

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3129

By: Morgan (Fred)

AS INTRODUCED

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 2-102, 2-103, as last amended by Section 1, Chapter 473, O.S.L. 2005, 2-104, as amended by Section 43, Chapter 140, O.S.L. 2005, 2-105, as amended by Section 25, Chapter 139, O.S.L. 2005, 2-201, 2-202, as amended by Section 27, Chapter 139, O.S.L. 2005, 2-203, 2-204, 2-205, 2-206, 2-207, 2-209, 2-210, 2-302, 2-304, 2-305, 2-308, 2-309, 2-310, as amended by Section 44, Chapter 140, O.S.L. 2005, 2-311, 2-312, 2-313, 2-314, 2-316, 2-318, 2-325, 2-326, 2-328, 2-401, as amended by Section 46, Chapter 140, O.S.L. 2005, 2-402, 2-403, 2-501, 2-502, 2-503, as amended by Section 47, Chapter 140, O.S.L. 2005, 2-504, 2-505, as amended by Section 48, Chapter 140, O.S.L. 2005, 2-506, as amended by Section 49, Chapter 140, O.S.L. 2005, 2-507, 2-508, 2-509, as amended by Section 50, Chapter 140, O.S.L. 2005, 2-510, 2-512, 2-513, 2-514, 2-601, 2-602, 2-603, 2-604, 2-605, as amended by Section 51, Chapter 140, O.S.L. 2005, 2-606, 2-607, 2-608, 2-609, 2-610, 2-611, 2-612, 2-613, 2-614, 2-615, 2-616, 2-702, 2-703, 2-704, 2-705, as amended by Section 52, Chapter 140, O.S.L. 2005, 2-706, 2-707, 2-708, 2-709, 2-710, 2-711, 2-712, 2-713, 2-714, 2-716, 2-718, 2-722, 2-723, 2-724 and 2-725 (12A O.S. Supp. 2005, Sections 2-103, 2-104, 2-105, 2-202, 2-310, 2-401, 2-503, 2-505, 2-506, 2-509, 2-605 and 2-705), which relate to Article 2 of the Uniform Commercial Code, which pertains to sales; modifying scope; modifying definitions; modifying certain procedures and requirements; modifying terminology to reflect inscription of information in medium other than written document; repealing 12A O.S. 2001, Section 2-208, which relates to course of performance or practical construction; repealing 12A O.S. 2001, Sections 2-319, 2-320, 2-321, 2-322, 2-323, as amended by Section 45, Chapter 140, O.S.L. 2005 and 2-324 (12A O.S. Supp. 2005, Section 2-323), which relate to certain shipping terms; 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 2-102, is amended to read as follows:

Section 2-102. Scope; Certain Security and Other Transactions Excluded from this Article.

(1) Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

(2) If a transaction includes information and goods, this article does not apply to the part involving information, including informational rights in it and creation or modification of it, or to the media on which the information is contained. However, if a copy of a computer program or other information is contained in and sold as part of goods other than the media on which the information is contained, this article applies to the computer program unless:

- (a) the goods are a computer or computer peripheral, or
- (b) giving the buyer of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold.

SECTION 2. AMENDATORY 12A O.S. 2001, Section 2-103, as last amended by Section 1, Chapter 473, O.S.L. 2005 (12A O.S. Supp. 2005, 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~~ that buys or contracts to buy goods.
- (b) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would

enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Whether a term is "conspicuous" or not is a decision for the court.

Conspicuous terms include the following:

(i) for a person:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to 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; and

(ii) for a person or an electronic agent, a term that is so placed in a record or display that the person or electronic agent may not proceed without taking action with respect to the particular term.

(c) "Consumer" means an individual who buys or contracts to buy goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family, or household purposes.

(d) "Consumer contract" means a contract between a merchant seller and a consumer.

(e) "Delivery" means the voluntary transfer of physical possession or control of goods.

- (f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
- (h) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- (i) "Foreign exchange transaction" means a transaction in which one party agrees to deliver a quantity of a specified money or unit of account in consideration of the other party's agreement to deliver another quantity of a different money or unit of account either currently or at a future date, and in which delivery is to be through funds transfer, book entry accounting, or other form of payment order, or other agreed means to transfer a credit balance. The term includes a transaction of this type involving two or more monies and spot, forward, option, or other products derived from underlying monies and any combination of these transactions. The term does not include a transaction involving two or more monies in which one or both of the parties is obligated to make physical delivery, at the time of contracting or in the future, of banknotes, coins, or other form of legal tender or specie.
- (j) Reserved.
- (k) "Goods" means all things that are movable at the time of identification to a contract for sale. The term

includes future goods, specially manufactured goods, the unborn young of animals, growing crops, and other identified things attached to realty as described in Section 2-107 of this title. The term does not include information, the money in which the price is to be paid, investment securities under Article 8, the subject matter of foreign exchange transactions, or choses in action.

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

~~(e)~~ (m) Reserved.

(n) "Remedial promise" means a promise by the seller to repair or replace goods or to refund all or part of the price of goods upon the happening of a specified event.

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

(p) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(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) "Control" as provided in Section 7-106 of this title and
the following definitions in other articles apply to this article:

"Check". Subsection (f) of Section 3-104 of this title.

"Consignee". Paragraph (3) of subsection (a) of Section 7-
102 of this title.

"Consignor". Paragraph (4) of subsection (a) of Section
7-102 of this title.

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

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

"Draft". Subsection (e) of Section 3-104 of this title.

"Honor". Paragraph (8) of subsection (a) of Section 5-102
of this title.

"Injunction against honor". Subsection (b) of Section 5-109 of this title.

"Letter of credit". Paragraph (10) of subsection (a) of Section 5-102 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 3. AMENDATORY 12A O.S. 2001, Section 2-104, as amended by Section 43, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-104), is amended to read as follows:

Section 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency".

(1) "Merchant" means a person ~~who~~ that deals in goods of the kind or otherwise ~~by his~~ holds itself out by occupation ~~holds himself out~~ as having knowledge or skill peculiar to the practices or goods involved in the transaction or to ~~whom such~~ which the knowledge or skill may be attributed by ~~his~~ the person's employment of an agent or broker or other intermediary ~~who by his~~ that holds itself out by occupation ~~holds himself out~~ as having ~~such~~ the knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person ~~who~~ that in the ordinary course of business makes advances against goods or documents of title or ~~who~~ that by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. ~~"Financing agency"~~ The term includes also a bank or other person ~~who~~ that similarly intervenes between persons ~~who~~ that are in the position of seller and buyer in respect to the goods (Section 2-707 of this title).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 2-105, as amended by Section 25, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, 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)~~ (2) There may be a sale of a part interest in existing identified goods.

~~(4)~~ (3) 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~~ the 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~~ that then becomes an owner in common.

~~(5)~~ (4) "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)~~ (5) "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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-108 of Title 12A, unless there is created a duplication in numbering, reads as follows:

TRANSACTIONS SUBJECT TO OTHER LAW.

(1) A transaction subject to this article is also subject to any applicable:

- (a) certificate of title statutes of this state covering automobiles, other motor vehicles, trailers, manufactured or mobile homes, or boats, except with respect to the rights of a buyer in ordinary course of business under subsection (2) of Section 2-403 of Title 12A of the Oklahoma Statutes which arise before a certificate of title covering the goods is effective in the name of any other buyer;
- (b) rule of law that establishes a different rule for consumers; or
- (c) statute of this state applicable to the transaction, such as a statute dealing with:
 - (i) the sale or lease of agricultural products;
 - (ii) the transfer of human blood, blood products, tissues, or parts;
 - (iii) the consignment or transfer by artists of works of art or fine prints;
 - (iv) distribution agreements, franchises, and other relationships through which goods are sold;

(v) the misbranding or adulteration of food products or drugs; and

(vi) dealers in particular products, such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids.

(2) Except for the rights of a buyer in ordinary course of business under paragraph (a) of subsection (1) of this section, in the event of a conflict between this article and a law referred to in subsection (1) of this section, that law governs.

(3) For purposes of this article, failure to comply with a law referred to in subsection (1) of this section has only the effect specified in that law.

(4) This article 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 6. AMENDATORY 12A O.S. 2001, Section 2-201, is amended to read as follows:

Section 2-201. Formal Requirements; Statute of Frauds.

(1) ~~Except as otherwise provided in this section a~~ A contract for the sale of goods for the price of ~~Five Hundred Dollars (\$500.00)~~ Five Thousand Dollars (\$5,000.00) or more is not enforceable by way of action or defense unless there is some ~~writing~~ record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against ~~whom~~ which enforcement is sought or by ~~his~~ the party's authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~ subsection beyond the quantity of goods shown in ~~such writing~~ the record.

(2) Between merchants if within a reasonable time a ~~writing~~ record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) of this section against ~~such party~~ the recipient unless ~~written~~ notice of objection to its contents is given in a record within ten (10) days after it is received.

(3) A contract ~~which~~ that does not satisfy the requirements of subsection (1) of this section but which is valid in other respects is enforceable:

- (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances ~~which~~ that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; ~~or~~
- (b) if the party against ~~whom~~ which enforcement is sought admits in ~~his~~ the party's pleading, testimony or otherwise ~~in court~~ under oath that a contract for sale was made, but the contract is not enforceable under this ~~provision~~ paragraph beyond the quantity of goods admitted; or
- (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2-606 of this title).

