

EHB 3084

THE STATE SENATE
Monday, April 3, 2006

ENGROSSED

House Bill No. 3084

As Amended

ENGROSSED HOUSE BILL NO. 3084 - By: MORGAN (Fred) of the House and
LASTER of the Senate.

[Uniform Commercial Code - leases - 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~~

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

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

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

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

20 (d) "Consumer lease" means a lease that a lessor regularly
21 engaged in the business of leasing or selling makes to
22 a lessee who is an individual and who takes under the
23 lease primarily for a personal, family, or household

1 purpose, if the total payments to be made under the
2 lease contract, excluding payments for options to
3 renew or buy, do not exceed Forty-five Thousand
4 Dollars (\$45,000.00).

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

7 ~~(g)~~ (f) "Finance lease" means a lease with respect to which:

8 (i) the lessor does not select, manufacture or supply
9 the goods;

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

16 (iii) one of the following occurs:

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

22 (B) the lessee's approval of the ~~contract~~
23 agreement by which the lessor acquired, or

1 proposes to acquire, the goods or the right
2 to possession and use of the goods is a
3 condition to effectiveness of the lease
4 ~~contract~~ agreement;

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

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

22 (I) of the identity of the person supplying
23 the goods to the lessor, unless the

1 lessee has selected that person and
2 directed the lessor to acquire the
3 goods or the right to possession and
4 use of the goods from that person, ~~(b)~~ i;

5 (II) that the lessee is entitled under this
6 article to the promises and warranties,
7 including those of any third party,
8 provided to the lessor by the person
9 supplying the goods in connection with
10 or as part of the contract by which the
11 lessor acquired the goods or the right
12 to possession and use of the goods, ~~r~~ i
13 and ~~(e)~~

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

21 ~~(h)~~ (g) "Goods" means all things that are movable at the time
22 of identification to the lease contract, or that are
23 fixtures (Section 2A-309 of this title). The term

1 includes future goods, specially manufactured goods,
2 and the unborn young of animals. The term does not
3 include information, the money in which the price is
4 to be paid, investment securities under Article 8 of
5 the Uniform Commercial Code, minerals or the like,
6 including oil and gas, before extraction, or choses in
7 action.

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

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

20 ~~(k)~~ (j) "Lease agreement" means the bargain, with respect to
21 the lease, of the lessor and the lessee in fact as
22 found in their language or by implication from other
23 circumstances including course of dealing or usage of

1 trade, or course of performance as provided in this
2 article. Unless the context clearly indicates
3 otherwise, the term includes a sublease agreement.

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

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

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

15 ~~(o)~~ (n) "Lessee in the ordinary course of business" means a
16 person ~~who~~ that leases goods in good faith ~~and,~~
17 without knowledge that the lease ~~to him is in~~
18 ~~violation~~ violates the rights of the ~~ownership rights~~
19 ~~or security interest or leasehold interest of a third~~
20 ~~party in the goods leases~~ another person, and in the
21 ordinary course from a person, other than a
22 pawnbroker, in the business of selling or leasing
23 goods of that kind ~~but does not include a pawnbroker.~~

1 ~~"Leasing"~~ A person leases in ordinary course if the
2 lease to the person comports with the usual or
3 customary practices in the kind of business in which
4 the lessor is engaged or with the lessor's own usual
5 or customary practices. A lessee in ordinary course
6 of business may be lease for cash or, by exchange of
7 other property, or on secured or unsecured credit, and
8 ~~includes acquiring~~ may acquire goods or documents of
9 title under a preexisting lease contract ~~but does not~~
10 ~~include.~~ Only a lessee that takes possession of the
11 goods or has a right to recover the goods from the
12 lessor under this article may be a lessee in ordinary
13 course of business. A person that acquires goods in a
14 transfer in bulk or as security for or in total or
15 partial satisfaction of a money debt is not a lessee
16 in ordinary course of business.

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

21 ~~(q)~~ (p) "Lessor's residual interest" means the lessor's
22 interest in the goods after expiration, termination,
23 or cancellation of the lease contract.

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

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

5 ~~"Account". Paragraph (2) of subsection (a) of Section~~
6 ~~1-9-102 of this title.~~

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

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

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

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

15 ~~"Document". Paragraph (30) of subsection (a) of Section~~
16 ~~1-9-102 of this title.~~

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

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

21 ~~"Instrument". Paragraph (47) of subsection (a) of Section~~
22 ~~1-9-102 of this title.~~

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

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

4 ~~"Mortgage". Paragraph (55) of subsection (a) of Section~~
5 ~~1-9-102 of this title.~~

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

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

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

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

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

14 "Seller". Subparagraph ~~(d)~~ of paragraph (1) of Section 2-
15 103 of this title.

