EHB 2028

THE STATE SENATE

Monday, April 11, 2005

ENGROSSED

House Bill No. 2028

ENGROSSED HOUSE BILL NO. 2028 - By: MORGAN (Fred) of the House and LASTER of the Senate.

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;

(Bold face denotes Committee Amendments)

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

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;~~

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

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

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

~~(4) The presence in certain provisions of this act of the words "unless otherwise agreed" or words of similar import does not imply~~

~~that the effect of other provisions may not be varied by agreement under subsection (3).~~

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

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

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

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

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

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

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

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

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

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

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

Section 1-104. Construction Against Implicit Repeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods~~, and includes an airbill. "Airbill" means a document serving for air~~

~~transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill~~. The term does not include a warehouse receipt.

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a

buyer in ordinary course of business. ~~A~~ "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt ~~is not a buyer in ordinary course of business~~.

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

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

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

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

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

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

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

~~(14)~~ (15) "Delivery" with respect to ~~instruments, documents~~ an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper~~, or certificated securities~~ means voluntary transfer of possession.

~~(15)~~ (16) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which~~ means a record that in

the regular course of business or financing is treated as adequately evidencing that the person in possession or control of ~~it~~ the record is entitled to receive, control, hold, and dispose of the ~~document~~ record and the goods ~~it~~ the record covers~~. To be a document of title a document must purport~~ and that purports to be issued by or addressed to a bailee and ~~purport~~ to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

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

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

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

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

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

~~(19)~~ (20) "Good faith", except as otherwise provided in Article 5 of this title, means honesty in fact ~~in the conduct or transaction concerned~~ and the observance of reasonable commercial standards of fair dealing.

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

(A) the person in possession ~~if the~~ of a negotiable instrument that is payable either to bearer or~~, in the case of an instrument payable~~ to an identified person~~, if the identified~~ that is the person ~~is~~ in possession~~. "Holder" with respect to a document of title means~~;

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

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

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

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

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

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

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

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

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government ~~and~~. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~nations~~ countries.

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

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

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

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

~~A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the provisions of the Uniform Commercial Code.~~

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

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

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

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

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

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

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

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

~~(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until~~

~~evidence is introduced which would support a finding of its nonexistence.~~

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

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

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

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

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

~~(35)~~ (33) "Representative" ~~includes~~ means a person empowered to act for another, including an agent, an officer of a corporation or

association, and a trustee, executor, or administrator of an estate~~, or any other person empowered to act for another~~.

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

~~(37) (a)~~ (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The term also~~ "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this title. ~~The~~ "Security interest" does not include the special property interest of a buyer of goods on identification of ~~such~~ those goods to a contract for sale under Section 2-401 of this title ~~is not a "security interest"~~, but a buyer may also acquire a "security interest" by complying with the provisions of Article 9 of this title. Except as otherwise provided in Section 2-505 of this title, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer ~~(~~ under Section 2-401 of this title~~)~~ is limited in effect to a reservation of a "security interest". ~~(b)~~ Whether a transaction in the form of a lease creates ~~a lease or~~ security interest is

determined ~~by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:~~

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

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

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

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

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

~~(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered 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 under the lease agreement if the option is not exercised;~~

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

~~(iii) "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 is not manifestly unreasonable at the time the transaction is 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~~ pursuant to Section 1-203 of this title.

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

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

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

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

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

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

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

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

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

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

~~(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-~~

~~back is provided for in the event of difficulties in collection; or~~

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

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

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

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

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

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

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

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

(1) has actual knowledge of it;

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

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

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

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

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

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

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

(2) it is duly delivered in a form ~~purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party~~ reasonable under the circumstances at the place of business through which

the contract was made or at another location held out by that person as the place for receipt of such communications.

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

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

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

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

(b) A transaction creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation ~~of good faith in its performance or enforcement~~ for the term of the lease not subject to termination by the lessee, and:

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

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

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

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

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

1 (1) the present value of the consideration the lessee is
2 obligated to pay the lessor for the right to
3 possession and use of the goods is substantially equal
4 to or is greater than the fair market value of the
5 goods at the time the lease is entered into;
6 (2) the lessee assumes risk of loss of the goods;
7 (3) the lessee agrees to pay, with respect to the goods,
8 taxes, insurance, filing, recording, or registration
9 fees, or service or maintenance costs;
10 (4) the lessee has an option to renew the lease or to
11 become the owner of the goods;
12 (5) the lessee has an option to renew the lease for a
13 fixed rent that is equal to or greater than the
14 reasonably predictable fair market rent for the use of
15 the goods for the term of the renewal at the time the
16 option is to be performed; or
17 (6) the lessee has an option to become the owner of the
18 goods for a fixed price that is equal to or greater
19 than the reasonably predictable fair market value of
20 the goods at the time the option is to be performed.
21 (d) Additional consideration is nominal if it is less than the
22 lessee's reasonably predictable cost of performing under the lease

agreement if the option is not exercised. Additional consideration is not nominal if:

(1) 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

(2) 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.