(4) A contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within one (1) year or any other period after its making.

SECTION 7. AMENDATORY 12A O.S. 2001, Section 2-202, as amended by Section 27, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-202), is amended to read as follows:

Section 2-202. Final ~~Written~~ Expression in a Record: Parol or Extrinsic Evidence.

(1) Terms with respect to which the confirmatory ~~memoranda records~~ records of the parties agree or which are otherwise set forth in a ~~writing~~ record 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 by evidence of:

(a) ~~by~~ course of performance, course of dealing or usage of trade (Section ~~16~~ 1-303 of this ~~act~~ title); and

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

(2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

SECTION 8. AMENDATORY 12A O.S. 2001, Section 2-203, is amended to read as follows:

Section 2-203. Seals Inoperative.

The affixing of a seal to a ~~writing~~ record evidencing a contract for sale or an offer to buy or sell goods does not constitute the ~~writing~~ record in a sealed instrument ~~and the~~ the. The law with respect to sealed instruments does not apply to such a contract or offer.

SECTION 9. AMENDATORY 12A O.S. 2001, Section 2-204, is amended to read as follows:

Section 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of ~~such~~ a contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.

(2) An agreement sufficient to constitute a contract for sale may be found even ~~though~~ if the moment of its making is undetermined.

(3) Even ~~though~~ if one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

(4) Except as otherwise provided in Sections 2-211 through 2-213 of this title, the following rules apply:

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:

(i) cause the electronic agent to complete the transaction or performance; or

(ii) indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

SECTION 10. AMENDATORY 12A O.S. 2001, Section 2-205, is amended to read as follows:

Section 2-205. Firm Offers.

An offer by a merchant to buy or sell goods in a signed ~~writing~~ which record that by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may ~~such~~ the period of irrevocability exceed three (3) months; ~~but any.~~ Any such term of assurance ~~on~~ in a form supplied by the offeree must be separately signed by the offeror.

SECTION 11. AMENDATORY 12A O.S. 2001, Section 2-206, is amended to read as follows:

Section 2-206. Offer and Acceptance in Formation of Contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances:

- (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
- (b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but ~~such a~~ the shipment of ~~non-conforming~~ nonconforming goods ~~does not constitute~~ is not an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) ~~Where~~ If the beginning of a requested performance is a reasonable mode of acceptance, an offeror ~~who~~ that is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

(3) A definite and seasonable expression of acceptance in a record operates as an acceptance even if it contains terms additional to or different from the offer.

(4) The terms of a record may be adopted after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or in part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins. If terms are to be adopted by later agreement and the party receiving the later record had reason to know that the other party did not intend to be bound unless the terms are so adopted, a contract is not formed if the party receiving the record does not agree to the terms.

SECTION 12. AMENDATORY 12A O.S. 2001, Section 2-207, is amended to read as follows:

Section 2-207. ~~Additional Terms In Acceptance or~~ Effect of Confirmation.

~~(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an~~ Subject to Section 2-202 of this title, if (i) conduct by both parties recognizes the existence of a contract although their records do not otherwise establish a contract, (ii) a contract is formed by an offer and acceptance even though it states, or (iii) a contract formed in any manner is confirmed by a record that contains terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

~~(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of~~ in the contract unless being confirmed, the terms of the contract are:

- (a) ~~the offer expressly limits acceptance to the terms of the offer~~ that appear in the records of both parties;
- (b) ~~they materially alter it; or~~ terms, whether in a record or not, to which both parties agree; and

(c) ~~notification of objection to them has already been given or is given within a reasonable time after notice of them is received.~~

~~(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms supplied or incorporated under any other provisions provision of this act the Uniform Commercial Code.~~

SECTION 13. AMENDATORY 12A O.S. 2001, Section 2-209, is amended to read as follows:

Section 2-209. Modification, Rescission and Waiver.

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) ~~A signed~~ An agreement in a signed record which excludes modification or rescission except by a signed ~~writing cannot~~ record may not be otherwise modified or rescinded, but except as between merchants such a requirement ~~on~~ in a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of ~~the statute of frauds section of this article (Section 2-201)~~ of this title must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) of this section, it ~~can~~ may operate as a waiver.

(5) A party ~~who~~ that has made a waiver affecting an executory portion of ~~the~~ a contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

SECTION 14. AMENDATORY 12A O.S. 2001, Section 2-210, is amended to read as follows:

Section 2-210. Delegation of Performance; Assignment of Rights.

(1) ~~A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.~~

~~(2) Except~~ If the seller or buyer assigns rights under a contract, the following rules apply:

(a) Subject to paragraph (b) of this subsection and except as otherwise provided in Section 1-9-406 of this title, ~~unless or~~ otherwise agreed, all rights of ~~either~~ the seller or the buyer ~~can~~ may be assigned ~~except where~~ unless the assignment would materially change the duty of the other party, ~~or~~ increase materially the burden or risk imposed on ~~him~~ that party by ~~his~~ the contract, or impair materially ~~his~~ that party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of ~~his~~ its entire obligation ~~can~~ may be assigned despite an agreement otherwise.

~~(3) (b)~~ The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not ~~a transfer~~ an assignment that materially changes the duty of or ~~increases~~ materially increases the burden or risk imposed on the buyer or ~~impairs~~ materially impairs the buyer's chance of obtaining return performance ~~within the purview of~~ under paragraph ~~(2)~~ (a) of this ~~section~~ subsection unless, and ~~then~~ only to the extent that, enforcement ~~actually~~ of the security interest results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, ~~but (i).~~ However, the seller is

liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and ~~(ii)~~ a court ~~having jurisdiction~~ may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

~~(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.~~

~~(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance~~

(2) If the seller or buyer delegates performance of its duties under a contract, the following rules apply:

(a) A party may perform its duties through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. Delegation of performance does not relieve the delegating party of any duty to perform or liability for breach.

(b) Acceptance of a delegation of duties by the assignee constitutes a promise ~~by him~~ to perform those duties. ~~This~~ The promise is enforceable by either the assignor or the other party to the original contract.

~~(6)~~ (c) The other party may treat any ~~assignment which delegates performance~~ delegation of duties as creating reasonable grounds for insecurity and may without prejudice to ~~his~~ its rights

against the assignor demand assurances from the assignee ~~under~~
Section 2-609) of this title.

(d) A contractual term prohibiting the delegation of duties otherwise delegable under paragraph (a) of this subsection is enforceable, and an attempted delegation is not effective.

(3) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances, as in an assignment for security, indicate the contrary, it is also a delegation of performance of the duties of the assignor.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-211 of Title 12A, unless there is created a duplication in numbering, reads as follows:

LEGAL RECOGNITION OF ELECTRONIC CONTRACTS, RECORDS, AND SIGNATURES.

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) This article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed by electronic means or in electronic form.

(4) A contract formed by the interaction of an individual and an electronic agent under Section 2-204(4) (b) does not include terms provided by the individual if the individual had reason to know that the agent could not react to the terms as provided.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-212 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ATTRIBUTION.

An electronic record or electronic signature is attributable to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-213 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ELECTRONIC COMMUNICATION.

(1) If the receipt of an electronic communication has a legal effect, it has that effect even if no individual is aware of its receipt.

(2) Receipt of an electronic acknowledgment of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.

SECTION 18. AMENDATORY 12A O.S. 2001, Section 2-302, is amended to read as follows:

Section 2-302. Unconscionable Contract or ~~Clause~~ Term.

(1) If the court as a matter of law finds the contract or any ~~clause term~~ of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable ~~clause term~~, or it may so limit the application of any unconscionable ~~clause term~~ as to avoid any unconscionable result.

(2) ~~When~~ If it is claimed or appears to the court that the contract or any ~~clause term~~ thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

SECTION 19. AMENDATORY 12A O.S. 2001, Section 2-304, is amended to read as follows:

Section 2-304. Price Payable in Money, Goods, ~~Realty~~ Real Property, or Otherwise.

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods ~~which he~~ that the party is to transfer.

(2) Even ~~though~~ if all or part of the price is payable in an interest in ~~realty~~ real property the transfer of the goods, and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in ~~realty~~ real property or the transferor's obligations in connection therewith.

SECTION 20. AMENDATORY 12A O.S. 2001, Section 2-305, is amended to read as follows:

Section 2-305. Open Price Term.

(1) The parties if they so intend ~~can~~ may conclude a contract for sale even ~~though~~ if the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

- (a) nothing is said as to price; ~~or~~
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price ~~for him to fix~~ to be fixed in good faith.

(3) ~~When~~ If a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party, the other may at ~~his~~ the party's option treat the contract as cancelled or ~~himself~~ the party may fix a reasonable price.

(4) ~~Where~~ If, however, the parties intend not to be bound unless the price ~~be~~ is fixed or agreed and it is not fixed or

agreed, there is no contract. In such case the buyer must return any goods already received or if unable ~~to~~ to do so must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

SECTION 21. AMENDATORY 12A O.S. 2001, Section 2-308, is amended to read as follows:

Section 2-308. Absence of Specified Place for Delivery.

Unless otherwise agreed:

- (a) the place for delivery of goods is the seller's place of business or if ~~he has~~ none ~~his~~, the seller's residence; but
- (b) in a contract for sale of identified goods ~~which~~ that to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and
- (c) documents of title may be delivered through customary banking channels.

