

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2028

By: Morgan (Fred)

COMMITTEE SUBSTITUTE

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 1-101, 1-102, 1-103, 1-104, 1-106 and 1-107, which relate to Part 1 of Article 1 of the Uniform Commercial Code; adding short title; providing scope of Article 1; providing for construction of the Uniform Commercial Code and applicability of supplemental principals of law; providing for construction against implied repeal; providing for use of singular and plural and use of gender; providing for captions; providing for certain electronic signatures; amending 12A O.S. 2001, Sections 1-201, 1-202, 1-203, 1-204, 1-205 and 1-206, which relate to Part 2 of Article 1 of the Uniform Commercial Code; modifying definitions; adding definitions; deleting definitions; providing definitions relating to notice; distinguishing lease from security interest; providing for determination of value; providing for determination of reasonable time and seasonableness; providing for presumptions; adding Part 3 relating to territorial applicability to Article 1 of the Uniform Commercial Code; defining terms; providing scope of section; providing for application of law by agreement; providing for application of law in absence of agreement; providing rules applicable if a party is a consumer; providing that agreement between parties is not effective if contrary to fundamental policy of state or country whose law would govern; providing scope of applicability of certain provisions of the Uniform Commercial Code; providing for variations by agreement; providing obligations that may not be disclaimed by agreement; defining course of performance, course of dealing, and usage of trade; imposing obligation of good faith; requiring remedies to be liberally administered; providing for discharge of a claim or right arising out of alleged breach; providing that certain third-party documents constitute prima facie evidence of authenticity, genuineness, and certain facts; providing for performance or acceptance under reservation of rights; providing for option to accelerate at will; providing for subordinated obligations; amending 12A O.S. 2001, Sections 2-103, 2-105, 2-106 and 2-202, which relate to sales; modifying provisions to conform with changes in Article 1 of the Uniform Commercial Code; modifying definitions; amending 12A O.S. 2001, Sections 2A-103, 2A-501, 2A-518, 2A-519, 2A-527 and 2A-528, which relate to leases; modifying definitions; modifying provisions to conform with

1 changes in Article 1 of the Uniform Commercial Code;
2 amending 12A O.S. 2001, Sections 4A-106 and 4A-204,
3 which relate to funds transfers; modifying provisions
4 to conform with changes in Article 1 of the Uniform
5 Commercial Code; amending 12A O.S. 2001, Section 5-
6 103, which relates to letters of credit; modifying
7 provisions to conform with changes in Article 1 of
8 the Uniform Commercial Code; amending 12A O.S. 2001,
9 Section 1-9-311, which relates to perfection of
10 security interest; providing law or procedure for
11 perfecting security interest in certain vehicles;
12 repealing 12A O.S. 2001, Sections 1-105 and 1-109,
13 which relate to territorial application and captions;
14 repealing 12A O.S. 2001, Sections 1-207, 1-208 and 1-
15 209, which relate to performance or acceptance under
16 reservation of rights, options to accelerate at will
17 and subordination of obligations; repealing 12A O.S.
18 2001, Section 2A-207, which relates to course of
19 performance or practical construction of lease
20 contracts; providing for codification; providing an
21 effective date; and declaring an emergency.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12A O.S. 2001, Section 1-101, is
amended to read as follows:

Section 1-101. Short ~~Title~~ Titles.

(a) Sections 1-101 through 11-107 of this title ~~and Sections 1~~
~~through 78 of this act~~ shall be known and may be cited as the
"Uniform Commercial Code".

(b) This article shall be known and may be cited as "Uniform
Commercial Code - General Provisions".

SECTION 2. AMENDATORY 12A O.S. 2001, Section 1-102, is
amended to read as follows:

Section 1-102. ~~Purposes; Rules of Construction; Variation by~~
~~Agreement~~ Scope of Article.

~~(1) This act shall be liberally construed and applied to promote~~
~~its underlying purposes and policies.~~

~~(2) Underlying purposes and policies of this Act are~~

~~(a) to simplify, clarify and modernize the law governing~~
~~commercial transactions;~~

1 ~~(b) to permit the continued expansion of commercial~~
2 ~~practices through custom, usage and agreement of the~~
3 ~~parties;~~

4 ~~(c) to make uniform the law among the various~~
5 ~~jurisdictions.~~

6 ~~(3) The effect of provisions of this act may be varied by~~
7 ~~agreement, except as otherwise provided in this act and except that~~
8 ~~the obligations of good faith, diligence, reasonableness and care~~
9 ~~prescribed by this act may not be disclaimed by agreement but the~~
10 ~~parties may by agreement determine the standards by which the~~
11 ~~performance of such obligations is to be measured if such standards~~
12 ~~are not manifestly unreasonable.~~

13 ~~(4) The presence in certain provisions of this act of the words~~
14 ~~"unless otherwise agreed" or words of similar import does not imply~~
15 ~~that the effect of other provisions may not be varied by agreement~~
16 ~~under subsection (3).~~

17 ~~(5) In this act unless the context otherwise requires~~

18 ~~(a) words in the singular number include the plural, and~~
19 ~~in the plural include the singular;~~

20 ~~(b) words of the masculine gender include the feminine and~~
21 ~~the neuter, and when the sense so indicates words of~~
22 ~~the neuter gender may refer to any gender article~~
23 ~~applies to a transaction to the extent that it is~~
24 ~~governed by another article of the Uniform Commercial~~
25 ~~Code.~~

26 SECTION 3. AMENDATORY 12A O.S. 2001, Section 1-103, is
27 amended to read as follows:

28 Section 1-103. ~~Supplementary General~~ Construction of Uniform
29 Commercial Code to Promote Its Purposes and Policies; Applicability
30 of Supplemental Principles of Law Applicable.
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32

1 (a) The Uniform Commercial Code shall be liberally construed
2 and applied to promote its underlying purposes and policies, which
3 are:

4 (1) to simplify, clarify and modernize the law governing
5 commercial transactions;

6 (2) to permit the continued expansion of commercial
7 practices through custom, usage and agreement of the
8 parties; and

9 (3) to make uniform the law among the various
10 jurisdictions.

11 (b) Unless displaced by the particular provisions of ~~this act~~
12 the Uniform Commercial Code, the principles of law and equity,
13 including the law merchant and the law relative to capacity to
14 contract, principal and agent, estoppel, fraud, misrepresentation,
15 duress, coercion, mistake, bankruptcy, or other validating or
16 invalidating cause shall supplement its provisions.

17 SECTION 4. AMENDATORY 12A O.S. 2001, Section 1-104, is
18 amended to read as follows:

19 Section 1-104. Construction Against Implicit Repeal.

20 ~~This act~~ The Uniform Commercial Code being a general act
21 intended as a unified coverage of its subject matter, no part of it
22 shall be deemed to be impliedly repealed by subsequent legislation
23 if such construction can reasonably be avoided.

24 SECTION 5. AMENDATORY 12A O.S. 2001, Section 1-106, is
25 amended to read as follows:

26 Section 1-106. ~~Remedies to Be Liberally Administered~~ Use of
27 Singular and Plural; Gender.

28 ~~(1) The remedies provided by this act shall be liberally~~
29 ~~administered to the end that the aggrieved party may be put in as~~
30 ~~good a position as if the other party had fully performed but~~
31 ~~neither consequential or special nor penal damages may be had except~~
32 ~~as specifically provided in this act or by other rule of law.~~

1 ~~(2) Any right or obligation declared by this act is enforceable~~
2 ~~by action~~ In the Uniform Commercial Code, unless the ~~provision~~
3 ~~declaring it specifies a different and limited effect~~ statutory
4 context otherwise requires:

5 (1) words in the singular number include the plural, and in the
6 plural include the singular; and

7 (2) words of any gender include any other gender.

8 SECTION 6. AMENDATORY 12A O.S. 2001, Section 1-107, is
9 amended to read as follows:

10 Section 1-107. ~~Waiver or Renunciation of Claim or Right after~~
11 Breach Section Captions.

12 ~~Any claim or right arising out of an alleged breach can be~~
13 ~~discharged in whole or in~~ Section captions are part without
14 ~~consideration by a written waiver or renunciation signed and~~
15 ~~delivered by the aggrieved party~~ of the Uniform Commercial Code.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-108.1 of Title 12A, unless
18 there is created a duplication in numbering, reads as follows:

19 Article 1 of the Uniform Commercial Code modifies, limits, and
20 supersedes the federal Electronic Signatures in Global and National
21 Commerce Act, 15 U.S.C., Section 7001 et seq., except that nothing
22 in this article modifies, limits or supersedes Section 7001(c) of
23 that Act or authorizes electronic delivery of any of the notices
24 described in Section 7003(b) of that Act.

25 SECTION 8. AMENDATORY 12A O.S. 2001, Section 1-201, is
26 amended to read as follows:

27 Section 1-201. General Definitions and Principles of
28 Interpretation.

29 (a) Unless the context otherwise requires, words or phrases
30 defined in this section, or in the additional definitions contained
31 in other articles of the Uniform Commercial Code that apply to
32 particular articles or parts thereof, have the meanings stated.

1 (b) Subject to ~~additional~~ definitions contained in ~~the~~
2 ~~subsequent~~ other articles of the Uniform Commercial Code ~~which are~~
3 ~~applicable~~ that apply to ~~specific~~ particular articles or parts
4 thereof, ~~and unless the context otherwise requires, in the Uniform~~
5 ~~Commercial Code:~~

6 (1) "Action" in the sense of a judicial proceeding includes a
7 recoupment, counterclaim, setoff, suit in equity, and any other
8 proceedings in which rights are determined.

9 (2) "Aggrieved party" means a party entitled to ~~resort to~~
10 pursue a remedy.