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

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

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

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

(1) ~~Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~ in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

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

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

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

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

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

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

~~(2) 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 and expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.~~

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

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

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

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

~~(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such~~

~~notice as the court finds sufficient to prevent unfair surprise to the latter~~ depends on the nature, purpose, and circumstances of the action.

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

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

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

~~(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond Five Thousand Dollars ($5,000.00) in amount or value of remedy~~ Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless ~~there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.~~

~~(2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section 2-201 of this title) nor of~~

~~securities (Section 8-113 of this title) nor security agreements (Section 9-203 of this title)~~ and until evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

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

Territorial Applicability; Parties' Power to Choose Applicable Law.

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

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

(1) Section 2-402 of this title;

(2) Sections 2A-105 and 2A-106 of this title;

(3) Section 4-102 of this title;

(4) Section 4A-507 of this title;

(5) Section 5-116 of this title;

(6) Section 8-110 of this title; and

(7) Sections 1-9-301 through 1-9-307 of this title.

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

Variation by Agreement.

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

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

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

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

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

Obligation of Good Faith.

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

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

Remedies to Be Liberally Administered.

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

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

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

Waiver or Renunciation of Claim or Right after Breach.

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

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

Prima Facie Evidence by Third Party Documents.

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

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

Performance or Acceptance Under Reservation of Rights.

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

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

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

Option to Accelerate at Will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or in words of similar import, means that the party shall have power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

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

Subordination of obligations.

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

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

Section 2-103. Definitions and Index of Definitions.

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

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

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

~~(c)~~ "Receipt" of goods means taking physical possession of them.

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

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

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

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

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

"Cancellation". Section 2-106(4) of this title.

"Commercial unit". Section 2-105 of this title.

"Confirmed credit". Section 2-325 of this title.

"Conforming to contract". Section 2-106 of this title.

"Contract for sale". Section 2-106 of this title.

"Cover". Section 2-712 of this title.

"Entrusting". Section 2-403 of this title.

"Financing agency". Section 2-104 of this title.

"Future goods". Section 2-105 of this title.

"Goods". Section 2-105 of this title.

"Identification". Section 2-501 of this title.

"Installment contract". Section 2-612 of this title.

"Letter of credit". Section 2-325 of this title.

"Lot". Section 2-105 of this title.

"Merchant". Section 2-104 of this title.

"Overseas". Section 2-323 of this title.

"Person in position of seller". Section 2-707 of this title.

"Present sale". Section 2-106 of this title.

"Sale". Section 2-106 of this title.

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

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

"Termination". Section 2-106 of this title.

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

"Check". Section 3-104 of this title.

"Consignee". Section 7-102 of this title.

"Consignor". Section 7-102 of this title.

"Consumer goods". Section 9-102 of this title.

"Dishonor". Section 3-502 of this title.

"Draft". Section 3-104 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 25. AMENDATORY 12A O.S. 2001, Section 2-105, is amended to read as follows:

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

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the

section on goods to be severed from realty (Section 2-107) but does not include information.

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

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

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

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

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale 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 an assortment of

sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) In this article unless the context otherwise requires:
2 (a) "Buyer in the ordinary course of business" means a
3 person who in good faith and without knowledge that
4 the sale to him is in violation of the ownership
5 rights or security interest or leasehold interest of a
6 third party in the goods, buys in the ordinary course
7 from a person in the business of selling goods of that
8 kind but does not include a pawnbroker. "Buying" may
9 be for cash or by exchange of other property or on
10 secured or unsecured credit and includes receiving
11 goods or documents of title under a preexisting
12 contract for sale but does not include a transfer in
13 bulk or as security for or in total or partial
14 satisfaction of a money debt.
15 (b) "Cancellation" occurs when either party puts an end to
16 the lease contract for default by the other party.
17 (c) "Commercial unit" means such a unit of goods as by
18 commercial usage is a single whole for purposes of
19 lease and division of which materially impairs its
20 character or value on the market or in use. A
21 commercial unit may be a single article, as a machine,
22 or a set of articles, as a suite of furniture or a
23 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) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

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

(g) "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; and

(iii) one of the following occurs:

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

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

(C) the lessee, before signing the lease contract, 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, informs the lessee in writing (a) 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) 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, and (c) 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 of remedies.