SECTION 22. AMENDATORY 12A O.S. 2001, Section 2-309, is amended to read as follows:

Section 2-309. Absence of Specific Time Provisions; Notice of Termination.

(1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) ~~Where~~ If the contract provides for successive performances but is indefinite in duration, it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. A

term specifying standards for the nature and timing of notice is enforceable if the standards are not manifestly unreasonable.

SECTION 23. AMENDATORY 12A O.S. 2001, Section 2-310, as amended by Section 44, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-310), is amended to read as follows:

Section 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; ~~and~~

(b) if the seller is required or authorized to send the goods ~~he, the seller~~ may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless ~~such~~ the inspection is inconsistent with the terms of the contract (Section 2-513 of this title); ~~and~~

(c) if tender of delivery is ~~authorized and~~ agreed to be made by way of documents of title otherwise than by ~~subsection~~ paragraph (b) of this section, then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) ~~where~~ if the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment but ~~post-dating~~ postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

SECTION 24. AMENDATORY 12A O.S. 2001, Section 2-311, is amended to read as follows:

Section 2-311. Options and Cooperation Respecting Performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2-204 of this title) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed, specifications relating to assortment of the goods are at the buyer's option and ~~except as otherwise provided in subsections (1) (c) and (3) of Section 2-319~~ specifications or arrangements relating to shipment are at the seller's option.

(3) ~~Where such~~ If the specification would materially affect the other party's performance but is not seasonably made or ~~where~~ if one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in ~~his own~~ that party's performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of ~~his own~~ that party's performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

SECTION 25. AMENDATORY 12A O.S. 2001, Section 2-312, is amended to read as follows:

Section 2-312. Warranty of Title and Against Infringement;
Buyer's Obligation Against Infringement.

(1) Subject to subsection ~~(2)~~ (3) of this section, there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful and shall not unreasonably expose the buyer

to litigation because of any colorable claim to or interest in the goods; and

- (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

~~(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.~~

~~(3) Unless otherwise agreed, a seller ~~who~~ that is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.~~

(3) A warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the buyer reason to know that the seller does not claim title, that the seller is purporting to sell only the right or title as the seller or a third person may have, or that the seller is selling subject to any claims of infringement or the like.

SECTION 26. AMENDATORY 12A O.S. 2001, Section 2-313, is amended to read as follows:

Section 2-313. Express Warranties by Affirmation, Promise, Description, Sample.

(1) In this section, "immediate buyer" means a buyer that enters into a contract with the seller.

(2) Express warranties by the seller to the immediate buyer are created as follows:

- (a) Any affirmation of fact or promise made by the seller ~~to the buyer~~ which relates to the goods and becomes

part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model ~~which~~ that is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

~~(2)~~ (3) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that ~~he~~ the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

(4) Any remedial promise made by the seller to the immediate buyer creates an obligation that the promise will be performed upon the happening of the specified event.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-313A of Title 12A, unless there is created a duplication in numbering, reads as follows:

OBLIGATION TO REMOTE PURCHASER CREATED BY RECORD PACKAGED WITH OR ACCOMPANYING GOODS.

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in a record packaged with or accompanying the goods the seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the seller reasonably expects the record to be, and the record is, furnished to the remote purchaser, the seller has an obligation to the remote purchaser that:

(a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and

(b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

(a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase or if the modification or limitation is contained in the record that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or

consequential damages under Section 2-715 of Title 12A of the Oklahoma Statutes, but not for lost profits.

- (c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) of this section the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

"Purchase". Section 1-201 of Title 12A of the Oklahoma Statutes.

"Record". Section 2-103 of Title 12A of the Oklahoma Statutes.

"Remedial promise". Section 2-103 of Title 12A of the Oklahoma Statutes.

"Remedy". Section 1-201 of Title 12A of the Oklahoma Statutes.

"Sale". Section 2-106 of Title 12A of the Oklahoma Statutes.

"Seller". Section 2-103 of Title 12A of the Oklahoma Statutes.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-313B of Title 12A, unless there is created a duplication in numbering, reads as follows:

OBLIGATION TO REMOTE PURCHASER CREATED BY COMMUNICATION TO THE PUBLIC.

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) This section applies only to new goods and goods sold or leased as new goods in a transaction of purchase in the normal chain of distribution.

(3) If in an advertisement or a similar communication to the public a seller makes an affirmation of fact or promise that relates to the goods, provides a description that relates to the goods, or makes a remedial promise, and the remote purchaser enters into a transaction of purchase with knowledge of and with the expectation that the goods will conform to the affirmation of fact, promise, or description, or that the seller will perform the remedial promise, the seller has an obligation to the remote purchaser that:

- (a) the goods will conform to the affirmation of fact, promise, or description unless a reasonable person in the position of the remote purchaser would not believe that the affirmation of fact, promise, or description created an obligation; and
- (b) the seller will perform the remedial promise.

(4) It is not necessary to the creation of an obligation under this section that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to undertake an obligation, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create an obligation.

(5) The following rules apply to the remedies for breach of an obligation created under this section:

- (a) The seller may modify or limit the remedies available to the remote purchaser if the modification or limitation is furnished to the remote purchaser no later than the time of purchase. The modification or limitation may be furnished as part of the communication that contains the affirmation of fact, promise, or description.

(b) Subject to a modification or limitation of remedy, a seller in breach is liable for incidental or consequential damages under Section 2-715 of Title 12A of the Oklahoma Statutes, but not for lost profits.

(c) The remote purchaser may recover as damages for breach of a seller's obligation arising under subsection (3) of this section the loss resulting in the ordinary course of events as determined in any reasonable manner.

(6) An obligation that is not a remedial promise is breached if the goods did not conform to the affirmation of fact, promise, or description creating the obligation when the goods left the seller's control.

SECTION 29. AMENDATORY 12A O.S. 2001, Section 2-314, is amended to read as follows:

Section 2-314. Implied Warranty: Merchantability; Usage of Trade.

(1) Unless excluded or modified (Section 2-316 of this title), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; ~~and~~

(b) in the case of fungible goods, are of fair average quality within the description; ~~and~~

(c) are fit for the ordinary purposes for which ~~such~~ goods of that description are used; ~~and~~

- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; ~~and~~
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316 of this title) other implied warranties may arise from course of dealing or usage of trade.

SECTION 30. AMENDATORY 12A O.S. 2001, Section 2-316, is amended to read as follows:

Section 2-316. Exclusion or Modification of Warranties. - (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but, subject to ~~the provisions of this Article on parol or extrinsic evidence~~ (Section 2-202) of this title, negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it in a consumer contract the language must be in a record, be conspicuous, and state "The seller undertakes no responsibility for the quality of the goods except as otherwise provided in the contract", and in any other contract the language must mention merchantability and in case of a ~~writing~~ record must be conspicuous, ~~and~~ Subject to subsection (3) of this section, to exclude or modify ~~any~~ the implied warranty of fitness, the exclusion must be ~~by a writing~~ in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer contract must state "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except

as otherwise provided in the contract", and in any other contract the language is sufficient if it states, for example, that "There are no warranties ~~which~~ that extend beyond the description on the face hereof". Language that satisfies the requirements of this subsection for the exclusion or modification of a warranty in a consumer contract also satisfies the requirements for any other contract.

(3) Notwithstanding subsection (2) of this section:

- (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language ~~which~~ that in common understanding calls the buyer's attention to the exclusion of warranties ~~and,~~ makes plain that there is no implied warranty, and, in a consumer contract evidenced by a record, is set forth conspicuously in the record; and
- (b) ~~when~~ if the buyer before entering into the contract has examined the goods or the sample or model as fully as ~~he~~ desired or has refused to examine the goods after a demand by the seller there is no implied warranty with regard to defects ~~which~~ that an examination ~~ought~~ in the circumstances ~~to~~ should have revealed to ~~him~~ the buyer; and
- (c) an implied warranty ~~can~~ may also be excluded or modified by course of dealing or course of performance or usage of trade; and
- (d) the implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties

of merchantability and fitness shall apply to the sale or barter of horses.

(4) Remedies for breach of warranty ~~can~~ may be limited in accordance with ~~the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy~~ ~~(Sections 2-718 and 2-719)~~ of this title.

SECTION 31. AMENDATORY 12A O.S. 2001, Section 2-318, is amended to read as follows:

Section 2-318. Third-Party Beneficiaries of Warranties Express or Implied and Obligations.

(1) In this section:

(a) "Immediate buyer" means a buyer that enters into a contract with the seller.

(b) "Remote purchaser" means a person that buys or leases goods from an immediate buyer or other person in the normal chain of distribution.

(2) A seller's warranty to an immediate buyer, whether express or implied, a seller's remedial promise to an immediate buyer, or a seller's obligation to a remote purchaser under Section 27 or 28 of this act extends to any natural person individual who is in the family or household of his the immediate buyer or the remote purchaser or who is a guest in his the home of either if it is reasonable to expect that such the person may use, consume or be affected by the goods and who is injured in person by breach of the warranty, remedial promise, or obligation.

~~(2) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a buyer to other persons.~~

~~(3) The operation of this section may not be excluded, modified, or limited by a seller, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the buyer is also effective against any~~

~~beneficiary designated under~~ A seller may not exclude or limit the operation of this section.