11 (3) "Agreement", as distinguished from "contract", means the
12 bargain of the parties in fact as found in their language or ~~by~~
13 implication inferred from other circumstances including course of
14 performance, course of dealing, or usage of trade ~~or course of~~
15 ~~performance as provided for in the Uniform Commercial Code (Sections~~
16 ~~1-205, 2-208 and 2A-207 of this title)~~ as provided in Section 1-303
17 of this title. ~~Whether an agreement has legal consequences is~~
18 ~~determined by the provisions of the Uniform Commercial Code, if~~
19 ~~applicable; otherwise by the law of contracts (Section 1-103 of this~~
20 ~~title).~~ ~~(Compare "Contract".)~~

21 (4) "Bank" means ~~any~~ a person engaged in the business of
22 banking and includes a savings bank, savings and loan association,
23 credit union, and trust company.

24 (5) "Bearer" means ~~the~~ a person in control of a negotiable
25 electronic document of title or a person in possession of an
26 instrument, negotiable tangible document of title, or certificated
27 security payable to bearer or endorsed in blank.

28 (6) "Bill of lading" means a document of title evidencing the
29 receipt of goods for shipment issued by a person engaged in the
30 business of directly or indirectly transporting or forwarding goods,
31 ~~and includes an airbill.~~ ~~"Airbill" means a document serving for air~~
32 ~~transportation as a bill of lading does for marine or rail~~

1 ~~transportation, and includes an air consignment note or air waybill.~~

2 The term does not include a warehouse receipt.

3 (7) "Branch" includes a separately incorporated foreign branch
4 of a bank.

5 (8) "Burden of establishing" means the burden of persuading the
6 ~~triers~~ trier of fact that the existence of the fact is more probable
7 than its nonexistence.

8 (9) "Buyer in ordinary course of business" means a person that
9 buys goods in good faith, without knowledge that the sale violates
10 the rights of another person in the goods, and in the ordinary
11 course from a person, other than a pawnbroker, in the business of
12 selling goods of that kind. A person buys goods in the ordinary
13 course if the sale to the person comports with the usual or
14 customary practices in the kind of business in which the seller is
15 engaged or with the seller's own usual or customary practices. A
16 person that sells oil, gas, or other minerals at the wellhead or
17 minehead is a person in the business of selling goods of that kind.
18 A buyer in ordinary course of business may buy for cash, by exchange
19 of other property, or on secured or unsecured credit, and may
20 acquire goods or documents of title under a preexisting contract for
21 sale. Only a buyer that takes possession of the goods or has a
22 right to recover the goods from the seller under Article 2 may be a
23 buyer in ordinary course of business. A "Buyer in ordinary course
24 of business" does not include a person that acquires goods in a
25 transfer in bulk or as security for or total or partial satisfaction
26 of a money debt ~~is not a buyer in ordinary course of business.~~

27 (10) "Conspicuous": ~~A, with reference to a term or clause is~~
28 ~~conspicuous when it is~~ means so written, displayed, or presented
29 that a reasonable person against whom it is to operate ought to have
30 noticed it. A printed Whether a term is "conspicuous" or not is a
31 decision for the court. Conspicuous terms include the following:
32

1 (A) a heading in capitals, ~~as: NONNEGOTIABLE BILL OF~~
2 ~~LADING, is conspicuous. Language in the body of a~~
3 ~~form is "conspicuous" if it is in larger~~ equal to or
4 greater in size than the surrounding text, or ~~either in~~
5 contrasting type, font, or color to the surrounding
6 text of same or lesser size. ~~But in a telegram any~~
7 ~~stated term is "conspicuous". Whether a term or clause~~
8 ~~is "conspicuous" or not is for decision by the court;~~
9 and

10 (B) language in the body of a record or display in larger
11 type than the surrounding text of the same size, or
12 set off from surrounding text of the same size by
13 symbols or other marks that call attention to the
14 language.

15 (11) "Consumer" means an individual who enters into a
16 transaction primarily for personal, family, or household purposes.

17 (12) "Contract", as distinguished from "agreement", means the
18 total legal obligation which that results from the parties'
19 agreement as affected determined by the provisions of the Uniform
20 Commercial Code and as supplemented by any other applicable rules of
21 law. (Compare "Agreement".) laws.

22 ~~(12)~~ (13) "Creditor" includes a general creditor, a secured
23 creditor, a lien creditor, and any representative of creditors,
24 including an assignee for the benefit of creditors, a trustee in
25 bankruptcy, a receiver in equity, and an executor or administrator
26 of an insolvent debtor's or assignor's estate.

27 ~~(13)~~ (14) "Defendant" includes a person in the position of
28 defendant in a ~~cross action or~~ counterclaim, cross-claim, or third-
29 party claim.

30 ~~(14)~~ (15) "Delivery" with respect to ~~instruments, documents an~~
31 electronic document of title means voluntary transfer of control and
32 with respect to an instrument, a tangible document of title, or

1 chattel paper, ~~or certificated securities~~ means voluntary transfer
2 of possession.

3 ~~(15)~~ (16) "Document of title" ~~includes bill of lading, dock~~
4 ~~warrant, dock receipt, warehouse receipt, or order for the delivery~~
5 ~~of goods, and also any other document which~~ means a record that in
6 the regular course of business or financing is treated as adequately
7 evidencing that the person in possession or control of ~~it~~ the record
8 is entitled to receive, control, hold, and dispose of the ~~document~~
9 record and the goods ~~it~~ the record covers. ~~To be a document of~~
10 ~~title a document must purport~~ and that purports to be issued by or
11 addressed to a bailee and ~~purport~~ to cover goods in the bailee's
12 possession which are either identified or are fungible portions of
13 an identified mass. The term includes a bill of lading, transport
14 document, dock warrant, dock receipt, warehouse receipt, and order
15 for delivery of goods. An electronic document of title means a
16 document of title evidenced by a record consisting of information
17 stored in an electronic medium. A tangible document of title means
18 a document of title evidenced by a record consisting of information
19 that is inscribed on a tangible medium.

20 ~~(16)~~ (17) "Fault" means a default, breach, or wrongful act, or
21 ~~omission, or breach.~~

22 ~~(17)~~ (18) "Fungible goods" means:

23 (A) goods ~~or securities~~ of which any unit ~~is~~, by nature or
24 usage of trade, is the equivalent of any other like
25 unit. ~~Goods which are not fungible shall be deemed~~
26 ~~fungible for the purposes of the Uniform Commercial~~
27 ~~Code to the extent that according to a particular; or~~

28 (B) goods that by agreement ~~or document~~ unlike units are
29 treated as ~~equivalents~~ equivalent.

30 ~~(18)~~ (19) "Genuine" means free of forgery or counterfeiting.

31 ~~(19)~~ (20) "Good faith", except as otherwise provided in Article
32 5 of this title, means honesty in fact ~~in the conduct or transaction~~

1 ~~concerned~~ and the observance of reasonable commercial standards of
2 fair dealing.

3 ~~(20)~~ (21) "Holder" ~~with respect to a negotiable instrument,~~
4 means:

5 (A) the person in possession ~~if the~~ of a negotiable
6 instrument that is payable either to bearer or, ~~in the~~
7 ~~case of an instrument payable~~ to an identified person,
8 ~~if the identified that is the person is~~ in possession.

9 ~~"Holder" with respect to a document of title means;~~

10 (B) the person in possession of a document of title if the
11 goods are deliverable either to bearer or to the order
12 of the person in possession; or

13 (C) the person in control of a negotiable electronic
14 document of title.

15 ~~(21) To "honor" is to pay or to accept and pay, or where a~~
16 ~~credit so engages to purchase or discount a draft complying with the~~
17 ~~terms of the credit.~~

18 (22) "Insolvency ~~proceedings~~ proceeding" includes any
19 assignment for the benefit of creditors or other ~~proceedings~~
20 proceeding intended to liquidate or rehabilitate the estate of the
21 person involved.

22 (23) ~~A person is "insolvent" who either has~~ "Insolvent" means:

23 (A) having generally ceased to pay ~~his~~ debts in the
24 ordinary course of business ~~or cannot~~ other than as a
25 result of bona fide dispute;

26 (B) being unable to pay ~~his~~ debts as they become due; or
27 is

28 (C) being insolvent within the meaning of the federal
29 bankruptcy law.

30 (24) "Money" means a medium of exchange authorized or adopted
31 by a domestic or foreign government ~~and~~. The term includes a
32

1 monetary unit of account established by an intergovernmental
2 organization or by agreement between two or more ~~nations~~ countries.

3 (25) ~~A person has "notice" of a fact when:~~

4 ~~(a) he has actual knowledge of it; or~~

5 ~~(b) he has received a notice or notification of it; or~~

6 ~~(c) from all the facts and circumstances known to him at
7 the time in question he has reason to know that it
8 exists.~~

9 ~~A person "knows" or has "knowledge" of a fact when he has actual
10 knowledge of it. "Discover" or "learn" or a word or phrase of
11 similar import refers to knowledge rather than to reason to know.~~

12 ~~The time and circumstances under which a notice or notification may
13 cease to be effective are not determined by the provisions of the
14 Uniform Commercial Code.~~

15 ~~(26) A person "notifies" or "gives" a notice or notification to
16 another by taking such steps as may be reasonably required to inform
17 the other in ordinary course whether or not such other actually
18 comes to know of it. A person "receives" a notice or notification
19 when:~~

20 ~~(a) it comes to his attention; or~~

21 ~~(b) it is duly delivered at the place of business through
22 which the contract was made or at any other place held
23 out by him as the place for receipt of such
24 communications.~~

25 ~~(27) Notice, knowledge, or a notice or notification received by
26 an organization is effective for a particular transaction from the
27 time when it is brought to the attention of the individual
28 conducting that transaction, and in any event from the time when it
29 would have been brought to his attention if the organization had
30 exercised due diligence. An organization exercises due diligence if
31 it maintains reasonable routines for communicating significant
32 information to the person conducting the transaction and there is~~

1 ~~reasonable compliance with the routines. Due diligence does not~~
2 ~~require an individual acting for the organization to communicate~~
3 ~~information unless such communication is part of his regular duties~~
4 ~~or unless he has reason to know of the transaction and that the~~
5 ~~transaction would be materially affected by the information.~~

