568

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SINGLETON.

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TERRY L. SPIELER, Secretary.

S2413.011

AN ACT

To repeal section 400.9-313, RSMo 1994, relating to security interests in fixtures, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 400.9-313, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 400.9-313, to read as follows:

400.9-313. (1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of section 400.9-402;

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

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

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(5) A security interest in a manufactured home as defined in section 700.010, RSMo, which has been perfected pursuant to sections 700.350 to 700.390, RSMo, has priority over the conflicting interest of an encumbrancer or owner of the real estate if the security agreement was made before the manufactured home was placed upon the real estate. This subdivision shall apply only to security interests in manufactured homes which are placed on real property after August 28, 1998. This subdivision shall not prevent the use of fixture filings for manufactured homes.

[(5)] (6) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

[(6)] (7) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) [and], (5) **and (6)**, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

[(7)] (8) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

[(8)] (9) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for

any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

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