

# Accounts Receivable Legislation

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In completely rewriting the ten-year-old legislation relating to the assignments of accounts receivable, the recent Legislature succeeded in adding greater respectability to this form of secured transaction. For the most part, the changes made in Sections 8509-3 to 8509-6 of the General Code by the enactment of Substitute House Bill No. 260 are not significant policy wise.<sup>1</sup> The chief purpose of the enactment was the clarification of a precedent-making statute of a decade ago. To say that this purpose must have succeeded in view of the wordiness of the old law is not to detract from those who participated in the original effort since they had nothing to draw upon. The new Act is an accumulation of their experience under the old Act and clarification has been accomplished.

The notice system of filing pioneered by Ohio in its legislation dealing with trust receipts<sup>2</sup> and made an integral part of Ohio's accounts receivable legislation ten years ago is still the heart of the new Act. The form of notice is substantially altered, however. An affidavit is no longer needed for filing purposes. Only a very simple writing signed by both the account assignor and assignee is needed. The statute includes a form for this as well as the other types of notice permitted or required by the Act. As in the previous law, the notice is effective for all assignments of accounts receivable which take place between the parties during the three year period for which the original notice is effective. As in the old law, the notice may be renewed for successive three year periods during which additional assignments will receive the Act's protection. It is no longer necessary to state the "ground" or "grounds" for renewal.

A new form of notice is added. This is the "notice of continuance." Its purpose is to protect an assignee who is no longer financing the assignor through accounts receivable and thus does not need a renewal of the notice but whose accounts taken during the period of the original notice or any renewal thereof have not been paid. The notice of continuance protects the assignee for three years after filing. As in the case of the other notices, no specification of the accounts assigned need be made in the notice of continuance.

The new Act also provides for a notice of cancellation. This in

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<sup>1</sup>The new Act repeals Sections 8509-3 to 8509-6, both inclusive, of the General Code and enacts as the new legislation on accounts receivable Sections 8509-3 to 8509-6d, both inclusive, of the General Code.

<sup>2</sup>OHIO GEN. CODE § 8568.

itself is but a change in the form of the old law. But the provision requiring, once the debt is paid, the account assignee to furnish such a notice upon written request sent to him by the assignor by registered mail and imposing a liability on the assignee of "\$500.00 as a liquidation of damages" if the delivery of the notice is not forthcoming within ten days due to the bad faith of the assignee is quite a new wrinkle.

The inclusion of a definition section aids greatly in accomplishing the Act's purpose of clarification. The definition of "Account Receivable" is better stated than in the old Act but is almost the same in substance. Two other definitions are of greater significance. "Value" to support the assignment is not only consideration which would support a simple contract but in line with other commercial laws such as the Negotiable Instruments Act and the Sales Act, it also includes an antecedent claim by the assignee. This definition did not appear in the old Act.

Again the Act adds a definition of "Proceeds of in any form" of an account receivable. These are stated to be "any partial or complete payment of the account in money, goods, services or otherwise including, but not limited to:

- (a) A judgment arising from the account,
- (b) Any obligation taken as absolute or conditional payment of the account,
- (c) Security taken for the account, and
- (d) Items, the sale of which gave rise to the account, returned or not received by the account debtor."

This definition is particularly significant when it is remembered that under both the old and the new Acts the assignor is entitled to recover such proceeds from anyone who acquires them. The only exceptions are a good faith purchaser for value of goods or a holder in due course of a negotiable instrument or the transferee of either. The holder in due course exception is new. Under the old Act "mortgagees in good faith and for value" of goods were classed as persons from whom proceeds in the form of goods could not be recovered. The new Act apparently takes away this protection from such mortgagees. Of course, an assignee of an account receivable, takes subject to the valid lien of any prior chattel mortgagee or any other prior private or public liens. The new Act places a one year limitation upon the right of the assignee to commence an action to recover proceeds from anyone save the assignor. The time starts to run when the proceeds have been paid by the account debtor.

In dealing with proceeds, the new Act gives the assignee an additional right when it provides that the fact that he allows the assignor to receive such proceeds, and deal with them as his own and

grant credits, allowances or adjustments will not affect the protection given the assignee under the act.

Certain matters of coverage are made more specific by the new Act. The law only extends to accounts receivable the ledger sheets for which are maintained in the state of Ohio. "Ledger Sheet" is defined as the "principal bookkeeping record of a single account receivable where the entries which pertain only to the single account are posted." Furthermore, the Act is not to apply to reassignments by filing assignors in the financing business or to assignments incidental to transactions under the Bulk Sales law.<sup>3</sup>

The new Act apparently includes sales of accounts receivable in its coverage. "Assignment" is defined to include sales as well as pledges and the language of the old Act to the effect that "A bona fide sale for value of an account or accounts shall not be affected hereby," is eliminated. This probably means that a purchaser of an account receivable will have to file a notice in order to be protected, for the new Act provides that an assignment not protected by an effective notice of assignment, renewal or continuance shall be valid between assignor and assignee but shall be wholly void as against all other persons. It is clear that this language reverses *Wells v. Place*, 58 Ohio L. Abs. 582 (D.C.N.D. Ohio 1950). In that case it was held that the old Act was not designed for the protection of creditors and hence an unfiled account receivable was valid as against a trustee in bankruptcy. The new Act writes this clearly erroneous interpretation of the old Act into oblivion.

Under both the old and new Acts the assignor's obligor, dubbed the "account debtor" under the new Act, may deal with impunity with the assignor until such debtor is notified in writing of the assignment. Under both Acts, the account debtor is given all defenses against the assignee that he had against the assignor up to the time the debtor is notified of the assignment. In addition, the new Act gives such debtor the defense of breach of warranty as to any defect which he did not discover until after he was notified of the assignment.

While the new Act is quite important to the commercial world, it is probable that it will be short lived in view of the proposed introduction of the Commercial Code at the next session of the Legislature.

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<sup>3</sup> OHIO GEN. CODE §§ 11102, 11103 and 11103-1.