SECTION 32. AMENDATORY 12A O.S. 2001, Section 2-325, is amended to read as follows:

Section 2-325. "Failure to Pay by Agreed Letter of Credit" Term; "Confirmed Credit".

~~(1) Failure of the buyer seasonably to furnish an agreed~~ If the parties agree that the primary method of payment will be by letter of credit is a breach of the contract for sale.

~~(2) The,~~ the following rules apply:

(a) The buyer's obligation to pay is suspended by reasonable delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

~~(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market~~ issued or confirmed by a financing agency of good repute in which the issuer and any confirmer undertake to pay against presentation of documents that evidence delivery of the goods.

(b) Failure of a party seasonably to furnish a letter of credit as agreed is a breach of the contract for sale.

(c) If the letter of credit is dishonored or repudiated, the seller, on reasonable notification, may require payment directly from the buyer.

SECTION 33. AMENDATORY 12A O.S. 2001, Section 2-326, is amended to read as follows:

Section 2-326. Sale on Approval and Sale or Return; ~~Consignment Sales and Rights of Creditors.~~

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale ~~within the statute of frauds section of this article (under Section 2-201 of this title)~~ and as contradicting the sale aspect of the contract ~~within the provisions of this article on parole or extrinsic evidence (under Section 2-202 of this title)~~.

SECTION 34. AMENDATORY 12A O.S. 2001, Section 2-328, is amended to read as follows:

Section 2-328. Sale by Auction.

(1) In a sale by auction, if goods are put up in lots, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. ~~Where~~ If a bid is made ~~while the hammer is falling in acceptance of~~ during the process of completing the sale but before a prior bid is accepted, the auctioneer ~~may in his~~ has the discretion to reopen the bidding or to declare the goods sold under the prior bid ~~on which the hammer was falling.~~

(3) ~~Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the~~

~~auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid~~ A sale by auction is subject to the seller's right to withdraw the goods unless at the time the goods are put up or during the course of the auction it is announced in express terms that the right to withdraw the goods is not reserved. In an auction in which the right to withdraw the goods is reserved, the auctioneer may withdraw the goods at any time until completion of the sale is announced by the auctioneer. In an auction in which the right to withdraw the goods is not reserved, after the auctioneer calls for bids on an article or lot, the article or lot may not be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at ~~his~~ the buyer's option avoid the sale or take the goods at the price of the last ~~good faith~~ good-faith bid prior to the completion of the sale. This subsection shall not apply to any bid at ~~a forced sale~~ an auction required by law.

SECTION 35. AMENDATORY 12A O.S. 2001, Section 2-401, as amended by Section 46, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-401), is amended to read as follows:

Section 2-401. Passing of Title; Reservation for Security; Limited Application of this Section.

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501 of this title), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and ~~to the provisions of the article on Secured Transactions (Article 9)~~ of the Uniform Commercial Code, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the ~~physical~~ delivery of the goods, despite any reservation of a security interest and even ~~though~~ if a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require ~~him~~ the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods, ~~7~~:

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where ~~he~~ the seller delivers ~~such documents~~ the document, and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such reversioning occurs by operation of law and is not a "sale".

SECTION 36. AMENDATORY 12A O.S. 2001, Section 2-402, is amended to read as follows:

Section 2-402. Rights of Seller's Creditors Against Sold Goods.

(1) Except as provided in subsections (2) and (3) of this section, rights of unsecured creditors of the seller with respect to goods ~~which~~ that have been identified to a contract for sale are subject to the buyer's rights to recover the goods under ~~this article~~ (Sections 2-502 and 2-716) of this title.

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against ~~him~~ the creditor a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, ~~except that~~. However, retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) ~~Nothing~~ Except as otherwise provided in subsection (2) of Section 2-403 of this title, nothing in this article shall be deemed to impair the rights of creditors of the seller~~;~~:

(a) ~~under the provisions of the article on Secured Transactions (Article 9) of the Uniform Commercial Code;~~ or

(b) ~~where~~ if identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a ~~pre-existing~~ preexisting claim for money, security or the like and is made under circumstances ~~which~~ that under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

SECTION 37. AMENDATORY 12A O.S. 2001, Section 2-403, is amended to read as follows:

Section 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting".

(1) A purchaser of goods acquires all title ~~which his~~ that the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a ~~good faith~~ good-faith purchaser for value. ~~When~~ If goods have been delivered under a transaction of purchase the purchaser has such power even ~~though~~ if:

(a) the transferor was deceived as to the identity of the purchaser~~;~~;

(b) the delivery was in exchange for a check ~~which~~ that is later dishonored~~;~~;

(c) it was agreed that the transaction was to be a "cash sale"~~;~~; or

(d) the delivery was procured through criminal fraud
~~punishable as larcenous under the criminal law.~~

(2) Any entrusting ~~of possession~~ of goods to a merchant ~~who~~
that deals in goods of that kind gives ~~him~~ the merchant power to
transfer all of the entruster's rights to the goods and to transfer
the goods free of any interest of the entruster to a buyer in
ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in
retention of possession regardless of any condition expressed
between the parties to the delivery or acquiescence and regardless
of whether the procurement of the entrusting or the possessor's
disposition of the goods ~~have been such as to be larcenous~~ was
punishable under the criminal law.

(4) The rights of other purchasers of goods and of lien
creditors are governed by ~~the articles on Secured Transactions~~
~~(Article 9) and Documents of Title (Article 7)~~ Articles 7 and 9 of
the Uniform Commercial Code.

SECTION 38. AMENDATORY 12A O.S. 2001, Section 2-501, is
amended to read as follows:

Section 2-501. Insurable Interest in Goods; Manner of
Identification of Goods.

(1) The buyer obtains a special property and an insurable
interest in goods by identification of existing goods as goods to
which the contract refers even ~~though~~ if the goods so identified are
nonconforming and ~~he~~ the buyer has an option to return or reject
them. Such identification ~~can~~ may be made at any time and in any
manner explicitly agreed to by the parties. In the absence of
explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of
goods already existing and identified;

(b) if the contract is for the sale of future goods other
than those described in paragraph (c) of this

subsection, when goods are shipped, marked, or otherwise designated by the seller as goods to which the contract refers;

- (c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the sale of crops to be harvested within twelve (12) months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in ~~him and where~~ the seller. If the identification is by the seller alone ~~he~~, the seller may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

SECTION 39. AMENDATORY 12A O.S. 2001, Section 2-502, is amended to read as follows:

Section 2-502. Buyer's Right to Goods on Seller's Insolvency, Repudiation, or Failure to Deliver.

(1) Subject to ~~paragraphs~~ subsections (2) and (3) of this section and even ~~though~~ if the goods have not been shipped, a buyer ~~who~~ that has paid a part or all of the price of goods in which the buyer has a special property under ~~the provisions of~~ Section 2-501 of this title may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought ~~for personal, family, or household purposes~~ by a consumer, the seller repudiates or fails to deliver as required by the contract; or

(b) in all cases, the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under ~~subparagraph~~ paragraph (a) of ~~paragraph~~ subsection (1) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating ~~his~~ a special property has been made by the buyer ~~he~~, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

SECTION 40. AMENDATORY 12A O.S. 2001, Section 2-503, as amended by Section 47, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-503), is amended to read as follows:

Section 2-503. Manner of Seller's Tender of Delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable ~~him~~ the buyer to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) ~~Where~~ If the case is within ~~the next section respecting~~ Section 2-504 of this title, tender requires that the seller comply with its provisions.

(3) ~~Where~~ If the seller is required to deliver at a particular destination, tender requires that ~~he~~ the seller comply with subsection (1) of this section and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) ~~Where~~ If goods are in the possession of a bailee and are to be delivered without being moved~~:-~~:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee to the buyer of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 of the Uniform Commercial Code receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, ~~and a refusal~~. Refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) ~~Where~~ If the contract requires the seller to deliver documents:

(a) ~~he~~ the seller must tender all such documents in correct form, ~~except as provided in this article with respect to bills of lading in a set (subsection (2) of Section 2-323); and~~

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

SECTION 41. AMENDATORY 12A O.S. 2001, Section 2-504, is amended to read as follows:

Section 2-504. Shipment by Seller.

~~Where~~ If the seller is required or authorized to send the goods to the buyer and the contract does not require ~~him~~ the seller to deliver them at a particular destination, then unless otherwise agreed ~~he~~ the seller must:

- (a) put ~~the~~ conforming goods in the possession of ~~such~~ a carrier and make ~~such~~ a proper contract for their transportation ~~as may be reasonable,~~ having regard to the nature of the goods and other circumstances of the case; ~~and~~
- (b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- (c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) of this section or to make a proper contract under paragraph (a) of this section is a ground for rejection only if material delay or loss ensues.

SECTION 42. AMENDATORY 12A O.S. 2001, Section 2-505, as amended by Section 48, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-505), is amended to read as follows:

Section 2-505. Seller's Shipment Under Reservation.

(1) ~~Where~~ If the seller has identified goods to the contract by or before shipment:

(a) ~~his~~ The seller's procurement of a negotiable bill of lading to ~~his~~ the seller's own order or otherwise reserves in ~~him~~ the seller a security interest in the goods. ~~His~~ The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) ~~a~~ A nonnegotiable bill of lading to ~~himself~~ the seller or ~~his~~ the seller's nominee reserves possession of the goods as security ~~but except in a case of conditional delivery (subsection (2) of Section 2-507).~~ However, unless a seller has a right to reclaim the goods under subsection (2) of Section 2-507 of this title a nonnegotiable bill of lading naming the buyer as consignee

reserves no security interest even ~~though~~ if the seller retains possession or control of the bill of lading.

(2) ~~When~~ If shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation ~~within the preceding section~~ under Section 2-504 of this title but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

SECTION 43. AMENDATORY 12A O.S. 2001, Section 2-506, as amended by Section 49, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-506), is amended to read as follows:

Section 2-506. Rights of Financing Agency.

(1) ~~A~~ Except as otherwise provided in Article 5 of the Uniform Commercial Code, a financing agency by paying or purchasing for value a draft ~~which~~ that relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency ~~which~~ that has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document ~~which~~ that was apparently regular.

SECTION 44. AMENDATORY 12A O.S. 2001, Section 2-507, is amended to read as follows:

Section 2-507. Effect of Seller's Tender; Delivery on Condition.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to ~~his~~ the buyer's

duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) ~~Where~~ If payment is due and demanded on the delivery to the buyer of goods or documents of title, ~~his right as against the seller to retain or dispose of them is conditional upon his making the payment due~~ the seller may reclaim the goods delivered upon a demand made within a reasonable time after the seller discovers or should have discovered that payment was not made.

(3) The seller's right to reclaim under subsection (2) of this section is subject to the rights of a buyer in ordinary course of business or other good-faith purchaser for value under Section 2-403 of this title.

SECTION 45. AMENDATORY 12A O.S. 2001, Section 2-508, is amended to read as follows:

Section 2-508. Cure by Seller of Improper Tender or Delivery; Replacement.

(1) ~~Where any tender or delivery by the seller is rejected because nonconforming~~ If the buyer rejects goods or a tender of delivery under Section 2-601 or 2-612 of this title or, except in a consumer contract, justifiably revokes acceptance under paragraph (b) of subsection (1) of Section 2-608 of this title and the agreed time for performance has not yet expired, the a seller that has performed in good faith, upon seasonable notice to the buyer and at the seller's own expense, may seasonably notify the buyer of his intention to cure and may then within the contract time make a the breach of contract by making a conforming tender of delivery within the agreed time. The seller shall compensate the buyer for all of the buyer's reasonable expenses caused by the seller's breach of contract and subsequent cure.

(2) ~~Where~~ If the buyer rejects goods or a ~~nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance~~ the seller may if he

~~seasonably notifies the buyer have a further reasonable time to substitute a conforming tender of delivery under Section 2-601 or 2-612 of this title or, except in a consumer contract, justifiably revokes acceptance under paragraph (b) of subsection (1) of Section 2-608 of this title and the agreed time for performance has expired, a seller that has performed in good faith, upon reasonable notice to the buyer and at the seller's own expense, may cure the breach of contract, if the cure is appropriate and timely under the circumstances, by making a tender of conforming goods. The seller shall compensate the buyer for all of the buyer's reasonable expenses caused by the seller's breach of contract and subsequent cure.~~

SECTION 46. AMENDATORY 12A O.S. 2001, Section 2-509, as amended by Section 50, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-509), is amended to read as follows:

Section 2-509. Risk of Loss in the Absence of Breach.

(1) ~~Where~~ If the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require ~~him~~ the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are ~~duly~~ delivered to the carrier even ~~though~~ if the shipment is under reservation (Section 2-505 of this title); but

(b) if it does require ~~him~~ the seller to deliver them at a particular destination and the goods are there ~~duly~~ tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there ~~duly~~ so tendered as to enable the buyer to take delivery.

(2) ~~Where~~ If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on ~~his~~ the buyer's receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee to the buyer of the buyer's right to possession of the goods; or

(c) after ~~his~~ the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in paragraph (b) of subsection (4) ~~(b)~~ of Section 2-503 of this title.

(3) In any case not within subsection (1) or (2) of this section, the risk of loss passes to the buyer on ~~his~~ the buyer's receipt of the goods ~~if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.~~

(4) The provisions of this section are subject to contrary agreement of the parties and to ~~the provisions of this article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510)~~ Sections 2-327 and 2-510 of this title.

SECTION 47. AMENDATORY 12A O.S. 2001, Section 2-510, is amended to read as follows:

Section 2-510. Effect of Breach on Risk of Loss.

(1) ~~Where~~ If a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) ~~Where~~ If the buyer rightfully revokes acceptance ~~he~~ the buyer may to the extent of any deficiency in ~~his~~ the buyer's effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) ~~Where~~ If the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to ~~him~~ the buyer, the seller may to the extent of any deficiency in ~~his~~ the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

SECTION 48. AMENDATORY 12A O.S. 2001, Section 2-512, is amended to read as follows:

Section 2-512. Payment by Buyer Before Inspection.

(1) ~~Where~~ If the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

- (a) the nonconformity appears without inspection; or
- (b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (subsection (b) of Section 5-109 of this title).

(2) Payment pursuant to subsection (1) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of ~~his~~ buyer's remedies.

SECTION 49. AMENDATORY 12A O.S. 2001, Section 2-513, is amended to read as follows:

Section 2-513. Buyer's Right to Inspection of Goods.

(1) Unless otherwise agreed and subject to subsection (3) of this section, ~~where~~ if goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. ~~When~~ If the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed ~~and subject to the provisions of this article on C.I.F. contracts (subsection (3) of Section 2-321)~~, the buyer is not entitled to inspect the goods before payment of the price ~~when~~ if the contract provides:

- (a) for delivery "C.O.D." ~~or on other like~~ on terms that under applicable course of performance, course of

dealing, or usage of trade are interpreted to preclude inspection before payment; or

- (b) for payment against documents of title, except where ~~such~~ the payment is due only after the goods are to become available for inspection.

(4) A place ~~or~~, method, or standard of inspection fixed by the parties is presumed to be exclusive, but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place ~~or~~, method, or standard fixed was clearly intended as an indispensable condition failure of which avoids the contract.

SECTION 50. AMENDATORY 12A O.S. 2001, Section 2-514, is amended to read as follows:

Section 2-514. When Documents Deliverable on Acceptance; When on Payment.

Unless otherwise agreed and except as otherwise provided in Article 5 of the Uniform Commercial Code, documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment.

SECTION 51. AMENDATORY 12A O.S. 2001, Section 2-601, is amended to read as follows:

Section 2-601. Buyer's Rights on Improper Delivery.

Subject to ~~the provisions of this article on breach in installment contracts (Section 2-612)~~ Sections 2-504 and 2-612 of this title, and unless otherwise agreed under ~~the sections on contractual limitations of remedy (Sections 2-718 and 2-719)~~ of this title, if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- (a) reject the whole; ~~or~~
(b) accept the whole; or

- (c) accept any commercial unit or units and reject the rest.

SECTION 52. AMENDATORY 12A O.S. 2001, Section 2-602, is amended to read as follows:

Section 2-602. Manner and Effect of ~~Rightful~~ Rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to ~~the provisions of the two following sections on rejected goods (Sections 2-603 and, 2-604),~~ and subsection (4) of Section 2-608 of this title:

- (a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
- (b) if the buyer has before rejection taken physical possession of goods in which ~~he~~ the buyer does not have a security interest under ~~the provisions of this article (subsection (3) of Section 2-711)~~ of this title, he the buyer is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
- (c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (Section 2-703 of this title).

SECTION 53. AMENDATORY 12A O.S. 2001, Section 2-603, is amended to read as follows:

Section 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods.

(1) Subject to any security interest in the buyer ~~under~~ subsection (3) of Section 2-711 of this title, ~~when~~ if the seller has no agent or place of business at the market of rejection, a merchant buyer is under a duty after rejection of goods in ~~his~~ the buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. ~~Instructions~~ In the case of a rightful rejection, instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) ~~When~~ If the buyer sells goods under subsection (1) of this section following a rightful rejection, ~~he~~ the buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and ~~good-faith~~ good-faith conduct ~~hereunder~~ under this section is neither acceptance nor conversion nor the basis of an action for damages.

SECTION 54. AMENDATORY 12A O.S. 2001, Section 2-604, is amended to read as follows:

Section 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods.

Subject to the provisions of ~~the immediately preceding section~~ Section 2-603 of this title on perishables, if the seller gives no instructions within a reasonable time after notification of rejection, the buyer may store the rejected goods for the seller's account or reship them to ~~him~~ the seller or resell them for the seller's account with reimbursement as provided in ~~the preceding~~

~~section~~ Section 2-603 of this title. Such action is not acceptance or conversion.

SECTION 55. AMENDATORY 12A O.S. 2001, Section 2-605, as amended by Section 51, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-605), is amended to read as follows:

Section 2-605. Waiver of Buyer's Objections by Failure to Particularize.