6 ~~(28) "Organization" includes a corporation, government or~~
7 ~~governmental subdivision or agency, business trust, estate, trust,~~
8 ~~partnership, or association, two or more persons having a joint or~~
9 ~~common interest, or any other legal or commercial entity means a~~
10 ~~person other than an individual.~~

11 ~~(29) (26) "Party", as ~~distinct~~ distinguished from "third~~
12 ~~party", means a person who has engaged in a transaction or made an~~
13 ~~agreement within the provisions of subject to the Uniform Commercial~~
14 ~~Code.~~

15 ~~(30) (27) "Person" includes means an individual ~~or an~~
16 ~~organization (See Section 1-102 of this title), corporation,~~
17 ~~business trust, estate, trust, partnership, limited liability~~
18 ~~company, association, joint venture, government, governmental~~
19 ~~subdivision, agency, or instrumentality, public corporation, or any~~
20 ~~other legal or commercial entity.~~~~

21 ~~(31) "Presumption" or "presumed" means that the trier of fact~~
22 ~~must find the existence of the fact presumed unless and until~~
23 ~~evidence is introduced which would support a finding of its~~
24 ~~nonexistence.~~

25 ~~(32) (28) "Present value" means the amount as of a date certain~~
26 ~~of one or more sums payable in the future, discounted to the date~~
27 ~~certain by use of either an interest rate specified by the parties~~
28 ~~if that rate is not manifestly unreasonable at the time the~~
29 ~~transaction is entered into or, if an interest rate is not so~~
30 ~~specified, a commercially reasonable rate that takes into account~~
31 ~~the facts and circumstances at the time the transaction is entered~~
32 ~~into.~~

1 (29) "Purchase" ~~includes~~ means taking by sale, discount,
2 negotiation, mortgage, pledge, lien, security interest, issue or
3 reissue, gift, or any other voluntary transaction creating an
4 interest in property.

5 ~~(33)~~ (30) "Purchaser" means a person who takes by purchase.

6 ~~(34)~~ (31) "Record" means information that is inscribed on a
7 tangible medium or that is stored in an electronic or other medium
8 and is retrievable in perceivable form.

9 (32) "Remedy" means any remedial right to which an aggrieved
10 party is entitled with or without resort to a tribunal.

11 ~~(35)~~ (33) "Representative" ~~includes~~ means a person empowered to
12 act for another, including an agent, an officer of a corporation or
13 association, and a trustee, executor, or administrator of an estate,
14 ~~or any other person empowered to act for another.~~

15 ~~(36)~~ "~~Rights~~" (34) "Right" includes ~~remedies~~ remedy.

16 ~~(37)~~ ~~(a)~~ (35) "Security interest" means an interest in
17 personal property or fixtures which secures payment or performance
18 of an obligation. ~~The term also~~ "Security interest" includes any
19 interest of a consignor and a buyer of accounts, chattel paper, a
20 payment intangible, or a promissory note in a transaction that is
21 subject to Article 9 of this title. ~~The~~ "Security interest" does
22 not include the special property interest of a buyer of goods on
23 identification of ~~such~~ those goods to a contract for sale under
24 Section 2-401 of this title ~~is not a "security interest",~~ but a
25 buyer may also acquire a "security interest" by complying with the
26 provisions of Article 9 of this title. Except as otherwise provided
27 in Section 2-505 of this title, the right of a seller or lessor of
28 goods under Article 2 or 2A of this title to retain or acquire
29 possession of the goods is not a "security interest", but a seller
30 or lessor may also acquire a "security interest" by complying with
31 Article 9 of this title. The retention or reservation of title by a
32 seller of goods notwithstanding shipment or delivery to the buyer ←

1 ~~under Section 2-401 of this title~~ is limited in effect to a
2 reservation of a "security interest". ~~(b)~~ Whether a transaction in
3 the form of a lease creates ~~a lease or~~ security interest is
4 ~~determined by the facts of each case; however, a transaction creates~~
5 ~~a security interest if the consideration the lessee is to pay the~~
6 ~~lessor for the right to possession and use of the goods is an~~
7 ~~obligation for the term of the lease not subject to termination by~~
8 ~~the lessee, and:~~

9 ~~(i) the original term of the lease is equal to or~~
10 ~~greater than the remaining economic life of the~~
11 ~~goods,~~

12 ~~(ii) the lessee is bound to renew the lease for the~~
13 ~~remaining economic life of the goods or is bound~~
14 ~~to become the owner of the goods,~~

15 ~~(iii) the lessee has an option to renew the lease for~~
16 ~~the remaining economic life of the goods for no~~
17 ~~additional consideration or nominal additional~~
18 ~~consideration upon compliance with the lease~~
19 ~~agreement, or~~

20 ~~(iv) the lessee has an option to become the owner of~~
21 ~~the goods for no additional consideration or~~
22 ~~nominal additional consideration upon compliance~~
23 ~~with the lease agreement.~~

24 ~~(c) A transaction does not create a security interest~~
25 ~~merely because it provides that:~~

26 ~~(i) the present value of the consideration the lessee~~
27 ~~is obligated to pay the lessor for the right to~~
28 ~~possession and use of the goods is substantially~~
29 ~~equal to or is greater than the fair market value~~
30 ~~of the goods at the time the lease is entered~~
31 ~~into,~~

- ~~(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,~~
- ~~(iii) the lessee has an option to renew the lease or to become the owner of the goods,~~
- ~~(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or~~
- ~~(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~(d) For purposes of this subsection:~~

~~(i) additional consideration is not nominal if:~~

~~(A) when the option to renew the lease is~~

~~granted to the lessee the rent is stated to~~

~~be the fair market rent for the use of the~~

~~goods for the term of the renewal determined~~

~~at the time the option is to be performed,~~

~~or~~

~~(B) when the option to become the owner of the~~

~~goods is granted to the lessee the price is~~

~~stated to be the fair market value of the~~

~~goods determined at the time the option is~~

~~to be performed. Additional consideration~~

~~is nominal if it is less than the lessee's~~

~~reasonably predictable cost of performing~~

1 ~~under the lease agreement if the option is~~
2 ~~not exercised;~~

3 ~~(ii) "reasonably predictable" and "remaining economic~~
4 ~~life of the goods" are to be determined with~~
5 ~~reference to the facts and circumstances at the~~
6 ~~time the transaction is entered into; and~~

7 ~~(iii) "present value" means the amount as of a date~~
8 ~~certain of one or more sums payable in the~~
9 ~~future, discounted to the date certain. The~~
10 ~~discount is determined by the interest rate~~
11 ~~specified by the parties if the rate is not~~
12 ~~manifestly unreasonable at the time the~~
13 ~~transaction is entered into; otherwise, the~~
14 ~~discount is determined by a commercially~~
15 ~~reasonable rate that takes into account the facts~~
16 ~~and circumstances of each case at the time the~~
17 ~~transaction was entered into pursuant to Section~~
18 ~~1-203 of this title.~~

19 ~~(38)~~ (36) "Send" in connection with any writing, record, or
20 notice means:

21 (A) to deposit in the mail or deliver for transmission by
22 any other usual means of communication with postage or
23 cost of transmission provided for and properly
24 addressed and, in the case of an instrument, to an
25 address specified thereon or otherwise agreed, or if
26 there be none, to any address reasonable under the
27 circumstances. ~~The receipt of any writing;~~ or

28 (B) in any other way to cause to be received any record or
29 notice within the time at which it would have arrived
30 if properly sent ~~has the effect of a proper sending.~~

1 ~~(39)~~ (37) "Signed" includes any symbol executed or adopted by a
2 party with present intention to authenticate adopt or accept a
3 writing.

4 ~~(40)~~ (38) "State" means a state of the United States, the
5 District of Columbia, Puerto Rico, the United States Virgin Islands,
6 or any territory or insular possession subject to the jurisdiction
7 of the United States.

8 (39) "Surety" includes guarantor or other secondary obligor.

9 ~~(41)~~ "Telegram" ~~includes a message transmitted by radio,~~
10 ~~teletype, cable, any mechanical method of transmission, or the like.~~

11 ~~(42)~~ (40) "Term" means ~~that~~ a portion of an agreement which
12 relates to a particular matter.

13 ~~(43)~~ (41) "Unauthorized signature" means a signature made
14 without actual, implied or apparent authority ~~and~~. The term
15 includes a forgery.

16 ~~(44)~~ "Value". ~~Except as otherwise provided for in Sections 3-~~
17 ~~303, 4-210 and 4-211 of this title with respect to negotiable~~
18 ~~instruments and bank collections, a person gives "value" for rights~~
19 ~~if he acquires them:~~

20 ~~(a) in return for a binding commitment to extend credit or~~
21 ~~for the extension of immediately available credit~~
22 ~~whether or not drawn upon and whether or not a charge-~~
23 ~~back is provided for in the event of difficulties in~~
24 ~~collection; or~~

25 ~~(b) as security for or in total or partial satisfaction of~~
26 ~~a preexisting claim; or~~

27 ~~(c) by accepting delivery pursuant to a preexisting~~
28 ~~contract for purchase; or~~

29 ~~(d) generally, in return for any consideration sufficient~~
30 ~~to support a simple contract.~~

31

32

1 ~~(45)~~ (42) "Warehouse receipt" means a ~~receipt~~ document of title
2 issued by a person engaged in the business of storing goods for
3 hire.

4 ~~(46)~~ ~~"Written" or "writing"~~ (43) "Writing" includes printing,
5 typewriting, or any other intentional reduction to tangible form.
6 "Written" has a corresponding meaning.

7 SECTION 9. AMENDATORY 12A O.S. 2001, Section 1-202, is
8 amended to read as follows:

9 Section 1-202. ~~Prima Facie Evidence by Third Party Documents~~
10 Notice; Knowledge.

11 ~~A document in due~~ (a) Subject to subsection (f) of this
12 section, a person has "notice" of a fact if the person:

13 (1) has actual knowledge of it;

14 (2) has received a notice or notification of it; or

15 (3) from all the facts and circumstances known to the
16 person at the time in question, has reason to know
17 that it exists.

18 (b) "Knowledge" means actual knowledge. "Knows" has a
19 corresponding meaning.

20 (c) "Discover" or "learn" or a word or phrase of similar import
21 refers to knowledge rather than to reason to know.

22 (d) A person "notifies" or "gives" a notice or notification to
23 another person by taking such steps as may be reasonably required to
24 inform the other person in ordinary course whether or not the other
25 person actually comes to know of it.

26 (e) Subject to subsection (f) of this section, a person
27 "receives" a notice or notification when:

28 (1) it comes to the attention of the person; or

29 (2) it is duly delivered in a form ~~purporting to be a bill~~
30 ~~of lading, policy or certificate of insurance,~~
31 ~~official weigher's or inspector's certificate,~~
32 ~~consular invoice, or any other document authorized or~~

1 ~~required by the contract to be issued by a third party~~
2 ~~shall be prima facie evidence of its own authenticity~~
3 ~~and genuineness and of the facts stated in the~~
4 ~~document by the third party~~ reasonable under the
5 circumstances at the place of business through which
6 the contract was made or at another location held out
7 by that person as the place for receipt of such
8 communications.

9 (f) Notice, knowledge, or a notice or notification received by
10 an organization is effective for a particular transaction from the
11 time when it is brought to the attention of the individual
12 conducting that transaction, and, in any event, from the time it
13 would have been brought to the attention of the individual if the
14 organization had exercised due diligence. An organization exercises
15 due diligence if it maintains reasonable routines for communicating
16 significant information to the person conducting the transaction and
17 there is reasonable compliance with the routines. Due diligence
18 does not require an individual acting for the organization to
19 communicate information unless such communication is part of the
20 regular duties of the individual or unless the individual has reason
21 to know of the transaction and that the transaction would be
22 materially affected by the information.

23 SECTION 10. AMENDATORY 12A O.S. 2001, Section 1-203, is
24 amended to read as follows:

25 Section 1-203. ~~Obligation of Good Faith~~ Lease Distinguished
26 from Security Interest.

27 ~~Every contract or duty within this act imposes~~ (a) Whether a
28 transaction in the form of a lease creates a lease or security
29 interest is determined by the facts of each case.

30 (b) A transaction creates a security interest if the
31 consideration that the lessee is to pay the lessor for the right to
32 possession and use of the goods is an obligation of good faith in

1 its performance or enforcement for the term of the lease not subject
2 to termination by the lessee, and:

3 (1) the original term of the lease is equal to or greater
4 than the remaining economic life of the goods;

5 (2) the lessee is bound to renew the lease for the
6 remaining economic life of the goods or is bound to
7 become the owner of the goods;

8 (3) the lessee has an option to renew the lease for the
9 remaining economic life of the goods for no additional
10 consideration or nominal additional consideration upon
11 compliance with the lease agreement; or

12 (4) the lessee has an option to become the owner of the
13 goods for no additional consideration or for nominal
14 additional consideration upon compliance with the
15 lease agreement.

16 (c) A transaction in the form of a lease does not create a
17 security interest merely because:

18 (1) the present value of the consideration the lessee is
19 obligated to pay the lessor for the right to
20 possession and use of the goods is substantially equal
21 to or is greater than the fair market value of the
22 goods at the time the lease is entered into;

23 (2) the lessee assumes risk of loss of the goods;

24 (3) the lessee agrees to pay, with respect to the goods,
25 taxes, insurance, filing, recording, or registration
26 fees, or service or maintenance costs;

27 (4) the lessee has an option to renew the lease or to
28 become the owner of the goods;

29 (5) the lessee has an option to renew the lease for a
30 fixed rent that is equal to or greater than the
31 reasonably predictable fair market rent for the use of
32

1 the goods for the term of the renewal at the time the
2 option is to be performed; or

3 (6) the lessee has an option to become the owner of the
4 goods for a fixed price that is equal to or greater
5 than the reasonably predictable fair market value of
6 the goods at the time the option is to be performed.

7 (d) Additional consideration is nominal if it is less than the
8 lessee's reasonably predictable cost of performing under the lease
9 agreement if the option is not exercised. Additional consideration
10 is not nominal if:

11 (1) when the option to renew the lease is granted to the
12 lessee, the rent is stated to be the fair market rent
13 for the use of the goods for the term of the renewal
14 determined at the time the option is to be performed,
15 or

16 (2) when the option to become the owner of the goods is
17 granted to the lessee, the price is stated to be the
18 fair market value of the goods determined at the time
19 the option is to be performed.

20 (e) The "remaining economic life of the goods" and "reasonably
21 predictable" fair market rent, fair market value, or cost of
22 performing under the lease agreement must be determined with
23 reference to the facts and circumstances at the time the transaction
24 is entered into.

25 SECTION 11. AMENDATORY 12A O.S. 2001, Section 1-204, is
26 amended to read as follows:

27 Section 1-204. ~~Time; Reasonable Time; "Seasonably"~~ "Value".

28 Except as otherwise provided in Articles 3, 4 and 5 of the
29 Uniform Commercial Code, a person gives value for rights if the
30 person acquires them:

31 (1) ~~Whenever this act requires any action to be taken within a~~
32 ~~reasonable time, any time which is not manifestly unreasonable may~~

1 ~~be fixed by agreement.~~ in return for a binding commitment to extend
2 credit or for the extension of immediately available credit, whether
3 or not drawn upon and whether or not a charge-back is provided for
4 in the event of difficulties in collection;

5 (2) ~~What is a reasonable time for taking any action depends on~~
6 ~~the nature, purpose and circumstances of such action.~~ as security
7 for, or in total or partial satisfaction of, a preexisting claim;

8 (3) ~~An action is taken "seasonably" when it is taken at or~~
9 ~~within the time agreed or if no time is agreed at or within a~~
10 ~~reasonable time~~ by accepting delivery under a preexisting contract
11 for purchase; or

12 (4) in return for any consideration sufficient to support a
13 simple contract.

14 SECTION 12. AMENDATORY 12A O.S. 2001, Section 1-205, is
15 amended to read as follows:

16 Section 1-205. ~~Course of Dealing and Usage of Trade~~ Reasonable
17 Time; Seasonableness.

18 ~~(1) A course of dealing is a sequence of previous conduct~~
19 ~~between the parties to a particular transaction which is fairly to~~
20 ~~be regarded as establishing a common basis of understanding for~~
21 ~~interpreting their expressions and other conduct.~~

22 ~~(2) A usage of trade is any practice or method of dealing having~~
23 ~~such regularity of observance in a place, vocation or trade as to~~
24 ~~justify and expectation that it will be observed with respect to the~~
25 ~~transaction in question. The existence and scope of such a usage~~
26 ~~are to be proved as facts. If it is established that such a usage~~
27 ~~is embodied in a written trade code or similar writing the~~
28 ~~interpretation of the writing is for the court.~~

29 ~~(3) A course of dealing between parties and any usage of trade~~
30 ~~in the vocation or trade in which they are engaged or of which they~~
31 ~~are or should be aware give particular meaning to and supplement or~~
32 ~~qualify terms of an agreement.~~

1 ~~(4) The express terms of an agreement and an applicable course~~
2 ~~of dealing or usage of trade shall be construed wherever~~

3 (a) Whether a time for taking an action required by the Uniform
4 Commercial Code is reasonable as consistent with each other; but
5 ~~when such construction is unreasonable express terms control both~~
6 ~~course of dealing and usage of trade and course of dealing controls~~
7 ~~usage of trade.~~

8 ~~(5) An applicable usage of trade in the place where any part of~~
9 ~~performance is to occur shall be used in interpreting the agreement~~
10 ~~as to that part of the performance.~~

11 ~~(6) Evidence of a relevant usage of trade offered by one party~~
12 ~~is not admissible unless and until he has given the other party such~~
13 ~~notice as the court finds sufficient to prevent unfair surprise to~~
14 ~~the latter depends on the nature, purpose, and circumstances of the~~
15 ~~action.~~

16 (b) An action is taken seasonably if it is taken at or within
17 the time agreed or, if no time is agreed, at or within a reasonable
18 time.

19 SECTION 13. AMENDATORY 12A O.S. 2001, Section 1-206, is
20 amended to read as follows:

21 Section 1-206. ~~Statute of Frauds for Kinds of Personal Property~~
22 ~~Not Otherwise Covered Presumptions.~~

23 ~~(1) Except in the cases described in subsection (2) of this~~
24 ~~section a contract for the sale of personal property is not~~
25 ~~enforceable by way of action or defense beyond Five Thousand Dollars~~
26 ~~(\$5,000.00) in amount or value of remedy Whenever the Uniform~~
27 Commercial Code creates a "presumption" with respect to a fact, or
28 provides that a fact is "presumed", the trier of fact must find the
29 existence of the fact unless there is some writing which indicates
30 ~~that a contract for sale has been made between the parties at a~~
31 ~~defined or stated price, reasonably identifies the subject matter,~~
32

1 ~~and is signed by the party against whom enforcement is sought or by~~
2 ~~his authorized agent.~~

3 ~~(2) Subsection (1) of this section does not apply to contracts~~
4 ~~for the sale of goods (Section 2-201 of this title) nor of~~
5 ~~securities (Section 8-113 of this title) nor security agreements~~
6 ~~(Section 9-203 of this title) and until evidence is introduced that~~
7 ~~supports a finding of its nonexistence.~~

8 PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

9 SECTION 14. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-301 of Title 12A, unless there
11 is created a duplication in numbering, reads as follows:

12 Territorial Applicability; Parties' Power to Choose Applicable
13 Law.

14 (a) Except as provided hereafter in this section, when a
15 transaction bears a reasonable relation to this state and also to
16 another state or nation, the parties may agree that the law either
17 of this state or of such other state or nation shall govern their
18 rights and duties. Failing such agreement, this title applies to
19 transactions bearing an appropriate relation to this state.

20 (b) To the extent that the Uniform Commercial Code governs a
21 transaction, if one of the following provisions of the Uniform
22 Commercial Code specifies the applicable law, that provision governs
23 and a contrary agreement is effective only to the extent permitted
24 by the law so specified:

- 25 (1) Section 2-402 of this title;
26 (2) Sections 2A-105 and 2A-106 of this title;
27 (3) Section 4-102 of this title;
28 (4) Section 4A-507 of this title;
29 (5) Section 5-116 of this title;
30 (6) Section 8-110 of this title; and
31 (7) Sections 1-9-301 through 1-9-307 of this title.

32

1 SECTION 15. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-302 of Title 12A, unless there
3 is created a duplication in numbering, reads as follows:

4 Variation by Agreement.

5 (a) Except as otherwise provided in subsection (b) of this
6 section or elsewhere in the Uniform Commercial Code, the effect of
7 the Uniform Commercial Code may be varied by agreement.

8 (b) The obligations of good faith, diligence, reasonableness,
9 and care prescribed by the Uniform Commercial Code may not be
10 disclaimed by agreement. The parties, by agreement, may determine
11 the standards by which the performance of those obligations is to be
12 measured if those standards are not manifestly unreasonable.

13 Whenever the Uniform Commercial Code requires an action to be taken
14 within a reasonable time, a time that is not manifestly unreasonable
15 may be fixed by agreement.

16 (c) The presence in certain provisions of the Uniform
17 Commercial Code of the phrase "unless otherwise agreed" or words of
18 similar import does not imply that the effect of other provisions
19 may not be varied by agreement under this section.

20 SECTION 16. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-303 of Title 12A, unless there
22 is created a duplication in numbering, reads as follows:

23 Course of Performance, Course of Dealing, and Usage of Trade.

24 (a) A "course of performance" is a sequence of conduct between
25 the parties to a particular transaction that exists if:

26 (1) the agreement of the parties with respect to the
27 transaction involves repeated occasions for performance by a party;
28 and

29 (2) the other party, with knowledge of the nature of the
30 performance and opportunity for objection to it, accepts the
31 performance or acquiesces in it without objection.

32

1 (b) A "course of dealing" is a sequence of conduct concerning
2 previous transactions between the parties to a particular
3 transaction that is fairly to be regarded as establishing a common
4 basis of understanding for interpreting their expressions and other
5 conduct.

6 (c) A "usage of trade" is any practice or method of dealing
7 having such regularity of observance in a place, vocation, or trade
8 as to justify an expectation that it will be observed with respect
9 to the transaction in question. The existence and scope of such a
10 usage must be proved as facts. If it is established that such a
11 usage is embodied in a trade code or similar record, the
12 interpretation of the record is a question of law.

13 (d) A course of performance or course of dealing between the
14 parties or usage of trade in the vocation or trade in which they are
15 engaged or of which they are or should be aware is relevant in
16 ascertaining the meaning of the agreement of the parties, may give
17 particular meaning to specific terms of the agreement, and may
18 supplement or qualify the terms of the agreement. A usage of trade
19 applicable in the place in which part of the performance under the
20 agreement is to occur may be so utilized as to that part of the
21 performance.

22 (e) Except as otherwise provided in subsection (f) of this
23 section, the express terms of an agreement and any applicable course
24 of performance, course of dealing, or usage of trade must be
25 construed whenever reasonable as consistent with each other. If
26 such a construction is unreasonable:

27 (1) express terms prevail over course of performance, course of
28 dealing, and usage of trade;

29 (2) course of performance prevails over course of dealing and
30 usage of trade; and

31 (3) course of dealing prevails over usage of trade.

32

1 (f) Subject to Section 2-209 of Title 12A of the Oklahoma
2 Statutes, a course of performance is relevant to show a waiver or
3 modification of any term inconsistent with the course of
4 performance.

5 (g) Evidence of a relevant usage of trade offered by one party
6 is not admissible unless that party has given the other party notice
7 that the court finds sufficient to prevent unfair surprise to the
8 other party.

9 SECTION 17. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-304 of Title 12A, unless there
11 is created a duplication in numbering, reads as follows:

12 Obligation of Good Faith.

13 Every contract of duty within the Uniform Commercial Code
14 imposes an obligation of good faith in its performance and
15 enforcement.

16 SECTION 18. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-305 of Title 12A, unless there
18 is created a duplication in numbering, reads as follows:

19 Remedies to Be Liberally Administered.

20 (a) The remedies provided by the Uniform Commercial Code must be
21 liberally administered to the end that the aggrieved party may be
22 put in as good a position as if the other party had fully performed
23 but neither consequential or special nor penal damages may be had
24 except as specifically provided in the Uniform Commercial Code or by
25 other rule of law.

26 (b) Any right or obligation declared by the Uniform Commercial
27 Code is enforceable by action unless the provision declaring it
28 specifies a different and limited effect.

29 SECTION 19. NEW LAW A new section of law to be codified
30 in the Oklahoma Statutes as Section 1-306 of Title 12A, unless there
31 is created a duplication in numbering, reads as follows:

32 Waiver or Renunciation of Claim or Right after Breach.

1 A claim or right arising out of an alleged breach may be
2 discharged in whole or in part without consideration by agreement of
3 the aggrieved party in an authenticated record.

4 SECTION 20. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-307 of Title 12A, unless there
6 is created a duplication in numbering, reads as follows:

7 Prima Facie Evidence by Third Party Documents.

8 A document in due form purporting to be a bill of lading, policy
9 or certificate of insurance, official weigher's or inspector's
10 certificate, consular invoice, or any other document authorized or
11 required by the contract to be issued by a third party is prima
12 facie evidence of its own authenticity and genuineness and of the
13 facts stated in the document by the third party.

14 SECTION 21. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-308 of Title 12A, unless there
16 is created a duplication in numbering, reads as follows:

17 Performance or Acceptance Under Reservation of Rights.

18 (a) A party that with explicit reservation of rights performs
19 or promises performance or assents to performance in a manner
20 demanded or offered by the other party does not thereby prejudice
21 the rights reserved. Such words as "without prejudice", "under
22 protest" or the like are sufficient.

23 (b) Subsection (a) of this section does not apply to an accord
24 and satisfaction.

25 SECTION 22. NEW LAW A new section of law to be codified
26 in the Oklahoma Statutes as Section 1-309 of Title 12A, unless there
27 is created a duplication in numbering, reads as follows:

28 Option to Accelerate at Will.

29 A term providing that one party or that party's successor in
30 interest may accelerate payment or performance or require collateral
31 or additional collateral "at will" or when the party "deems itself
32 insecure", or in words of similar import, means that the party shall

1 have power to do so only if that party in good faith believes that
2 the prospect of payment or performance is impaired. The burden of
3 establishing lack of good faith is on the party against whom the
4 power has been exercised.

5 SECTION 23. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-310 of Title 12A, unless there
7 is created a duplication in numbering, reads as follows:

8 Subordination of obligations.

9 An obligation may be issued as subordinated to performance of
10 another obligation of the person obligated, or a creditor may
11 subordinate its right to performance of an obligation by agreement
12 with either the person obligated or another creditor of the person
13 obligated. Such a subordination does not create a security interest
14 as against either the common debtor or a subordinated creditor.

15 SECTION 24. AMENDATORY 12A O.S. 2001, Section 2-103, is
16 amended to read as follows:

17 Section 2-103. Definitions and Index of Definitions.

18 (1) In this article unless the context otherwise requires:

19 (a) "Buyer" means a person who buys or contracts to buy
20 goods.

21 ~~(b) "Good faith" in the case of a merchant means honesty~~
22 ~~in fact and the observance of reasonable commercial~~
23 ~~standards of fair dealing in the trade.~~

24 ~~(e)~~ "Receipt" of goods means taking physical possession of
25 them.

26 ~~(d)~~ (c) "Seller" means a person who sells or contracts to
27 sell goods.

28 (2) Other definitions applying to this article or to specified
29 parts thereof, and the sections in which they appear are:

30 "Acceptance". Section 2-606 of this title.

31 "Banker's credit". Section 2-325 of this title.

32 "Between merchants". Section 2-104 of this title.

1 "Cancellation". Section 2-106(4) of this title.
2 "Commercial unit". Section 2-105 of this title.
3 "Confirmed credit". Section 2-325 of this title.
4 "Conforming to contract". Section 2-106 of this title.
5 "Contract for sale". Section 2-106 of this title.
6 "Cover". Section 2-712 of this title.
7 "Entrusting". Section 2-403 of this title.
8 "Financing agency". Section 2-104 of this title.
9 "Future goods". Section 2-105 of this title.
10 "Goods". Section 2-105 of this title.
11 "Identification". Section 2-501 of this title.
12 "Installment contract". Section 2-612 of this title.
13 "Letter of credit". Section 2-325 of this title.
14 "Lot". Section 2-105 of this title.
15 "Merchant". Section 2-104 of this title.
16 "Overseas". Section 2-323 of this title.
17 "Person in position of seller". Section 2-707 of this
18 title.
19 "Present sale". Section 2-106 of this title.
20 "Sale". Section 2-106 of this title.
21 "Sale on approval". Section 2-326 of this title.
22 "Sale or return". Section 2-326 of this title.
23 "Termination". Section 2-106 of this title.

24 (3) The following definitions in other articles apply to this
25 article:

26 "Check". Section 3-104 of this title.
27 "Consignee". Section 7-102 of this title.
28 "Consignor". Section 7-102 of this title.
29 "Consumer goods". Section 9-102 of this title.
30 "Dishonor". Section 3-502 of this title.
31 "Draft". Section 3-104 of this title.
32

1 (4) In addition, Article 1 of this title contains general
2 definitions and principles of construction and interpretation
3 applicable throughout this article.

4 SECTION 25. AMENDATORY 12A O.S. 2001, Section 2-105, is
5 amended to read as follows:

6 Section 2-105. Definitions: Transferability; "Goods";
7 "Future" Goods; "Lot"; "Commercial Unit".

8 (1) "Goods" means all things (including specially manufactured
9 goods) which are movable at the time of identification to the
10 contract for sale other than the money in which the price is to be
11 paid, investment securities (Article 8) and things in action.

12 "Goods" also includes the unborn young of animals and growing crops
13 and other identified things attached to realty as described in the
14 section on goods to be severed from realty (Section 2-107) but does
15 not include information.

16 (2) Goods must be both existing and identified before any
17 interest in them can pass. Goods which are not both existing and
18 identified are "future" goods. A purported present sale of future
19 goods or of any interest therein operates as a contract to sell.

20 (3) There may be a sale of a part interest in existing
21 identified goods.

22 (4) An undivided share in an identified bulk of fungible goods
23 is sufficiently identified to be sold although the quantity of the
24 bulk is not determined. Any agreed proportion of such a bulk or any
25 quantity thereof agreed upon by number, weight or other measure may
26 to the extent of the seller's interest in the bulk be sold to the
27 buyer who then becomes an owner in common.

28 (5) "Lot" means a parcel or a single article which is the
29 subject matter of a separate sale or delivery, whether or not it is
30 sufficient to perform the contract.

31 (6) "Commercial unit" means such a unit of goods as by
32 commercial usage is a single whole for purposes of sale and division

1 of which materially impairs its character or value on the market or
2 in use. A commercial unit may be a single article (as a machine) or
3 a set of articles (as a suite of furniture or an assortment of
4 sizes) or a quantity (as a bale, gross, or carload) or any other
5 unit treated in use or in the relevant market as a single whole.

6 SECTION 26. AMENDATORY 12A O.S. 2001, Section 2-106, is
7 amended to read as follows:

8 Section 2-106. Definitions: "Contract"; "Agreement"; "Contract
9 for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract;
10 "Termination"; "Cancellation".

11 (1) In this article unless the context otherwise requires
12 "contract" and "agreement" are limited to those relating to the
13 present or future sale of goods. "Contract for sale" includes both
14 a present sale of goods and a contract to sell goods at a future
15 time but does not include a license of information. A "sale"
16 consists in the passing of title from the seller to the buyer for a
17 price (Section 2-401). A "present sale" means a sale which is
18 accomplished by the making of the contract.

19 (2) Goods or conduct including any part of a performance are
20 "conforming" or conform to the contract when they are in accordance
21 with the obligations under the contract.

22 (3) "Termination" occurs when either party pursuant to a power
23 created by agreement or law puts an end to the contract otherwise
24 than for its breach. On "termination" all obligations which are
25 still executory on both sides are discharged but any right based on
26 prior breach or performance survives.

27 (4) "Cancellation" occurs when either party puts an end to the
28 contract for breach by the other and its effect is the same as that
29 of "termination" except that the canceling party also retains any
30 remedy for breach of the whole contract or any unperformed balance.

31 SECTION 27. AMENDATORY 12A O.S. 2001, Section 2-202, is
32 amended to read as follows:

1 Section 2-202. Final Written Expression: Parol or Extrinsic
2 Evidence.

3 Terms with respect to which the confirmatory memoranda of the
4 parties agree or which are otherwise set forth in a writing intended
5 by the parties as a final expression of their agreement with respect
6 to such terms as are included therein may not be contradicted by
7 evidence of any prior agreement or of a contemporaneous oral
8 agreement but may be explained or supplemented:

9 (a) by course of performance, course of dealing or usage of
10 trade ~~(Section 1-205) or by course of performance (Section 2-208)~~
11 (Section 16 of this act); and

12 (b) by evidence of consistent additional terms unless the court
13 finds the writing to have been intended also as a complete and
14 exclusive statement of the terms of the agreement.

15 SECTION 28. AMENDATORY 12A O.S. 2001, Section 2A-103, is
16 amended to read as follows:

17 Section 2A-103. Definitions and Index of Definitions.

18 (1) In this article unless the context otherwise requires:

19 (a) "Buyer in the ordinary course of business" means a
20 person who in good faith and without knowledge that
21 the sale to him is in violation of the ownership
22 rights or security interest or leasehold interest of a
23 third party in the goods, buys in the ordinary course
24 from a person in the business of selling goods of that
25 kind but does not include a pawnbroker. "Buying" may
26 be for cash or by exchange of other property or on
27 secured or unsecured credit and includes receiving
28 goods or documents of title under a preexisting
29 contract for sale but does not include a transfer in
30 bulk or as security for or in total or partial
31 satisfaction of a money debt.

32

1 (b) "Cancellation" occurs when either party puts an end to
2 the lease contract for default by the other party.

3 (c) "Commercial unit" means such a unit of goods as by
4 commercial usage is a single whole for purposes of
5 lease and division of which materially impairs its
6 character or value on the market or in use. A
7 commercial unit may be a single article, as a machine,
8 or a set of articles, as a suite of furniture or a
9 line of machinery, or a quantity, as a gross or
10 carload, or any other unit treated in use or in the
11 relevant market as a single whole.

12 (d) "Conforming" goods or performance under a lease
13 contract means goods or performance that are in
14 accordance with the obligations under the lease
15 contract.

16 (e) "Consumer lease" means a lease that a lessor regularly
17 engaged in the business of leasing or selling makes to
18 a lessee who is an individual and who takes under the
19 lease primarily for a personal, family, or household
20 purpose, if the total payments to be made under the
21 lease contract, excluding payments for options to
22 renew or buy, do not exceed Forty-five Thousand
23 Dollars (\$45,000.00).

24 (f) "Fault" means wrongful act, omission, breach, or
25 default.

26 (g) "Finance lease" means a lease with respect to which:

27 (i) the lessor does not select, manufacture or supply
28 the goods;

29 (ii) the lessor acquires the goods or the right to
30 possession and use of the goods in connection
31 with the lease; and

32 (iii) one of the following occurs:

- 1 (A) the lessee receives a copy of the contract
2 by which the lessor acquired the goods or
3 the right to possession and use of the goods
4 before signing the lease contract;
- 5 (B) the lessee's approval of the contract by
6 which the lessor acquired the goods or the
7 right to possession and use of the goods is
8 a condition to effectiveness of the lease
9 contract;
- 10 (C) the lessee, before signing the lease
11 contract, receives an accurate and complete
12 statement designating the promises and
13 warranties, and any disclaimers of
14 warranties, limitations or modifications of
15 remedies, or liquidated damages, including
16 those of a third party, such as the
17 manufacturer of the goods, provided to the
18 lessor by the person supplying the goods in
19 connection with or as part of the contract
20 by which the lessor acquired the goods or
21 the right to possession and use of the
22 goods; or
- 23 (D) if the lease is not a consumer lease, the
24 lessor, before the lessee signs the lease
25 contract, informs the lessee in writing (a)
26 of the identity of the person supplying the
27 goods to the lessor, unless the lessee has
28 selected that person and directed the lessor
29 to acquire the goods or the right to
30 possession and use of the goods from that
31 person, (b) that the lessee is entitled
32 under this article to the promises and

1 warranties, including those of any third
2 party, provided to the lessor by the person
3 supplying the goods in connection with or as
4 part of the contract by which the lessor
5 acquired the goods or the right to
6 possession and use of the goods, and (c)
7 that the lessee may communicate with the
8 person supplying the goods to the lessor and
9 receive an accurate and complete statement
10 of those promises and warranties, including
11 any disclaimers and limitations of them or
12 of remedies.

13 (h) "Goods" means all things that are movable at the time
14 of identification to the lease contract, or are
15 fixtures (Section 2A-309 of this title), but the term
16 does not include money, documents, information,
17 instruments, accounts, chattel paper, general
18 intangibles, or minerals or the like, including oil
19 and gas, before extraction. The term also includes
20 the unborn young of animals.

21 (i) "Installment lease contract" means a lease contract
22 that authorizes or requires the delivery of goods in
23 separate lots to be separately accepted, even though
24 the lease contract contains a clause "each delivery is
25 a separate lease" or its equivalent.

26 (j) "Lease" means a transfer of the right to possession
27 and use of goods for a term in return for
28 consideration, but a sale, including a sale on
29 approval or a sale or return, or retention or creation
30 of a security interest or license of information is
31 not a lease. Unless the context clearly indicates
32 otherwise, the term includes a sublease.

1 (k) "Lease agreement" means the bargain, with respect to
2 the lease, of the lessor and the lessee in fact as
3 found in their language or by implication from other
4 circumstances including course of dealing or usage of
5 trade or course of performance as provided in this
6 article. Unless the context clearly indicates
7 otherwise, the term includes a sublease agreement.

8 (l) "Lease contract" means the total legal obligation that
9 results from the lease agreement as affected by this
10 article and any other applicable rules of law. Unless
11 the context clearly indicates otherwise, the term
12 includes a sublease contract.

13 (m) "Leasehold interest" means the interest of the lessor
14 or the lessee under a lease contract.

15 (n) "Lessee" means a person who acquires the right to
16 possession and use of goods under a lease. Unless the
17 context clearly indicates otherwise, the term includes
18 a sublessee.

19 (o) "Lessee in the ordinary course of business" means a
20 person who in good faith and without knowledge that
21 the lease to him is in violation of the ownership
22 rights or security interest or leasehold interest of a
23 third party in the goods leases in the ordinary course
24 from a person in the business of selling or leasing
25 goods of that kind but does not include a pawnbroker.
26 "Leasing" may be for cash or by exchange of other
27 property or on secured or unsecured credit and
28 includes receiving goods or documents of title under a
29 preexisting lease contract but does not include a
30 transfer in bulk or as security for or in total or
31 partial satisfaction of a money debt.