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

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

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

(o) "Lessee in the ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in the ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other

1 property or on secured or unsecured credit and
2 includes receiving goods or documents of title under a
3 preexisting lease contract but does not include a
4 transfer in bulk or as security for or in total or
5 partial satisfaction of a money debt.
6 (p) "Lessor" means a person who transfers the right to
7 possession and use of goods under a lease. Unless the
8 context clearly indicates otherwise, the term includes
9 a sublessor.
10 (q) "Lessor's residual interest" means the lessor's
11 interest in the goods after expiration, termination,
12 or cancellation of the lease contract.
13 (r) "Lien" means a charge against or interest in goods to
14 secure payment of a debt or performance of an
15 obligation, but the term does not include a security
16 interest.
17 (s) "Lot" means a parcel or a single article that is the
18 subject matter of a separate lease or delivery,
19 whether or not it is sufficient to perform the lease
20 contract.
21 (t) "Merchant lessee" means a lessee that is a merchant
22 with respect to goods of the kind subject to the
23 lease.

(u) "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) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

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

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

(z) "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.

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

"Instrument". Paragraph (47) of subsection (a) of Section 1-9-102 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) of paragraph (1) of Section 2-103 of this title.

"Sale". Paragraph (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 29. AMENDATORY 12A O.S. 2001, Section 2A-501, is amended to read as follows:

Section 2A-501.

DEFAULT; PROCEDURE

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in subsection ~~(1)~~ (a) of Section ~~1-106~~ 18 of this ~~title~~ act or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

SECTION 30. AMENDATORY 12A O.S. 2001, Section 2A-518, is amended to read as follows:

Section 2A-518.

COVER; SUBSTITUTE GOODS

(1) After a default by a lessor under the lease contract of the type described in subsection (1) of Section 2A-508 of this title, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-

503 of this title), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

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

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

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

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

Section 2A-519.

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

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

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

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (subsection (3) of Section 2A-516 of

this title), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

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

Section 2A-527.

LESSOR'S RIGHTS TO DISPOSE OF GOODS

(1) After a default by a lessee under the lease contract of the type described in subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526 of this title), or, if agreed, after other

default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

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

(i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement,

(ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and

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

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

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

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

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

Section 2A-528.

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

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties

(subsection ~~(3)~~ (c) of Section ~~1-102~~ 15 of this act and Section 2A-503 of this title), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section 2A-527 of this title, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523, or, if agreed, for other default of the lessee:

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

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

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

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

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

Section 4A-106. TIME PAYMENT ORDER IS RECEIVED

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~paragraph (27) of~~ Section ~~1-201~~ 1-202 of ~~Title 12A of the Oklahoma Statutes~~ this title. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders,

cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

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

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

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

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section ~~10~~ 4A-202 of this ~~act~~ title, or (ii) not enforceable, in whole or in part, against the customer under Section ~~11~~ 4A-203 of this ~~act~~ title, the

bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

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

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

Section 5-103. Scope.

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

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

(c) With the exception of this subsection, subsections (a) and (d) of this section, paragraphs (9) and (10) of subsection (a) of Section 5-102 of this title, subsection (d) of Section 5-106 of this title, and subsection (d) of Section 5-114 of this title, and except to the extent prohibited in ~~subsection (3) of~~ Section ~~1-102~~ 15 of this ~~title~~ act and subsection (d) of Section 5-117 of this title, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which

underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

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

Section 1-9-311.

PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES

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

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

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

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's

obtaining priority over the rights of a lien creditor with respect to the property; or

(4) the law or procedure of a federally recognized Indian tribe, if the security interest is in a vehicle registered or to be registered by the federally recognized Indian tribe and if within thirty (30) days after the security interest attaches, it is noted on the face of a certificate of title issued by the Indian tribe or, notwithstanding subsection G of Section 1110 of Title 47 of the Oklahoma Statutes, the security interest is otherwise perfected under an applicable law or procedure of that tribe.

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

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

(d) During any period in which collateral, described in Section 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma Statutes, is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

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

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

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

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

1 SECTION 42. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS.