

THE HOUSE OF REPRESENTATIVES
Monday, March 5, 2007

House Bill No. 2172

HOUSE BILL NO. 2172 - By: DUNCAN of the House and COFFEE of the Senate.

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 2-103, as last amended by Section 1, Chapter 473, O.S.L. 2005, 2-105, as amended by Section 25, Chapter 139, O.S.L. 2005, 2-201, 2-204, 2-210, 2-310, as amended by Section 44, Chapter 140, O.S.L. 2005, 2-325, 2-326, 2-402, 2-403, 2-502, 2-506, as amended by Section 49, Chapter 140, O.S.L. 2005, 2-507, 2-509, as amended by Section 50, Chapter 140, O.S.L. 2005, and 2-514 (12A O.S. Supp. 2006, Sections 2-103, 2-105, 2-310, 2-506 and 2-509), which relate to Article 2 of the Uniform Commercial Code, which pertains to sales; modifying definitions; providing for transactions that are subject to other laws; modifying certain procedures and requirements; modifying rules that apply to formation of contracts; modifying rules that apply to assignment of rights and delegation of performance; providing for legal recognition of electronic contracts, records and signatures; modifying requirements relating to payment, running of credit and shipping; modifying rules pertaining to payment by letter of credit; clarifying provisions relating to returns; modifying rights of creditors; clarifying rights of purchasers; modifying rights of buyers with respect to goods; modifying rights of financing agencies; modifying effect of tender by seller; modifying when risk of loss passes; modifying exception to when documents are delivered; amending 12A O.S. 2001, Sections 2A-103, as last amended by Section 2, Chapter 473, O.S.L. 2005, 2A-211, 2A-303 and 2A-506 (12A O.S. Supp. 2006, Section 2A-103), which relate to Article 2A of the Uniform Commercial Code, pertaining to leases; modifying definitions; modifying scope of warranties; clarifying limitations on alienability of interest under lease contract; excluding consumer leases and actions for indemnity from statute of limitation provision; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 12A O.S. 2001, Section 2-103, as last amended by
2 Section 1, Chapter 473, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2-103), is amended to
3 read as follows:

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

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

6 (a) “Buyer” means a person ~~who~~ that buys or contracts to buy goods.

7 (b) “Conspicuous”, with reference to a term, means so written, displayed,
8 or presented that a reasonable person against which it is to operate
9 ought to have noticed it. A term in an electronic record intended to
10 evoke a response by an electronic agent is conspicuous if it is presented
11 in a form that would enable a reasonably configured electronic agent to
12 take it into account or react to it without review of the record by an
13 individual. Whether a term is “conspicuous” or not is a decision for the
14 court. Conspicuous terms include the following:

15 (i) for a person:

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

19 (B) language in the body of a record or display in larger type
20 than the surrounding text, or in contrasting type, font, or
21 color to the surrounding text of the same size, or set off

1 from surrounding text of the same size by symbols or
2 other marks that call attention to the language; and

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

7 (c) “Delivery” means the voluntary transfer of physical possession or
8 control of goods.

9 (d) “Electronic” means relating to technology having electrical, digital,
10 magnetic, wireless, optical, electromagnetic, or similar capabilities.

11 (e) “Electronic agent” means a computer program or an electronic or other
12 automated means used independently to initiate an action or respond
13 to electronic records or performances in whole or in part, without
14 review or action by an individual.

15 (f) “Electronic record” means a record created, generated, sent,
16 communicated, received, or stored by electronic means.

17 (g) “Foreign exchange transaction” means a transaction in which one
18 party agrees to deliver a quantity of a specified money or unit of
19 account in consideration of the other party’s agreement to deliver
20 another quantity of a different money or unit of account either
21 currently or at a future date, and in which delivery is to be through
22 funds transfer, book entry accounting, or other form of payment order.

1 or other agreed means to transfer a credit balance. The term includes
2 a transaction of this type involving two or more monies and spot,
3 forward, option, or other products derived from underlying monies and
4 any combination of these transactions. The term does not include a
5 transaction involving two or more monies in which one or both of the
6 parties is obligated to make physical delivery, at the time of
7 contracting or in the future, of banknotes, coins, or other form of legal
8 tender or specie.

9 (h) Reserved.

10 (i) “Receipt” of goods” means taking physical possession of ~~them~~ goods.

11 ~~(e)~~ (j) Reserved.

