

HOUSE BILL REPORT

SB 5077

As Passed Legislature

Title: An act relating to recording security interests.

Brief Description: Perfecting certain security interests upon recording.

Sponsor(s): Senators Nelson and Rasmussen.

Brief History:

Reported by House Committee on:
Judiciary, April 2, 1991, DP;
Passed House, April 15, 1991, 94-1;
Passed Legislature, 94-1.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass.* Signed by 17 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Paris, Assistant Ranking
Minority Member; Belcher; Broback; Hargrove; Inslee;
R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate;
Vance; and Wineberry.

Staff: Jeff Fishel (786-7191).

Background: Federal bankruptcy law enables a bankrupt to discharge his or her debts to unsecured creditors. Secured creditors with perfected security interests are the first to be paid from the assets of the bankrupt's estate. The remaining assets go to satisfy the holders of unperfected security interests or unsecured interests.

A bankruptcy court depends on state law to determine whether or not a security interest is perfected. In 1969, the Legislature allowed a mortgagee who takes an assignment of rents as further security for a mortgaged debt to perfect its security interest by recording the assignment with the county auditor.

However, in 1988, the Bankruptcy Court for the Western District of Washington held that, despite the 1969 law, an assignment of rent taken as security is not perfected until the creditor possesses the property or a receiver is appointed. The Legislature responded in 1989 by adopting a

measure stating that a mortgage, pledge, or assignment of unpaid rent is perfected when it is recorded and no further action is required by the mortgagee.

Subsequent bankruptcy cases have held that assignments recorded prior to July 23, 1989, the effective date of the 1989 legislation, are not perfected under the statute and the mortgagee must perfect the assignment of rent as before.

Summary of Bill: The added language clarifies the intent of the Legislature that the 1989 amendment has retroactive effect. Thus, a mortgagee who recorded an assignment of rents as further security for a mortgaged debt before July 23, 1989, perfected that interest.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There is a split in the bankruptcy courts over the applicability of the law to assignments recorded prior to July 23, 1989. Although there is one opinion which supports the intent of this bill, it would be best to make sure that the intent of the Legislature is expressed.

Testimony Against: None.

Witnesses: Larry Shannon, Washington Mortgage Bankers Association (pro).