(1) ~~The~~ A buyer's failure to state in connection with rejection a particular defect ~~which is ascertainable by reasonable inspection~~ or in connection with revocation of acceptance a defect that justifies revocation precludes ~~him~~ the buyer from relying on the unstated defect to justify rejection or ~~to establish breach~~ revocation of acceptance if the defect is ascertainable by reasonable inspection:

(a) ~~where~~ if the seller had a right to cure the defect and could have cured it if stated seasonably; or

(b) between merchants ~~when,~~ if the seller has after rejection or revocation of acceptance made a request in ~~writing~~ a record for a full and final ~~written~~ statement in a record of all defects on which the buyer proposes to rely.

(2) ~~Payment~~ A buyer's payment against documents tendered to the buyer made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

SECTION 56. AMENDATORY 12A O.S. 2001, Section 2-606, is amended to read as follows:

Section 2-606. What Constitutes Acceptance of Goods.

(1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that ~~he~~ the buyer will take or retain them in spite of their nonconformity; or

- (b) fails to make an effective rejection ~~+~~ under subsection (1) of Section 2-602~~+~~ of this title, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
- (c) subject to subsection (4) of Section 2-608 of this title, does any act inconsistent with the seller's ownership; ~~but if such act is wrongful as against the seller it is an acceptance only if ratified by him.~~

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

SECTION 57. AMENDATORY 12A O.S. 2001, Section 2-607, is amended to read as follows:

Section 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity ~~cannot~~ may not be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured, but acceptance does not of itself impair any other remedy provided by this article for nonconformity.

(3) ~~Where~~ If a tender has been accepted:

- (a) the buyer must within a reasonable time after ~~he~~ the buyer discovers or should have discovered any breach notify the seller ~~of breach or be barred~~, but failure to give timely notice bars the buyer from any a remedy only to the extent that the seller is prejudiced by the failure; and
- (b) if the claim is one for infringement or the like ~~under subsection (3)~~ (2) of Section 2-312~~+~~ of this

title and the buyer is sued as a result of such a breach ~~he~~, the buyer must so notify the seller within a reasonable time after ~~he~~ the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) ~~Where~~ If the buyer is sued for indemnity, breach of a warranty, or other obligation for which ~~his seller~~ another party is answerable over:

(a) ~~he~~ the buyer may give ~~his seller written~~ the other party notice of the litigation. ~~If~~ in a record, and if the notice states that the ~~seller~~ other party may come in and defend and that if the ~~seller~~ other party does not do so ~~he~~ the other party will be bound in any action against ~~him~~ the other party by ~~his~~ the buyer by any determination of fact common to the two litigations, then unless the ~~seller~~ other party after reasonable receipt of the notice does come in and defend ~~he~~ the other party is so bound.

(b) if the claim is one for infringement or the like ~~under subsection (3) (2) of Section 2-312~~ of this title, the original seller may demand in ~~writing a~~ record that ~~his~~ its buyer turn over to ~~him~~ it control of the litigation including settlement or else be barred from any remedy over and if ~~he~~ it also agrees to bear all expense and to satisfy any adverse judgment, ~~then~~ the buyer is so barred unless the buyer after reasonable receipt of the demand does turn over control ~~the buyer is so barred~~.

(6) ~~The provisions of subsections~~ Subsections (3), (4), and (5) of this section apply to any obligation of a buyer to hold the

seller harmless against infringement or the like ~~under~~ subsection ~~(3)(b)~~ (2) of Section 2-312 of this title.

SECTION 58. AMENDATORY 12A O.S. 2001, Section 2-608, is amended to read as follows:

Section 2-608. Revocation of Acceptance in Whole or in Part.

(1) ~~The~~ A buyer may revoke ~~his~~ acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to ~~him~~ the buyer if ~~he~~ the buyer has accepted it:

- (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured;
or
- (b) without discovery of ~~such~~ the nonconformity if ~~his~~ the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. ~~The~~ The revocation is not effective until the buyer notifies the seller of it.

(3) A buyer ~~who~~ that so revokes has the same rights and duties with regard to the goods involved as if ~~he~~ the buyer had rejected them.

(4) If a buyer uses the goods after a rightful rejection or justifiable revocation of acceptance, the following rules apply:

- (a) Any use by the buyer that is unreasonable under the circumstances is wrongful as against the seller and is an acceptance only if ratified by the seller.
- (b) Any use of the goods that is reasonable under the circumstances is not wrongful as against the seller and is not an acceptance, but in an appropriate case

the buyer is obligated to the seller for the value of
the use to the buyer.

SECTION 59. AMENDATORY 12A O.S. 2001, Section 2-609, is amended to read as follows:

Section 2-609. Right to Adequate Assurance of Performance.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. ~~When~~ If reasonable grounds for insecurity arise with respect to the performance of either party, the other may ~~in writing~~ demand in a record adequate assurance of due performance and until ~~he~~ the party receives such assurance may if commercially reasonable suspend any performance for which ~~he~~ it has not already received the agreed return.

(2) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

SECTION 60. AMENDATORY 12A O.S. 2001, Section 2-610, is amended to read as follows:

Section 2-610. Anticipatory Repudiation.

~~When~~ (1) If either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- (a) for a commercially reasonable time await performance by the repudiating party; or

- (b) resort to any remedy for breach (Section 2-703 or Section 2-711 of this title), even ~~though he~~ if the aggrieved party has notified the repudiating party that ~~he~~ it would await the latter's performance and has urged retraction; and
- (c) in either case suspend ~~his own~~ performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704 of this title).

(2) Repudiation includes language that a reasonable person would interpret to mean that the other party will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that would appear to a reasonable person to make a future performance by the other party impossible.

SECTION 61. AMENDATORY 12A O.S. 2001, Section 2-611, is amended to read as follows:

Section 2-611. Retraction of Anticipatory Repudiation.

(1) Until the repudiating party's next performance is due ~~he can~~, the party may retract his the repudiation unless the aggrieved party has since the repudiation cancelled or materially changed ~~his~~ position or otherwise indicated that ~~he considers~~ the repudiation is final.

(2) Retraction may be by any method ~~which~~ that clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under ~~the provisions of this article~~ (Section 2-609) of this title.

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

SECTION 62. AMENDATORY 12A O.S. 2001, Section 2-612, is amended to read as follows:

Section 2-612. "Installment Contract"; Breach.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even ~~though~~ if the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment ~~which~~ that is nonconforming if the nonconformity substantially impairs the value of that installment ~~and cannot be cured~~ to the buyer or if the nonconformity is a defect in the required documents; ~~but.~~ However, if the nonconformity does not fall within subsection (3) of this section and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) ~~Whenever~~ If nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract, there is a breach of the whole. But the aggrieved party reinstates the contract if ~~he~~ the party accepts a nonconforming installment without seasonably notifying of cancellation or if ~~he~~ the party brings an action with respect only to past installments or demands performance as to future installments.

SECTION 63. AMENDATORY 12A O.S. 2001, Section 2-613, is amended to read as follows:

Section 2-613. Casualty to Identified Goods.

~~Where~~ If the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, ~~or in a proper case under a "no arrival, no sale" term (Section 2-324)~~ then:

- (a) if the loss is total the contract is ~~avoided~~ terminated; and
- (b) if the loss is partial or the goods have so deteriorated ~~as~~ that they no longer ~~to~~ conform to the contract, the buyer may nevertheless demand inspection

and at ~~his~~ the buyer's option either treat the contract as ~~avoided~~ terminated or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

SECTION 64. AMENDATORY 12A O.S. 2001, Section 2-614, is amended to read as follows:

Section 2-614. Substituted Performance.

(1) ~~Where~~ If without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of ~~delivery~~ performance otherwise becomes commercially impracticable but a commercially reasonable substitute is available, ~~such~~ the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

SECTION 65. AMENDATORY 12A O.S. 2001, Section 2-615, is amended to read as follows:

Section 2-615. Excuse by Failure of Presupposed Conditions.

Except ~~so far as~~ to the extent that a seller may have assumed a greater obligation and subject to ~~the preceding section on~~ substituted performance Section 2-614 of this title:

- (a) Delay in ~~delivery or nondelivery~~ performance or nonperformance in whole or in part by a seller ~~who~~ that complies with paragraphs (b) and (c) of this section is not a breach of ~~his~~ the seller's duty under a contract for sale if performance as agreed has been

made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) ~~Where~~ If the ~~clauses~~ causes mentioned in paragraph (a) of this section affect only a part of the seller's capacity to perform, ~~he~~ the seller must allocate production and deliveries among ~~his~~ its customers but may at ~~his~~ its option include regular customers not then under contract as well as ~~his~~ its own requirements for further manufacture. ~~He~~ The seller may so allocate in any manner ~~which~~ that is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or ~~nondelivery~~ nonperformance and, ~~when~~ if allocation is required under paragraph (b) of this section, of the estimated quota thus made available for the buyer.

SECTION 66. AMENDATORY 12A O.S. 2001, Section 2-616, is amended to read as follows:

Section 2-616. Procedure on Notice Claiming Excuse.

(1) ~~Where the~~ If a buyer receives notification of a material or indefinite delay or an allocation justified under ~~the preceding section~~ Section 2-615 of this title, the buyer may by written notification in a record to the seller as to any ~~delivery performance~~ concerned, and ~~where~~ if the prospective deficiency substantially impairs the value of the whole contract under ~~the provisions of this article relating to breach of installment contracts~~ (Section 2-612) of this title, then also as to the whole ;

- (a) terminate and thereby discharge any unexecuted portion of the contract; or
- (b) modify the contract by agreeing to take ~~his~~ the buyer's available quota in substitution.