12 (k) “Seller” means a person ~~who~~ that sells or contracts to sell goods.

13 (l) “Sign” means, with present intent to authenticate or adopt a record:

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

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

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

19 “Acceptance”. Section 2-606 of this title.

20 ~~“Banker's credit”. Section 2-325 of this title.~~

21 “Between merchants”. Section 2-104 of this title.

22 “Cancellation”. Section 2-106(4) of this title.

1 “Commercial unit”. Section 2-105 of this title.
2 ~~“Confirmed credit”. Section 2-325 of this title.~~
3 “Conforming to contract”. Section 2-106 of this title.
4 “Contract for sale”. Section 2-106 of this title.
5 “Cover”. Section 2-712 of this title.
6 “Entrusting”. Section 2-403 of this title.
7 “Financing agency”. Section 2-104 of this title.
8 “Future goods”. Section 2-105 of this title.
9 “Goods”. Section 2-105 of this title.
10 “Identification”. Section 2-501 of this title.
11 “Installment contract”. Section 2-612 of this title.
12 ~~“Letter of credit”. Section 2-325 of this title.~~
13 “Lot”. Section 2-105 of this title.
14 “Merchant”. Section 2-104 of this title.
15 “Overseas”. Section 2-323 of this title.
16 “Person in position of seller”. Section 2-707 of this title.
17 “Present sale”. Section 2-106 of this title.
18 “Sale”. Section 2-106 of this title.
19 “Sale on approval”. Section 2-326 of this title.
20 “Sale or return”. Section 2-326 of this title.
21 “Termination”. Section 2-106 of this title.

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

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

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

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

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

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

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

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

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

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

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

16 SECTION 2. AMENDATORY 12A O.S. 2001, Section 2-105, as amended by
17 Section 25, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2-105), is amended to
18 read as follows:

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

21 (1) "Goods" means all things (~~including specially manufactured goods~~) which that
22 are movable at the time of identification to the a contract for sale other than the money

1 ~~in which the price is to be paid, investment securities (Article 8) and things in action.~~
2 "Goods" also The term includes future goods, specially manufactured goods, the unborn
3 young of animals ~~and,~~ growing crops, and other identified things attached to realty as
4 described in ~~the section on goods to be severed from realty (Section 2-107) but~~ Section 2-
5 107 of this title. The term does not include information, the money in which the price is
6 to be paid, investment securities under Article 8 of the Uniform Commercial Code, the
7 subject matter of foreign exchange transactions, or choses in action.

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

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

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

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

19 (6) "Commercial unit" means such a unit of goods as by commercial usage is a
20 single whole for purposes of sale and division of which materially impairs its character or
21 value on the market or in use. A commercial unit may be a single article (as a machine)
22 or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a

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

3 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 2-108 of Title 12A, unless there is created a duplication in
5 numbering, reads as follows:

6 TRANSACTIONS SUBJECT TO OTHER LAW.

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

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

- 1 (v) the misbranding or adulteration of food products or drugs; and
2 (vi) dealers in particular products, such as automobiles, motorized
3 wheelchairs, agricultural equipment, and hearing aids.

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

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

9 (4) This article modifies, limits, and supersedes the federal Electronic Signatures in
10 Global and National Commerce Act, 15 U.S.C., Section 7001 et seq., except that nothing
11 in this article modifies, limits, or supersedes Section 7001(c) of that act or authorizes
12 electronic delivery of any of the notices described in Section 7003(b) of that act. In part
13 to effectuate the ability to supersede the federal Electronic Signatures in Global and
14 National Commerce Act, any reference in this article to a “writing” or “written” document
15 shall be deemed to mean a “record”, as defined by Section 1-201 of Title 12A of the
16 Oklahoma Statutes.

17 SECTION 4. AMENDATORY 12A O.S. 2001, Section 2-201, is amended to read
18 as follows:

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

20 (1) ~~Except as otherwise provided in this section a~~ A contract for the sale of goods for
21 the price of ~~Five Hundred Dollars (\$500.00)~~ Five Thousand Dollars (\$5,000.00) or more is
22 not enforceable by way of action or defense unless there is some ~~writing~~ writing record sufficient

1 to indicate that a contract for sale has been made between the parties and signed by the
2 party against ~~whom~~ which enforcement is sought or by ~~his~~ the party's authorized agent
3 or broker. A ~~written~~ record is not insufficient because it omits or incorrectly states a
4 term agreed upon but the contract is not enforceable under this ~~paragraph~~ subsection
5 beyond the quantity of goods shown in ~~such writing~~ the record.

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

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

13 (a) if the goods are to be specially manufactured for the buyer and are not
14 suitable for sale to others in the ordinary course of the seller's business
15 and the seller, before notice of repudiation is received and under
16 circumstances ~~which~~ that reasonably indicate that the goods are for
17 the buyer, has made either a substantial beginning of their
18 manufacture or commitments for their procurement; ~~or~~

19 (b) if the party against ~~whom~~ which enforcement is sought admits in ~~his~~
20 the party's pleading, testimony or otherwise ~~in court~~ under oath that a
21 contract for sale was made, but the contract is not enforceable under
22 this ~~provision~~ paragraph beyond the quantity of goods admitted; or

1 (c) with respect to goods for which payment has been made and accepted
2 or which have been received and accepted (Section 2-606 of this title).

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

6 SECTION 5. AMENDATORY 12A O.S. 2001, Section 2-204, is amended to read
7 as follows:

8 Section 2-204. Formation in General.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

- 1 **(b)** A contract may be formed by the interaction of an electronic agent and
2 an individual acting on the individual’s own behalf or for another
3 person. A contract is formed if the individual takes actions that the
4 individual is free to refuse to take or makes a statement, and the
5 individual has reason to know that the actions or statement will:
6 **(i)** cause the electronic agent to complete the transaction or
7 performance; or
8 **(ii)** indicate acceptance of an offer, regardless of other expressions or
9 actions by the individual to which the electronic agent cannot
10 react.

11 SECTION 6. AMENDATORY 12A O.S. 2001, Section 2-210, is amended to read
12 as follows:

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

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

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

20 (a) Subject to paragraph (b) of this subsection and except as otherwise provided in
21 Section 1-9-406 of this title, unless or otherwise agreed, all rights of either the seller or
22 the buyer can may be assigned except where unless the assignment would materially

1 change the duty of the other party, or increase materially the burden or risk imposed on
2 ~~him that party~~ by ~~his the~~ contract, or impair materially ~~his that party's~~ chance of
3 obtaining return performance. A right to damages for breach of the whole contract or a
4 right arising out of the assignor's due performance of ~~his its~~ entire obligation ~~can~~ may be
5 assigned despite an agreement otherwise.

6 ~~(3)~~ (b) The creation, attachment, perfection, or enforcement of a security interest in
7 the seller's interest under a contract is not ~~a transfer~~ an assignment that materially
8 changes the duty of or ~~increases~~ materially increases the burden or risk imposed on the
9 buyer or ~~impairs~~ materially impairs the buyer's chance of obtaining return performance
10 ~~within the purview of~~ under paragraph ~~(2)~~ (a) of this ~~section~~ subsection unless, and ~~then~~
11 only to the extent that, enforcement ~~actually~~ of the security interest results in a
12 delegation of material performance of the seller. Even in that event, the creation,
13 attachment, perfection, and enforcement of the security interest remain effective, ~~but (i)~~,
14 However, the seller is liable to the buyer for damages caused by the delegation to the
15 extent that the damages could not reasonably be prevented by the buyer, and ~~(ii)~~ a court
16 ~~having jurisdiction~~ may grant other appropriate relief, including cancellation of the
17 contract for sale or an injunction against enforcement of the security interest or
18 consummation of the enforcement.

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

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

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

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

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

14 ~~(6) (c)~~ (c) The other party may treat any ~~assignment which delegates performance~~
15 delegation of duties as creating reasonable grounds for insecurity and may without
16 prejudice to ~~his~~ its rights against the assignor demand assurances from the assignee
17 (under Section 2-609) of this title.

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

21 (3) An assignment of "the contract" or of "all my rights under the contract" or an
22 assignment in similar general terms is an assignment of rights and unless the language

1 or the circumstances, as in an assignment for security, indicate the contrary, it is also a
2 delegation of performance of the duties of the assignor.

3 (4) Unless the circumstances indicate the contrary, a prohibition of assignment of
4 “the contract” is to be construed as barring only the delegation to the assignee of the
5 assignor’s performance.