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

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

21 Section 2A-211.

22 WARRANTIES AGAINST INTERFERENCE AND AGAINST

23 INFRINGEMENT; LESSEE'S OBLIGATION AGAINST

1 INFRINGEMENT

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

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

13 a. a claim to or interest in the goods not attributable
14 to the lessee's own act or omission which will
15 interfere with the lessee's enjoyment of its leasehold
16 interest; or

17 b. a colorable claim to or interest in the goods which
18 will unreasonably expose the lessee to litigation.

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

22 (a) a claim or interest in the goods that arose from an
23 act or omission of the lessor which will interfere

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

6 (3) A Except in a finance lease, a lessor that is a merchant
7 regularly dealing in goods of the kind warrants that the goods will
8 be delivered free of the rightful claim of a third party by way of
9 infringement or the like. However, a lessee ~~who~~ that furnishes
10 specifications to a lessor or a supplier ~~shall hold~~ holds the lessor
11 and the supplier harmless against any claim ~~by way~~ of infringement
12 or the like that arises out of compliance with the specifications.

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

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

22 Section 2A-303.

23 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT

1 OR OF LESSOR'S RESIDUAL INTEREST IN GOODS;

2 DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS

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

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

19 (3) A provision in a lease agreement which (i) prohibits a
20 transfer of a right to damages for default with respect to the whole
21 lease contract or of a right to payment arising out of the
22 transferor's due performance of the transferor's entire obligation,
23 or (ii) makes such a transfer an event of default, is not

1 enforceable, and such a transfer is not a transfer that materially
2 impairs the prospect of obtaining return performance by, materially
3 changes the duty of, or materially increases the burden of risk
4 imposed on, the other party to the lease contract within ~~the purview~~
5 ~~of~~ subsection (4) of this section.

6 (4) Subject to subsection (3) of this section and Section
7 1-9-407 of this ~~article~~ title:

- 8 (a) if a transfer is made ~~which~~ that is ~~made~~ an event of
9 default under a lease agreement, the party to the
10 lease contract not making the transfer, unless that
11 party waives the default or otherwise agrees, has the
12 rights and remedies described in subsection (2) of
13 Section 2A-501 of this title; or
14 (b) if paragraph (a) of this subsection is not applicable
15 and if a transfer is made that (i) is prohibited under
16 a lease agreement or (ii) materially impairs the
17 prospect of obtaining return performance by,
18 materially changes the duty of, or materially
19 increases the burden or risk imposed on, the other
20 party to the lease contract, unless the party not
21 making the transfer agrees at any time to the transfer
22 in the lease contract or otherwise, then, except as
23 limited by contract, (i) the transferor is liable to

1 the party not making the transfer for damages caused
2 by the transfer to the extent that the damages could
3 not reasonably be prevented by the party not making
4 the transfer and (ii) a court having jurisdiction may
5 grant other appropriate relief, including cancellation
6 of the lease contract or an injunction against the
7 transfer.

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

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

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

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

3 Section 2A-506.

4 STATUTE OF LIMITATIONS

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

11 (2) A cause of action for default accrues when the act or
12 omission on which the default or breach of warranty is based is or
13 should have been discovered by the aggrieved party, or when the
14 default occurs, whichever is later. A cause of action for indemnity
15 accrues when the act or omission on which the claim for indemnity is
16 based is or should have been discovered by the indemnified party,
17 whichever is later.

18 (3) If an action commenced within the time limited by
19 subsection (1) of this section is so terminated as to leave
20 available a remedy by another action for the same default or breach
21 of warranty or indemnity, the other action may be commenced after
22 the expiration of the time limited and within six (6) months after
23 the termination of the first action unless the termination resulted

1 from voluntary discontinuance or from dismissal for failure or
2 neglect to prosecute.

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

6 SECTION 5. AMENDATORY Section 16, Chapter 139, O.S.L.
7 2005 (12A O.S. Supp. 2005, Section 1-303), is amended to read as
8 follows:

9 Section 1-303.

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

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

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

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

19 (b) A "course of dealing" is a sequence of conduct concerning
20 previous transactions between the parties to a particular
21 transaction that is fairly to be regarded as establishing a common
22 basis of understanding for interpreting their expressions and other
23 conduct.

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

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

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

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

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

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

4 (f) Subject to Section 2-209 and Section 2A-208 of ~~Title 12A of~~
5 ~~the Oklahoma Statutes~~ this title, a course of performance is
6 relevant to show a waiver or modification of any term inconsistent
7 with the course of performance.

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

12 SECTION 6. This act shall become effective November 1, 2006.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-28-06 - DO
14 PASS, As Amended.