- 1 (p) "Lessor" means a person who transfers the right to
2 possession and use of goods under a lease. Unless the
3 context clearly indicates otherwise, the term includes
4 a sublessor.
- 5 (q) "Lessor's residual interest" means the lessor's
6 interest in the goods after expiration, termination,
7 or cancellation of the lease contract.
- 8 (r) "Lien" means a charge against or interest in goods to
9 secure payment of a debt or performance of an
10 obligation, but the term does not include a security
11 interest.
- 12 (s) "Lot" means a parcel or a single article that is the
13 subject matter of a separate lease or delivery,
14 whether or not it is sufficient to perform the lease
15 contract.
- 16 (t) "Merchant lessee" means a lessee that is a merchant
17 with respect to goods of the kind subject to the
18 lease.
- 19 (u) "Present value" means the amount as of a date certain
20 of one or more sums payable in the future, discounted
21 to the date certain. The discount is determined by
22 the interest rate specified by the parties if the rate
23 was not manifestly unreasonable at the time the
24 transaction was entered into; otherwise, the discount
25 is determined by a commercially reasonable rate that
26 takes into account the facts and circumstances of each
27 case at the time the transaction was entered into.
- 28 (v) "Purchase" includes taking by sale, lease, mortgage,
29 security interest, pledge, gift, or any other
30 voluntary transaction creating an interest in goods.
31
32

1 (w) "Sublease" means a lease of goods the right to
2 possession and use of which was acquired by the lessor
3 as a lessee under an existing lease.

4 (x) "Supplier" means a person from whom a lessor buys or
5 leases goods to be leased under a finance lease.

6 (y) "Supply contract" means a contract under which a
7 lessor buys or leases goods to be leased.

8 (z) "Termination" occurs when either party pursuant to a
9 power created by agreement or law puts an end to the
10 lease contract otherwise than for default.

11 (2) Other definitions applying to this article and the sections
12 in which they appear are:

13 "Accessions". Subsection (1) of Section 2A-310 of this
14 title.

15 "Construction mortgage". Paragraph (d) of subsection (1)
16 of Section 2A-309 of this title.

17 "Encumbrance". Paragraph (e) of subsection (1) of Section
18 2A-309 of this title.

19 "Fixtures". Paragraph (a) of subsection (1) of Section 2A-
20 309 of this title.

21 "Fixture filing". Paragraph (b) of subsection (1) of
22 Section 2A-309 of this title.

23 "Purchase money lease". Paragraph (c) of subsection (1) of
24 Section 2A-309 of this title.

25 (3) The following definitions in other articles apply to this
26 article:

27 "Account". Paragraph (2) of subsection (a) of Section
28 1-9-102 of this title.

29 "Between merchants". Subsection (3) of Section 2-104 of
30 this title.

31 "Buyer". Paragraph (a) of subsection (1) of Section 2-103
32 of this title.

1 "Chattel paper". Paragraph (11) of subsection (a) of
2 Section 1-9-102 of this title.

3 "Consumer goods". Paragraph (23) of subsection (a) of
4 Section 1-9-102 of this title.

5 "Document". Paragraph (30) of subsection (a) of Section
6 1-9-102 of this title.

7 "Entrusting". Paragraph (3) of Section 2-403 of this
8 title.

9 "General intangible". Paragraph (42) of subsection (a) of
10 Section 1-9-102 of this title.

11 ~~"Good faith". Paragraph (b) of subsection (1) of Section~~
12 ~~2-103 of this title.~~

13 "Instrument". Paragraph (47) of subsection (a) of Section
14 1-9-102 of this title.

15 "Merchant". Subsection (1) of Section 2-104 of this title.

16 "Mortgage". Paragraph (55) of subsection (a) of Section
17 1-9-102 of this title.

18 "Pursuant to commitment". Paragraph (68) of subsection (a)
19 of Section 1-9-102 of this title.

20 "Receipt". Subsection (c) of paragraph (1) of Section 2-
21 103 of this title.

22 "Sale". Paragraph (1) of Section 2-106 of this title.

23 "Sale on approval". Section 2-326 of this title.

24 "Sale or return". Section 2-326 of this title.

25 "Seller". Subparagraph (d) of paragraph (1) of Section 2-
26 103 of this title.

27 (4) In addition, Article 1 of this title, contains general
28 definitions and principles of construction and interpretation
29 applicable throughout this article.

30 SECTION 29. AMENDATORY 12A O.S. 2001, Section 2A-501, is
31 amended to read as follows:

32 Section 2A-501.

1 cover by making any purchase or lease of or contract to purchase or
2 lease goods in substitution for those due from the lessor.

3 (2) Except as otherwise provided with respect to damages
4 liquidated in the lease agreement (Section 2A-504 of this title) or
5 otherwise determined pursuant to agreement of the parties
6 (subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-
7 503 of this title), if a lessee's cover is by a lease agreement
8 substantially similar to the original lease agreement and the new
9 lease agreement is made in good faith and in a commercially
10 reasonable manner, the lessee may recover from the lessor as
11 damages:

12 (i) the present value, as of the date of the commencement
13 of the term of the new lease agreement, of the rent
14 under the new lease agreement applicable to that
15 period of the new lease term which is comparable to
16 the then remaining term of the original lease
17 agreement minus the present value as of the same date
18 of the total rent for the then remaining lease term of
19 the original lease agreement, and

20 (ii) any incidental or consequential damages less expenses
21 saved in consequence of the lessor's default.

22 (3) If a lessee's cover is by lease agreement that for any
23 reason does not qualify for treatment under subsection (2) of this
24 section, or is by purchase or otherwise, the lessee may recover from
25 the lessor as if the lessee had elected not to cover and Section 2A-
26 519 of this title governs.

27 SECTION 31. AMENDATORY 12A O.S. 2001, Section 2A-519, is
28 amended to read as follows:

29 Section 2A-519.

30 LESSEE'S DAMAGES FOR NONDELIVERY,
31 REPUDIATION, DEFAULT AND BREACH OF
32 WARRANTY IN REGARD TO ACCEPTED GOODS

1 (1) Except as otherwise provided with respect to damages
2 liquidated in the lease agreement (Section 2A-504 of this title) or
3 otherwise determined pursuant to agreement of the parties
4 (subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-
5 503 of this title), if a lessee elects not to cover or a lessee
6 elects to cover and the cover is by lease agreement that for any
7 reason does not qualify for treatment under subsection (2) of
8 Section 2A-518 of this title, or is by purchase or otherwise, the
9 measure of damages for nondelivery or repudiation by the lessor or
10 for rejection or revocation of acceptance by the lessee is the
11 present value, as of the date of the default, of the then market
12 rent minus the present value as of the same date of the original
13 rent, computed for the remaining lease term of the original lease
14 agreement, together with incidental and consequential damages, less
15 expenses saved in consequence of the lessor's default.

16 (2) Market rent is to be determined as of the place for tender
17 or, in cases of rejection after arrival or revocation of acceptance,
18 as of the place of arrival.

19 (3) Except as otherwise agreed, if the lessee has accepted
20 goods and given notification (subsection (3) of Section 2A-516 of
21 this title), the measure of damages for nonconforming tender or
22 delivery or other default by a lessor is the loss resulting in the
23 ordinary course of events from the lessor's default as determined in
24 any manner that is reasonable together with incidental and
25 consequential damages, less expenses saved in consequence of the
26 lessor's default.

27 (4) Except as otherwise agreed, the measure of damages for
28 breach of warranty is the present value at the time and place of
29 acceptance of the difference between the value of the use of the
30 goods accepted and the value if they had been as warranted for the
31 lease term, unless special circumstances show proximate damages of a
32 different amount, together with incidental and consequential

1 damages, less expenses saved in consequence of the lessor's default
2 or breach of warranty.

3 SECTION 32. AMENDATORY 12A O.S. 2001, Section 2A-527, is
4 amended to read as follows:

5 Section 2A-527.

6 LESSOR'S RIGHTS TO DISPOSE OF GOODS

7 (1) After a default by a lessee under the lease contract of the
8 type described in subsection (1) of Section 2A-523 of this title or
9 paragraph (a) of subsection (3) of Section 2A-523 of this title or
10 after the lessor refuses to deliver or takes possession of goods
11 (Section 2A-525 or 2A-526 of this title), or, if agreed, after other
12 default by a lessee, the lessor may dispose of the goods concerned
13 or the undelivered balance thereof by lease, sale, or otherwise.

14 (2) Except as otherwise provided with respect to damages
15 liquidated in the lease agreement (Section 2A-504 of this title) or
16 otherwise determined pursuant to agreement of the parties
17 (subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-
18 503 of this title), if the disposition is by lease agreement
19 substantially similar to the original lease agreement and the new
20 lease agreement is made in good faith and in a commercially
21 reasonable manner, the lessor may recover from the lessee as
22 damages:

- 23 (i) accrued and unpaid rent as of the date of the
24 commencement of the term of the new lease agreement,
25 (ii) the present value, as of the same date, of the total
26 rent for the then remaining lease term of the original
27 lease agreement minus the present value, as of the
28 same date, of the rent under the new lease agreement
29 applicable to that period of the new lease term which
30 is comparable to the then remaining term of the
31 original lease agreement, and
32

1 (iii) any incidental damages allowed under Section 2A-530 of
2 this title, less expenses saved in consequence of the
3 lessee's default.

4 (3) If the lessor's disposition is by lease agreement that for
5 any reason does not qualify for treatment under subsection (2) of
6 this section, or is by sale or otherwise, the lessor may recover
7 from the lessee as if the lessor had elected not to dispose of the
8 goods and Section 2A-528 of this title governs.

9 (4) A subsequent buyer or lessee who buys or leases from the
10 lessor in good faith for value as a result of a disposition under
11 this section takes the goods free of the original lease contract and
12 any rights of the original lessee even though the lessor fails to
13 comply with one or more of the requirements of this article.

14 (5) The lessor is not accountable to the lessee for any profit
15 made on any disposition. A lessee who has rightfully rejected or
16 justifiably revoked acceptance shall account to the lessor for any
17 excess over the amount of the lessee's security interest (subsection
18 (5) of Section 2A-508 of this title).

