

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

440.9320 Buyer of goods.

Sec. 9320.

(1) Except as otherwise provided in subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(2) Except as otherwise provided in subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys without knowledge of the security interest, for value, primarily for the buyer's personal, family, or household purposes, and before the filing of a financing statement covering the goods.

(3) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9316(1) and (2).

(4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under section 9313.

(6) Subsections (7) to (14) shall apply in the case of a person buying farm products from a person engaged in farming operations.

(7) If requested by the secured party, a debtor engaged in farming operations who gives a security interest in farm products shall provide to the secured party a written list identifying potential buyers and points of delivery of the farm products. Except as otherwise provided by subsection (8), the number of potential buyers for each commodity shall not exceed 5. If a potential buyer has more than 1 point of delivery, each additional point of delivery shall be counted as a potential buyer.

(8) A debtor engaged in farming operations who provides a written list of potential buyers to a secured party pursuant to subsection (7) shall not sell farm products that secure the debt to a buyer who is not identified on the list without the prior written consent of the secured party. A person who knowingly or intentionally violates this subsection is guilty of a felony, punishable by imprisonment for not more than 3 years or a fine of not more than \$10,000.00, or both. If appropriate given the facts and circumstances of the case, the court shall place the person on probation upon the condition that restitution be made to the secured party. Payment of, or application of the proceeds to, the debt upon which the security interest is based is an absolute defense to a prosecution under this subsection if the payment or application is made prior to commencement of prosecution.

(9) A secured party who is provided with a written list of potential buyers pursuant to subsection (7) may notify buyers identified on the list of the security interest as provided in this subsection. A secured party shall not notify a person not identified on the list, except that the secured party may notify a buyer concerning whom the secured party has given prior written consent pursuant to subsection (8) or to whom the secured party has reasonable cause to believe the debtor is about to sell the farm products. A notice provided pursuant to this subsection shall be in writing and shall be mailed by certified mail or delivered by another method by which receipt can be verified. The notice may be in a form agreed upon in writing by the buyer and the secured party, but in absence of such an agreement the notice shall be an original financing statement or a carbon, photographic, or other reproduction of an original or a statement that contains all of the following:

- (a) The full name and address of the debtor.
- (b) The full name and address of the secured party.
- (c) A description of the collateral.
- (d) The date and location of the filing of the security interest.
- (e) The date and signature of the secured party.

(10) If the debt that is the basis of the security interest is satisfied, the secured party shall notify in writing each potential buyer to whom the secured party sent notice under subsection (9). The notice may be given within a time period agreed upon in writing by the buyer and the secured party, but in absence of such an agreement the notice shall be given within 11 days after the debt is satisfied.

(11) A secured party who does any of the following is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both:

- (a) Knowingly or intentionally gives false or misleading information in a notice provided pursuant to subsection (9).
- (b) Sends notice to a potential buyer other than as permitted in subsection (9).
- (c) Fails to notify a potential buyer of the satisfaction of a debt within the time period prescribed by subsection

(10).

(12) A buyer of farm products who receives notice pursuant to subsection (9) of a security interest in the farm products shall make payment for the farm products by check or other instrument made payable to the seller and the secured party jointly, except that payment may be made directly to the secured party if authorized in writing by the seller. This subsection does not apply to any payment or partial payment made before notice under subsection (9) has been received by the buyer. A buyer of farm products who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both. Payment of the debt upon which the security interest is based is an absolute defense to a prosecution under this subsection if payment is made prior to commencement of prosecution.

(13) As used in subsections (6) to (12), "person buying farm products" or "buyer" includes a commission merchant or selling agent who sells farm products in the ordinary course of business for a person engaged in farming operations.

(14) A buyer in ordinary course of business who receives notice pursuant to subsection (9), who buys farm products from a person engaged in farming operations, and who withholds all or part of the proceeds of the sale from the seller in order to satisfy a debt owed by the seller to the buyer, takes subject to a security interest in those farm products created by the seller, unless the debt owed by the seller to the buyer was secured by a prior perfected security interest. For purposes of this subsection, "debt" does not include the cost of harvesting; processing, including packaging, freezing, canning, and drying; storing; marketing; or transporting farm products to market.

(15) Except as otherwise provided by subsection (16), a commission merchant or selling agent who sells farm products, in the ordinary course of business, for a person engaged in farming operations is not liable to the holder of a security interest in those farm products even though the security interest is perfected and even though the commission merchant or selling agent knows of its existence.

(16) A commission merchant or selling agent who sells farm products, in the ordinary course of business, for a person engaged in farming operations, and who receives notice pursuant to subsection (9), shall not be protected from liability under subsection (15) if the commission merchant or selling agent withholds from the seller all or part of the proceeds of a sale of the farm products in order to satisfy a debt owed by the seller to the commission merchant or selling agent, unless the debt was secured by a prior perfected security interest. For purposes of this subsection, "debt" does not include the cost of harvesting; processing, including packaging, freezing, canning, and drying; storing; marketing; or transporting farm products to market.

(17) A prosecution under subsections (12) to (14) shall not be commenced after the expiration of 2 years following the date the violation occurred.

History: Add. 2000, Act 348, Eff. July 1, 2001