

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 3002

By: Morgan (Fred)

COMMITTEE SUBSTITUTE

An Act relating to the Uniform Commercial Code; amending Sections 16 and 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Sections 1-303 and 1-304), which relate to negotiable instruments; providing scope of obligation of good faith; amending 12A O.S. 2001, Section 7-209, as amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 7-209), which relates to warehouse liens; correcting language relating to persons against whom lien or security interest is not effective; amending 12A O.S. 2001, Section 1-9-705, as amended by Section 7, Chapter 153, O.S.L. 2004 (12A O.S. Supp. 2005, Section 1-9-705), which relates to effectiveness of certain actions under Article 9 of the Uniform Commercial Code; providing rules applicable to certain financing statements; repealing 12A O.S. 2001, Section 2-208, which relates to course of performance and practical construction; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 1-303), is amended to read as follows:

Section 1-303. Course of Performance, Course of Dealing, and Usage of Trade.

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

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

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

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct. The obligation of good faith in Section 1-304 of this title displaces any common law or other statutory obligation or duty of good faith with respect to each contract or duty with the Uniform Commercial Code.

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

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

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

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

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

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

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

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

SECTION 2. AMENDATORY Section 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 1-304), is amended to read as follows:

Section 1-304. Obligation of Good Faith.

Every contract ~~of~~ or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement. The obligation of good faith does not support an independent cause of action in tort or otherwise for a failure to perform or enforce in good faith. Rather, the obligation means that a failure to perform or enforce in good faith a specific duty or obligation under the contract or this act constitutes a breach of that contract or duty or makes unavailable, under the particular circumstances, a remedial right or power.

SECTION 3. AMENDATORY 12A O.S. 2001, Section 7-209, as amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 7-209), is amended to read as follows:

Section 7-209. Lien of Warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the

proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Article 9 of the Uniform Commercial Code.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) ~~delivers or entrusts~~ deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7-403 of this title; or

(C) power of disposition under Sections 2-403, 2A-304(2), 2A-305(2), 1-9-320, or 1-9-321(c) of the Uniform

Commercial Code or other statute or rule of law; or

(2) ~~acquiesces~~ acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 1-9-705, as amended by Section 7, Chapter 153, O.S.L. 2004 (12A O.S. Supp. 2005, Section 1-9-705), is amended to read as follows:

Section 1-9-705.

EFFECTIVENESS OF ACTION TAKEN

BEFORE EFFECTIVE DATE OF ACT

(a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one (1) year after this act takes effect. An attached security interest

becomes unperfected one (1) year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103.1 of this title. However, except as otherwise provided in subsections (d) ~~and~~, (e), (g) and (h) of this section and Section 1-9-706 of this title, the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this article, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Paragraph (2) of subsection (c) of this section applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103.1 only to

the extent that Part 3 of this article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 of this article for an initial financing statement.

(g) If an effective financing statement was filed before July 1, 2001, and that financing statement would otherwise cease to be effective on June 30, 2006, by operation of paragraph (2) of subsection (c) of this section, a continuation statement permitted to be filed by the second sentence of subsection (d) of this section may be filed between December 30, 2005, and June 30, 2006, inclusive, and will be timely, notwithstanding subsection (d) of Section 1-9-515 of this title. Without limitation, this provision applies to collateral, however described under former law, that meets the definition of "as-extracted collateral" in Section 1-9-102 of this title.

(h) The following rules apply to a filed financing statement that is effective under subsection (b) of this section:

(1) paragraph (2) of subsection (c) of this section does not apply; and

(2) the filing of a continuation statement with respect to the financing statement is timely if the filing occurs before the financing statement ceases to be effective and not before the earlier of December 30, 2005, or six (6) months before the effectiveness of the financing statement would lapse.

(i) The filing of a continuation statement with respect to a financing statement that was filed and effective before July 1, 2001, and whose effectiveness would lapse after June 30, 2006, but

for paragraph (2) of subsection (c) of this section, is timely if  
the filing occurs before the financing statement ceases to be  
effective but not before December 30, 2005.

SECTION 5. REPEALER 12A O.S. 2001, Section 2-208, is  
hereby repealed.

SECTION 6. It being immediately necessary for the preservation  
of the public peace, health and safety, an emergency is hereby  
declared to exist, by reason whereof this act shall take effect and  
be in full force from and after its passage and approval.

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