

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3084

By: Morgan (Fred)

COMMITTEE SUBSTITUTE

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 2A-103, as last amended by Section 2, Chapter 473, O.S.L. 2005, 2A-211, 2A-303 and 2A-506 (12A O.S. Supp. 2005, Section 2A-103), which relate to Article 2A of the Uniform Commercial Code, pertaining to leases; modifying definitions; modifying scope of warranties; clarifying limitations on alienability of interest under lease contract; excluding consumer leases and actions for indemnity from statute of limitation provision; amending Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 1-303), which relates to course of performance, course of dealing, and usage of trade; modifying statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 12A O.S. 2001, Section 2A-103, as last amended by Section 2, Chapter 473, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-103), is amended to read as follows:

Section 2A-103.

DEFINITIONS AND INDEX OF DEFINITIONS

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

- (a) ~~"Buyer in the ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in the ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring~~

~~goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~

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

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

~~(d)~~ (c) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

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

~~(f)~~ (e) "Fault" means wrongful act, omission, breach, or default.

~~(g)~~ (f) "Finance lease" means a lease with respect to which:
(i) the lessor does not select, manufacture or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease or, in the case of goods that have been leased previously by the lessor and are not being leased to a consumer, in connection with another lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the ~~contract~~ agreement by which the lessor acquired, or proposes to acquire, the goods or the right to possession and use of the goods before signing the lease ~~contract~~ agreement;

(B) the lessee's approval of the ~~contract~~ agreement by which the lessor acquired, or proposes to acquire, the goods or the right to possession and use of the goods is a condition to effectiveness of the lease ~~contract~~ agreement;

(C) the lessee, before signing the lease ~~contract~~ agreement, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease ~~contract~~ agreement, informs the lessee in ~~writing~~ ~~(a)~~ a record:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, ~~(b)~~ i

(II) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods ~~(c)~~ i and ~~(e)~~

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them, or a statement of remedies.

~~(h)~~ (g) "Goods" means all things that are movable at the time of identification to the lease contract, or that are fixtures (Section 2A-309 of this title). The term includes future goods, specially manufactured goods, and the unborn young of animals. The term does not include information, the money in which the price is

to be paid, investment securities under Article 8 of the Uniform Commercial Code, minerals or the like, including oil and gas, before extraction, or choses in action.

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

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

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

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

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

~~(n)~~ (m) "Lessee" means a person ~~who~~ that acquires the right to possession and use of goods under a lease. Unless the

context clearly indicates otherwise, the term includes a sublessee.

~~(e)~~ (n) "Lessee in the ordinary course of business" means a person ~~who~~ that leases goods in good faith ~~and,~~ without knowledge that the lease ~~to him is in violation~~ violates the rights of the ~~ownership rights or security interest or leasehold interest of a third party in the goods leases~~ another person, and in the ordinary course from a person, other than a pawnbroker, in the business of selling or leasing goods of that kind ~~but does not include a pawnbroker.~~ "Leasing" A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual or customary practices. A lessee in ordinary course of business may be lease for cash or, by exchange of other property, or on secured or unsecured credit, and ~~includes acquiring~~ may acquire goods or documents of title under a preexisting lease contract ~~but does not include.~~ Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor under this article may be a lessee in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a lessee in ordinary course of business.

~~(p)~~ (o) "Lessor" means a person ~~who~~ that transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

- ~~(p)~~ (p) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- ~~(r)~~ (q) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, ~~but the~~ The term does not include a security interest.
- ~~(s)~~ (r) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- ~~(t)~~ (s) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- ~~(u)~~ (t) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- ~~(v)~~ (u) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- ~~(w)~~ (v) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- ~~(x)~~ (w) "Supplier" means a person from ~~whom~~ which a lessor buys or leases goods to be leased under a finance lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Letter of credit". Paragraph 10 of subsection (a) of Section 5-102 of this title.

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

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

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

"Receipt". ~~Subsection (c)~~ Paragraph (c) of ~~paragraph~~ subsection (1) of Section 2-103 of this title.

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

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

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

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

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

SECTION 2. AMENDATORY 12A O.S. 2001, Section 2A-211, is amended to read as follows:

Section 2A-211.

WARRANTIES AGAINST INTERFERENCE AND AGAINST
INFRINGEMENT; LESSEE'S OBLIGATION AGAINST
INFRINGEMENT

~~(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.~~

~~(2) Except in a finance lease there is, a lessor in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of warrants that, except for claims by any person by way of infringement or the like, for the duration of the lease no person holds:~~

- ~~a. a claim to or interest in the goods not attributable to the lessee's own act or omission which will interfere with the lessee's enjoyment of its leasehold interest; or~~
- ~~b. a colorable claim to or interest in the goods which will unreasonably expose the lessee to litigation.~~

~~(2) A finance lessor warrants that, except for claims by way of infringement or the like, for the duration of the lease no person holds:~~

- ~~(a) a claim or interest in the goods that arose from an act or omission of the lessor which will interfere with the lessee's enjoyment of its leasehold interest; or~~
- ~~(b) a colorable claim to or interest in the goods that arose from an act or omission of the lessor which will unreasonably expose the lessee to litigation.~~

~~(3) A Except in a finance lease, a lessor that is a merchant regularly dealing in goods of the kind warrants that the goods will be delivered free of the rightful claim of a third party by way of infringement or the like. However, a lessee who that furnishes specifications to a lessor or a supplier shall hold holds the lessor~~

and the supplier harmless against any claim ~~by way~~ of infringement or the like that arises out of compliance with the specifications.

(4) A warranty under this section may be excluded or modified only by specific language that is conspicuous and contained in a record, or by circumstances, including course of performance, course of dealing, or usage of trade, that give the lessee reason to know that the lessor purports to transfer only such right as the lessor or a third party may have, or that it is leasing subject to any claims of infringement or the like.

SECTION 3. AMENDATORY 12A O.S. 2001, Section 2A-303, is amended to read as follows:

Section 2A-303.

ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT

OR OF LESSOR'S RESIDUAL INTEREST IN GOODS;

DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this title, ~~Secured Transactions~~, by reason of paragraph (3) of subsection (a) of Section 1-9-109 of this title.

(2) ~~Except as provided in~~ Subject to subsection (3) of this section and except as provided in Section 1-9-407 of this title or as otherwise agreed, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, ~~but~~. However, a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract within ~~the purview of~~ subsection (4) of this section.

(4) Subject to subsection (3) of this section and Section 1-9-407 of this ~~article~~ title:

- (a) if a transfer is made ~~which~~ that is ~~made~~ an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (2) of Section 2A-501 of this title; or
- (b) if paragraph (a) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may

grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a ~~writing~~ record, and conspicuous.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 2A-506, is amended to read as follows:

Section 2A-506.

STATUTE OF LIMITATIONS

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. ~~By~~ Except in a consumer lease or an action for indemnity, the original lease ~~contract~~ parties agreement may reduce the period of limitation to not less than one (1) year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the

default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this article becomes effective.

SECTION 5. 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.

(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 and Section 2A-208 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 6. This act shall become effective November 1, 2006.

50-2-9687 SD 03/05/06