(2) If after receipt of ~~such~~ notification from the seller the buyer fails ~~se~~ to modify the contract within a reasonable time not exceeding thirty (30) days, the contract lapses is terminated with respect to any ~~deliveries~~ performance affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under ~~the preceding section~~ Section 2-615 of this title.

SECTION 67. AMENDATORY 12A O.S. 2001, Section 2-702, is amended to read as follows:

Section 2-702. Seller's Remedies on Discovery of Buyer's Insolvency.

(1) ~~Where~~ If the seller discovers that the buyer ~~to be~~ is insolvent ~~he,~~ the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under ~~this article~~ (Section 2-705) of this title.

(2) ~~Where~~ If the seller discovers that the buyer has received goods on credit while insolvent ~~he,~~ the seller may reclaim the goods upon demand made within ~~ten (10) days~~ a reasonable time after the buyer's receipt, ~~but if misrepresentation of solvency has been made to the particular seller in writing within three (3) months before delivery the ten-day limitation does not apply~~ of the goods. Except as provided in this subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) of this section is subject to the rights of a buyer in ordinary course of business or other good faith purchaser for value under ~~this article~~

~~(Section 2-403)~~ of this title. Successful reclamation of goods excludes all other remedies with respect to them.

SECTION 68. AMENDATORY 12A O.S. 2001, Section 2-703, is amended to read as follows:

Section 2-703. Seller's Remedies in General.

~~Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may~~

(1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.

(2) If the buyer is in breach of contract the seller, to the extent provided for by this act or other law, may:

- (a) withhold delivery of ~~such~~ the goods;
- (b) stop delivery ~~by any bailee as hereafter provided (of the goods under Section 2-705)~~ of this title;
- (c) proceed under ~~the next section respecting~~ Section 2-704 of this title with respect to goods still unidentified to the contract or unfinished;
- (d) ~~resell and recover damages as hereafter provided (Section 2-706)~~ reclaim the goods under subsection (2) of Section 2-507 of this title or subsection (2) of Section 2-702 of this title;
- (e) ~~recover damages for nonacceptance (Section 2-708) or in a proper case the price (Section 2-709)~~ require payment directly from the buyer under paragraph (c) of Section 2-325 of this title;
- (f) cancel;

- (g) resell and recover damages under Section 2-706 of this title;
- (h) recover damages for nonacceptance or repudiation under subsection (1) of Section 2-708 of this title;
- (i) recover lost profits under subsection (2) of Section 2-708 of this title;
- (j) recover the price under Section 2-709 of this title;
- (k) obtain specific performance under Section 2-716 of this title;
- (l) recover liquidated damages under Section 2-718 of this title;
- (m) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) If the buyer becomes insolvent, the seller may:

- (a) withhold delivery under subsection (1) of Section 2-702 of this title;
- (b) stop delivery of the goods under Section 2-705 of this title;
- (c) reclaim the goods under subsection (2) of Section 2-702 of this title.

SECTION 69. AMENDATORY 12A O.S. 2001, Section 2-704, is amended to read as follows:

Section 2-704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods.

(1) An aggrieved seller ~~under the preceding section~~ may in an appropriate case involving breach by the buyer:

- (a) identify to the contract conforming goods not already identified if at the time ~~he~~ the seller learned of the breach ~~they~~ the goods are in ~~his~~ the seller's possession or control;

(b) treat as the subject of resale goods ~~which~~ that have demonstrably been intended for the particular contract even ~~though~~ if those goods are unfinished.

(2) ~~Where~~ If the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

SECTION 70. AMENDATORY 12A O.S. 2001, Section 2-705, as amended by Section 52, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2-705), is amended to read as follows:

Section 2-705. Seller's Stoppage of Delivery in Transit or Otherwise.

(1) ~~The~~ A seller may stop delivery of goods in the possession of a carrier or other bailee ~~when he~~ if the seller discovers the buyer to be insolvent (Section 2-702 of this title) ~~and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when~~ or if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; ~~or~~

(b) acknowledgement to the buyer by any bailee of the goods, except a carrier, that the bailee holds the goods for the buyer; ~~or~~

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods, the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier ~~who~~ that has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 71. AMENDATORY 12A O.S. 2001, Section 2-706, is amended to read as follows:

Section 2-706. Seller's Resale Including Contract for Resale.

(1) ~~Under the conditions stated in Section 2-703 on seller's remedies~~ In an appropriate case involving breach by the buyer, the seller may resell the goods concerned or the undelivered balance thereof. ~~Where~~ If the resale is made in good faith and in a commercially reasonable manner, the seller may recover the difference between the contract price and the resale price ~~and the contract price~~ together with any incidental or consequential damages allowed under ~~the provisions of this article (Section 2-710)~~ of this title, but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) of this section or unless otherwise agreed, resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place, and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) ~~Where~~ If the resale is at private sale, the seller must give the buyer reasonable notification of ~~his~~ an intention to resell.

(4) ~~Where~~ If the resale is at public sale:

- (a) only identified goods ~~can~~ may be sold ~~except where~~ unless there is a recognized market for a public sale of futures in goods of the kind; ~~and~~
- (b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; ~~and~~
- (c) if the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and
- (d) the seller may buy.

(5) A purchaser ~~who~~ that buys in good faith at a resale takes the goods free of any rights of the original buyer even ~~though~~ if the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707 of this title) or a buyer ~~who~~ that has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of ~~his~~ the buyer's security interest, ~~as hereinafter defined~~ (under subsection (3) of Section 2-711) of this title.

(7) Failure of a seller to resell under this section does not bar the seller from any other remedy.

SECTION 72. AMENDATORY 12A O.S. 2001, Section 2-707, is amended to read as follows:

Section 2-707. "Person in the Position of a Seller".

(1) A "person in the position of a seller" includes as against a principal an agent ~~who~~ that has paid or become responsible for the price of goods on behalf of ~~his~~ the principal or ~~anyone who~~ a person that otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller ~~may as provided in this article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710)~~ has the same remedies as a seller under this article.

SECTION 73. AMENDATORY 12A O.S. 2001, Section 2-708, is amended to read as follows:

Section 2-708. Seller's Damages for Nonacceptance or Repudiation.

(1) Subject to subsection (2) of this section and ~~to the provisions of this article with respect to proof of market price (Section 2-723),~~ of this title:

- (a) the measure of damages for nonacceptance ~~or repudiation~~ by the buyer is the difference between the contract price and the market price at the time and place for tender and the unpaid contract price together with any incidental or consequential damages provided in ~~this article (Section 2-710)~~ of this title, but less expenses saved in consequence of the buyer's breach; and
- (b) the measure of damages for repudiation by the buyer is the difference between the contract price and the market price at the place for tender at the expiration of a commercially reasonable time after the seller learned of the repudiation, but not later than the time stated in paragraph (a) of this subsection, together with any incidental or consequential damages

provided in Section 2-710 of this title, less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) of this section or in Section 2-706 of this title is inadequate to put the seller in as good a position as performance would have done ~~then,~~ the measure of damages is the profit (including reasonable overhead) ~~which that~~ the seller would have made from full performance by the buyer, together with any incidental or consequential damages provided in this article (Section 2-710 of this title), ~~due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.~~

SECTION 74. AMENDATORY 12A O.S. 2001, Section 2-709, is amended to read as follows:

Section 2-709. Action for the Price.

(1) ~~When~~ If the buyer fails to pay the price as it becomes due, the seller may recover, together with any incidental or consequential damages under ~~the next section~~ Section 2-710 of this title, the price:

- (a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and
- (b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) ~~Where~~ If the seller sues for the price ~~he,~~ the seller must hold for the buyer any goods ~~which that~~ have been identified to the contract and are still in ~~his~~ the seller's control ~~except that.~~ However, if resale becomes possible ~~he,~~ the seller may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and the

payment of the judgment entitles ~~him~~ the buyer to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610 of this title), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under ~~the preceding section~~ Section 2-708 of this title.

SECTION 75. AMENDATORY 12A O.S. 2001, Section 2-710, is amended to read as follows:

Section 2-710. Seller's Incidental and Consequential Damages.

(1) Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

(2) Consequential damages resulting from the buyer's breach include any loss resulting from general or particular requirements and needs of which the buyer at the time of contracting had reason to know and which could not reasonably be prevented by resale or otherwise.

(3) In a consumer contract, a seller may not recover consequential damages from a consumer.

SECTION 76. AMENDATORY 12A O.S. 2001, Section 2-711, is amended to read as follows:

Section 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

~~(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may~~

~~cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid~~

- ~~(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or~~
- ~~(b) recover damages for nondelivery as provided in this article (Section 2-713).~~

A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

~~(2) Where the seller fails to deliver or repudiates the buyer may also~~

- ~~(a) if the goods have been identified recover them as provided in this article (Section 2-502); or~~
- ~~(b) in a proper case obtain specific performance or replevy the goods as provided in this article (Section 2-716).~~

If the seller is in breach of contract under subsection (1) of this section, the buyer, to the extent provided for by this act or other law, may:

- (a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;
- (b) deduct damages from any part of the price still due under Section 2-717 of this title;
- (c) cancel;
- (d) cover and have damages under Section 2-712 of this title as to all goods affected whether or not they have been identified to the contract;
- (e) recover damages for nondelivery or repudiation under Section 2-713 of this title;

- (f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section 2-714 of this title;
- (g) recover identified goods under Section 2-502 of this title;
- (h) obtain specific performance or obtain the goods by replevin or similar remedy under Section 2-716 of this title;
- (i) recover liquidated damages under Section 2-718 of this title;
- (j) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in ~~his~~ the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706 of this title).