19 SECTION 33. AMENDATORY 12A O.S. 2001, Section 2A-528, is
20 amended to read as follows:

21 Section 2A-528.

22 LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION,
23 OR OTHER DEFAULT

24 (1) Except as otherwise provided with respect to damages
25 liquidated in the lease agreement (Section 2A-504 of this title) or
26 otherwise determined pursuant to agreement of the parties
27 (subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-
28 503 of this title), if a lessor elects to retain the goods or a
29 lessor elects to dispose of the goods and the disposition is by
30 lease agreement that for any reason does not qualify for treatment
31 under subsection (2) of Section 2A-527 of this title, or is by sale
32 or otherwise, the lessor may recover from the lessee as damages for

1 a default of the type described in subsection (1) of Section 2A-523
2 or paragraph (a) of subsection (3) of Section 2A-523, or, if agreed,
3 for other default of the lessee:

4 (i) accrued and unpaid rent as of the date of default if
5 the lessee has never taken possession of the goods,
6 or, if the lessee has taken possession of the goods,
7 as of the date the lessor repossesses the goods or an
8 earlier date on which the lessee makes a tender of the
9 goods to the lessor,

10 (ii) the present value as of the date determined under
11 clause (i) of this subsection of the total rent for
12 the then remaining lease term of the original lease
13 agreement minus the present value as of the same date
14 of the market rent at the place where the goods are
15 located computed for the same lease term, and

16 (iii) any incidental damages allowed under Section 2A-530 of
17 this title, less expenses saved in consequence of the
18 lessee's default.

19 (2) If the measure of damages provided in subsection (1) of
20 this section is inadequate to put a lessor in as good a position as
21 performance would have, the measure of damages is the present value
22 of the profit, including reasonable overhead, the lessor would have
23 made from full performance by the lessee, together with any
24 incidental damages allowed under Section 2A-530 of this title, due
25 allowance for costs reasonably incurred and due credit for payments
26 or proceeds of disposition.

27 SECTION 34. AMENDATORY 12A O.S. 2001, Section 4A-106, is
28 amended to read as follows:

29 Section 4A-106. TIME PAYMENT ORDER IS RECEIVED

30 (a) The time of receipt of a payment order or communication
31 canceling or amending a payment order is determined by the rules
32 applicable to receipt of a notice stated in ~~paragraph (27) of~~

1 Section ~~1-201~~ 1-202 of ~~Title 12A of the Oklahoma Statutes~~ this
2 title. A receiving bank may fix a cut-off time or times on a funds-
3 transfer business day for the receipt and processing of payment
4 orders and communications canceling or amending payment orders.
5 Different cut-off times may apply to payment orders, cancellations,
6 or amendments, or to different categories of payment orders,
7 cancellations, or amendments. A cut-off time may apply to senders
8 generally or different cut-off times may apply to different senders
9 or categories of payment orders. If a payment order or
10 communication canceling or amending a payment order is received
11 after the close of a funds-transfer business day or after the
12 appropriate cut-off time on a funds-transfer business day, the
13 receiving bank may treat the payment order or communication as
14 received at the opening of the next funds-transfer business day.

15 (b) If this Article refers to an execution date or payment date
16 or states a day on which a receiving bank is required to take
17 action, and the date or day does not fall on a funds-transfer
18 business day, the next day that is a funds-transfer business day is
19 treated as the date or day stated, unless the contrary is stated in
20 this Article.

21 SECTION 35. AMENDATORY 12A O.S. 2001, Section 4A-204, is
22 amended to read as follows:

23 Section 4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO
24 REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.

25 (a) If a receiving bank accepts a payment order issued in the
26 name of its customer as sender which is (i) not authorized and not
27 effective as the order of the customer under Section ~~10~~ 4A-202 of
28 this ~~act~~ title, or (ii) not enforceable, in whole or in part,
29 against the customer under Section ~~11~~ 4A-203 of this ~~act~~ title, the
30 bank shall refund any payment of the payment order received from the
31 customer to the extent the bank is not entitled to enforce payment
32 and shall pay interest on the refundable amount calculated from the

1 date the bank received payment to the date of the refund. However,
2 the customer is not entitled to interest from the bank on the amount
3 to be refunded if the customer fails to exercise ordinary care to
4 determine that the order was not authorized by the customer and to
5 notify the bank of the relevant facts within a reasonable time not
6 exceeding ninety (90) days after the date the customer received
7 notification from the bank that the order was accepted or that the
8 customer's account was debited with respect to the order. The bank
9 is not entitled to any recovery from the customer on account of a
10 failure by the customer to give notification as stated in this
11 section.

12 (b) Reasonable time under subsection (a) of this section may be
13 fixed by agreement as stated in ~~paragraph (1)~~ subsection (b) of
14 Section ~~1-201~~ 15 of ~~Title 12A of the Oklahoma Statutes~~ this act, but
15 the obligation of a receiving bank to refund payment as stated in
16 subsection (a) of this section may not otherwise be varied by
17 agreement.

18 SECTION 36. AMENDATORY 12A O.S. 2001, Section 5-103, is
19 amended to read as follows:

20 Section 5-103. Scope.

21 (a) This article applies to letters of credit and to certain
22 rights and obligations arising out of transactions involving letters
23 of credit.

24 (b) The statement of a rule in this article does not by itself
25 require, imply, or negate application of the same or a different
26 rule to a situation not provided for, or to a person not specified,
27 in this article.

28 (c) With the exception of this subsection, subsections (a) and
29 (d) of this section, paragraphs (9) and (10) of subsection (a) of
30 Section 5-102 of this title, subsection (d) of Section 5-106 of this
31 title, and subsection (d) of Section 5-114 of this title, and except
32 to the extent prohibited in ~~subsection (3) of Section 1-102~~ 15 of

1 this ~~title~~ act and subsection (d) of Section 5-117 of this title,
2 the effect of this article may be varied by agreement or by a
3 provision stated or incorporated by reference in an undertaking. A
4 term in an agreement or undertaking generally excusing liability or
5 generally limiting remedies for failure to perform obligations is
6 not sufficient to vary obligations prescribed by this article.

7 (d) Rights and obligations of an issuer to a beneficiary or a
8 nominated person under a letter of credit are independent of the
9 existence, performance, or nonperformance of a contract or
10 arrangement out of which the letter of credit arises or which
11 underlies it, including contracts or arrangements between the issuer
12 and the applicant and between the applicant and the beneficiary.

13 SECTION 37. AMENDATORY 12A O.S. 2001, Section 1-9-311,
14 is amended to read as follows:

15 Section 1-9-311.

16 PERFECTIION OF SECURITY INTERESTS IN PROPERTY

17 SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES

18 (a) Except as otherwise provided in subsection (d) of this
19 section, the filing of a financing statement is not necessary or
20 effective to perfect a security interest in property subject to:

21 (1) a statute, regulation, or treaty of the United States whose
22 requirements for a security interest's obtaining priority over the
23 rights of a lien creditor with respect to the property preempt
24 subsection (a) of Section 1-9-310 of this title;

25 (2) another statute of this state that provides for central
26 filing of, or that requires indication on or delivery for indication
27 on a certificate of title of, any security interest in the property
28 as a condition or result of perfection, including, but not limited
29 to, Section 1110 of Title 47 and Section 4013 of Title 63 of the
30 Oklahoma Statutes; ~~or~~

31 (3) a certificate-of-title statute of another jurisdiction
32 which provides for a security interest to be indicated on the

1 certificate as a condition or result of the security interest's
2 obtaining priority over the rights of a lien creditor with respect
3 to the property; or

4 (4) the law or procedure of a federally recognized Indian
5 tribe, if the security interest is in a vehicle registered or to be
6 registered by the federally recognized Indian tribe and if within
7 twenty (20) days after the security interest attaches, it is noted
8 on the face of a certificate of title issued by the Indian tribe or,
9 notwithstanding subsection G of Section 1110 of Title 47 of the
10 Oklahoma Statutes, the security interest is otherwise perfected
11 under an applicable law or procedure of that tribe.

12 (b) Compliance with the requirements of a statute, regulation,
13 or treaty described in subsection (a) of this section for obtaining
14 priority over the rights of a lien creditor is equivalent to the
15 filing of a financing statement under this article. Except as
16 otherwise provided in subsection (d) of this section and Section
17 1-9-313 and subsections (d) and (e) of Section 1-9-316 of this title
18 for goods covered by a certificate of title, a security interest in
19 property subject to a statute, regulation, or treaty described in
20 subsection (a) of this section may be perfected only by compliance
21 with those requirements, and a security interest so perfected
22 remains perfected notwithstanding a change in the use or transfer of
23 possession of the collateral.

24 (c) Except as otherwise provided in subsection (d) of this
25 section and subsections (d) and (e) of Section 1-9-316 of this
26 title, duration and renewal of perfection of a security interest
27 perfected by compliance with the requirements prescribed by a
28 statute, regulation, or treaty described in subsection (a) of this
29 section are governed by the statute, regulation, or treaty. In
30 other respects, the security interest is subject to this article.

31 (d) During any period in which collateral, described in Section
32 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma

1 Statutes, is inventory held for sale or lease by a person or leased
2 by that person as lessor and that person is in the business of
3 selling goods of that kind, this section does not apply to a
4 security interest in that collateral created by that person as
5 debtor.

6 SECTION 38. REPEALER 12A O.S. 2001, Sections 1-105 and
7 1-109, are hereby repealed.

8 SECTION 39. REPEALER 12A O.S. 2001, Sections 1-207, 1-
9 208 and 1-209, are hereby repealed.

10 SECTION 40. REPEALER 12A O.S. 2001, Section 2A-207, is
11 hereby repealed.

12 SECTION 41. Sections 1 through 36 and 38 through 40 of this act
13 shall become effective January 1, 2006.

14 SECTION 42. It being immediately necessary for the preservation
15 of the public peace, health and safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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19 50-1-6515 SD 03/09/05

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