SECTION 77. AMENDATORY 12A O.S. 2001, Section 2-712, is amended to read as follows:

Section 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) ~~After a breach within the preceding section~~ If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) ~~The~~ A buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages ~~as hereinafter defined~~

~~under Section 2-715~~ of this title, but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar ~~him~~ the buyer from any other remedy.

SECTION 78. AMENDATORY 12A O.S. 2001, Section 2-713, is amended to read as follows:

Section 2-713. Buyer's Damages for Nondelivery or Repudiation.

(1) Subject to ~~the provisions of this article with respect to proof of market price~~ (Section 2-723) of this title, if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:

- (a) the measure of damages ~~for nondelivery or repudiation~~ in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time ~~when the buyer learned of the breach~~ for tender under the contract and the contract price together with any incidental ~~and~~ or consequential damages ~~provided in this article~~ (under Section 2-715) of this title, but less expenses saved in consequence of the seller's breach; and
- (b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a) of this subsection, and the contract price together with any incidental or consequential damages provided in this article (Section 2-715 of this title), less expenses saved in consequence of the seller's breach.

(2) Market price 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.

SECTION 79. AMENDATORY 12A O.S. 2001, Section 2-714, is amended to read as follows:

Section 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) ~~Where~~ if the buyer has accepted goods and given notification ~~(pursuant to subsection (3) of Section 2-607) ~~he~~ of this title, the~~ buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any reasonable manner ~~which is reasonable~~.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages ~~under the next section~~ Section 2-715 of this title may also be recovered.

SECTION 80. AMENDATORY 12A O.S. 2001, Section 2-716, is amended to read as follows:

Section 2-716. ~~Buyer's Right to Specific Performance or;~~ Buyer's Right to Replevin.

(1) Specific performance may be decreed ~~where~~ if the goods are unique or in other proper circumstances. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or similar remedy for goods identified to the contract if after reasonable effort ~~he~~ the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. ~~In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.~~

(4) The buyer's right under subsection (3) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

SECTION 81. AMENDATORY 12A O.S. 2001, Section 2-718, is amended to read as follows:

Section 2-718. Liquidation or Limitation of Damages; Deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount ~~which~~ that is reasonable in the light of the anticipated or actual harm caused by the breach and, in a consumer contract, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. ~~A term fixing unreasonably large liquidated damages is void as a penalty.~~ Section 2-719 of this title determines the enforceability of a term that limits but does not liquidate damages.

(2) ~~Where~~ If the seller justifiably withholds delivery of goods or stops performance because of the buyer's breach or insolvency, the buyer is entitled to restitution of any amount by which the sum of ~~his~~ the buyer's payments exceeds

~~(a)~~ the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), ~~or~~

~~(b) in the absence of such terms, twenty percent (20%) of the value of the total performance for which the buyer is obligated under the contract or Five Hundred Dollars (\$500.00), whichever is smaller~~ of this section.

(3) The buyer's right to restitution under subsection (2) of this section is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this article other than subsection (1), of this section; and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) ~~Where~~ If a seller has received payment in goods, their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2), ~~but~~ of this section. However, if the seller has notice of the buyer's breach before reselling goods received in part performance, ~~his~~ the resale is subject to the conditions ~~laid down in~~ of this article on resale by an aggrieved seller (Section 2-706 of this title).

SECTION 82. AMENDATORY 12A O.S. 2001, Section 2-722, is amended to read as follows:

Section 2-722. Who ~~Can~~ May Sue Third Parties for Injury to Goods.

~~Where~~ If a third party so deals with goods ~~which~~ that have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale ~~who~~ that has title to

or a security interest or a special property or an insurable interest in the goods~~+~~l, and if the goods have been destroyed or converted~~,~~l, a right of action is also in the party ~~who~~ that either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, ~~his~~ the party plaintiff's suit or settlement is, subject to ~~his~~ its own interest, as a fiduciary for the other party to the contract; and

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

SECTION 83. AMENDATORY 12A O.S. 2001, Section 2-723, is amended to read as follows:

Section 2-723. Proof of Market Price: Time and Place.

~~(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.~~

~~(2)~~ If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place ~~which~~ that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from ~~such~~ the other place.

~~(3)~~ (2) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until ~~he~~ the party has given the other party such notice as the court finds sufficient to prevent unfair surprise.

SECTION 84. AMENDATORY 12A O.S. 2001, Section 2-724, is amended to read as follows:

Section 2-724. Admissibility of Market Quotations.

~~Whenever~~ If the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers ~~or~~, periodicals or other means of communication in general circulation published as the reports of ~~such~~ the market ~~shall be~~ are admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

SECTION 85. AMENDATORY 12A O.S. 2001, Section 2-725, is amended to read as follows:

Section 2-725. Statute of Limitations in Contracts for Sale.

(1) ~~An~~ Except as otherwise provided in this section, an action for breach of any contract for sale must be commenced within ~~five~~ ~~(5)~~ four (4) years after the ~~cause~~ right of action has accrued under subsection (2) or (3) of this section or one (1) year after the breach was or should have been discovered, but no longer than five (5) years after the right of action accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it. However, in a consumer contract, the period of limitation may not be reduced.

(2) ~~A cause~~ Except as otherwise provided in subsection (3) of this section, the following rules apply:

(a) Except as otherwise provided in this subsection, a right of action accrues when the breach occurs,

~~regardless of even if the aggrieved party's lack of party did not have knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.~~

(b) For breach of a contract by repudiation, a right of action accrues at the earlier of when the aggrieved party elects to treat the repudiation as a breach or when a commercially reasonable time for awaiting performance has expired.

(c) For breach of a remedial promise, a right of action accrues when the remedial promise is not performed when performance is due.

(d) In an action by a buyer against a person that is answerable over to the buyer for a claim asserted against the buyer, the buyer's right of action against the person answerable over accrues at the time the claim was originally asserted against the buyer.

(3) ~~Where~~ If a breach of a warranty arising under Section 2-312, subsection (2) of Section 2-313, Section 2-314, or Section 2-315 of this title, or a breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B of this title, is claimed, the following rules apply:

(a) Except as otherwise provided in paragraph (c) of this subsection, a right of action for breach of a warranty arising under subsection (2) of Section 2-313, Section 2-314, or Section 2-315 of this title accrues when the seller has tendered delivery to the immediate buyer, as defined in Section 2-313 of this title, and has

completed performance of any agreed installation or assembly of the goods.

(b) Except as otherwise provided in paragraph (c) of this subsection, a right of action for breach of an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B of this title accrues when the remote purchaser, as defined in Section 2-313A or 2-313B of this title, receives the goods.

(c) If a warranty arising under subsection (2) of Section 2-313 of this title or an obligation, other than a remedial promise, arising under Section 2-313A or 2-313B of this title explicitly extends to future performance of the goods and discovery of the breach must await the time for performance, the right of action accrues when the immediate buyer as defined in Section 2-313 of this title or the remote purchaser as defined in Section 2-313A or 2-313B of this title discovers or should have discovered the breach.

(d) A right of action for breach of warranty arising under Section 2-312 of this title accrues when the aggrieved party discovers or should have discovered the breach. However, an action for breach of the warranty of noninfringement may not be commenced more than six (6) years after tender of delivery of the goods to the aggrieved party.

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

~~(4)~~ (5) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action ~~which have that~~ accrued before ~~this act becomes effective~~ January 1, 2007.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-801 of Title 12A, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-802 of Title 12A, unless there is created a duplication in numbering, reads as follows:

AMENDMENT OF EXISTING ARTICLE 2.

This act amends Article 2 of the Uniform Commercial Code.

SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-803 of Title 12A, unless there is created a duplication in numbering, reads as follows:

APPLICATION TO EXISTING RELATIONS.

(1) This act applies to a transaction within its scope that is entered into on or after January 1, 2007.

(2) This act does not apply to a transaction that is entered into before January 1, 2007, even if the transaction would be subject to this act if it had been entered into after January 1, 2007.

(3) This act does not apply to a right of action that accrued before January 1, 2007.

(4) Section 2-313B of Title 12A of the Oklahoma Statutes does not apply to an advertisement or similar communication made before January 1, 2007.

SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-804 of Title 12A, unless there is created a duplication in numbering, reads as follows:

SAVINGS CLAUSE.

A transaction entered into before January 1, 2007, and the rights, obligations, and interests flowing from that transaction, are governed by any statute or other law amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

SECTION 90. REPEALER 12A O.S. 2001, Section 2-208, is hereby repealed.

SECTION 91. REPEALER 12A O.S. 2001, Sections 2-319, 2-320, 2-321, 2-322, 2-323, as amended by Section 45, Chapter 140, O.S.L. 2005 and 2-324 (12A O.S. Supp. 2005, Section 2-323), are hereby repealed.

SECTION 92. Sections 1 through 89 and Section 91 of this act shall become effective January 1, 2007.

SECTION 93. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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