6 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 2-211 of Title 12A, unless there is created a duplication in
8 numbering, reads as follows:

9 LEGAL RECOGNITION OF ELECTRONIC CONTRACTS, RECORDS, AND
10 SIGNATURES.

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

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

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

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

1 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 2-212 of Title 12A, unless there is created a duplication in
3 numbering, reads as follows:

4 ATTRIBUTION.

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

8 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 2-213 of Title 12A, unless there is created a duplication in
10 numbering, reads as follows:

11 ELECTRONIC COMMUNICATION.

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

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

17 SECTION 10. AMENDATORY 12A O.S. 2001, Section 2-310, as amended by
18 Section 44, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2-310), is amended to
19 read as follows:

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

22 Unless otherwise agreed:

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

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

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

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

16 SECTION 11. AMENDATORY 12A O.S. 2001, Section 2-325, is amended to
17 read as follows:

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

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

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

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

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

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

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

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

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

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

22 (a) a "sale on approval" if the goods are delivered primarily for use;² and

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

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

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

9 SECTION 13. AMENDATORY 12A O.S. 2001, Section 2-402, is amended to
10 read as follows:

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

12 (1) Except as provided in subsections (2) and (3) of this section, rights of unsecured
13 creditors of the seller with respect to goods ~~which~~ that have been identified to a contract
14 for sale are subject to the buyer's rights to recover the goods under ~~this article (Sections~~
15 ~~2-502 and 2-716)~~ of this title.

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

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

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

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

11 SECTION 14. AMENDATORY 12A O.S. 2001, Section 2-403, is amended to
12 read as follows:

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

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

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

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

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

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

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

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

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

16 SECTION 15. AMENDATORY 12A O.S. 2001, Section 2-502, is amended to
17 read as follows:

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

20 (1) Subject to ~~paragraphs~~ subsections (2) and (3) of this section and even ~~though~~ if
21 the goods have not been shipped, a buyer ~~who~~ that has paid a part or all of the price of
22 goods in which the buyer has a special property under ~~the provisions of~~ Section 2-501 of

1 this title may on making and keeping good a tender of any unpaid portion of their price
2 recover them from the seller if:

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

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

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

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

13 SECTION 16. AMENDATORY 12A O.S. 2001, Section 2-506, as amended by
14 Section 49, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2-506), is amended to
15 read as follows:

16 Section 2-506. Rights of Financing Agency.

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

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

5 SECTION 17. AMENDATORY 12A O.S. 2001, Section 2-507, is amended to
6 read as follows:

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

8 (1) Tender of delivery is a condition to the buyer's duty to accept the goods and,
9 unless otherwise agreed, to ~~his~~ the buyer's duty to pay for them. Tender entitles the
10 seller to acceptance of the goods and to payment according to the contract.

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

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

19 SECTION 18. AMENDATORY 12A O.S. 2001, Section 2-509, as amended by
20 Section 50, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2-509), is amended to
21 read as follows:

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

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

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

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

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

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

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

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

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

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

4 SECTION 19. AMENDATORY 12A O.S. 2001, Section 2-514, is amended to
5 read as follows:

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

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

11 SECTION 20. AMENDATORY 12A O.S. 2001, Section 2A-103, as last amended
12 by Section 2, Chapter 473, O.S.L. 2005 (12A O.S. Supp. 2006, Section 2A-103), is
13 amended to read as follows:

14 Section 2A-103.

15 DEFINITIONS AND INDEX OF DEFINITIONS

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

- 17 (a) ~~“Buyer in the ordinary course of business” means a person who in good~~
18 ~~faith and without knowledge that the sale to him is in violation of the~~
19 ~~ownership rights or security interest or leasehold interest of a third~~
20 ~~party in the goods, buys in the ordinary course from a person in the~~
21 ~~business of selling goods of that kind but does not include a~~
22 ~~pawnbroker. “Buying” may be for cash or by exchange of other~~

1 ~~property or on secured or unsecured credit and includes acquiring~~
2 ~~goods or documents of title under a preexisting contract for sale but~~
3 ~~does not include a transfer in bulk or as security for or in total or~~
4 ~~partial satisfaction of a money debt.~~

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

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

14 ~~(d)~~ (c) “Conforming” goods or performance under a lease contract means
15 goods or performance that are in accordance with the obligations under
16 the lease contract.

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

- 1 ~~(f)~~ (e) “Fault” means wrongful act, omission, breach, or default.
- 2 ~~(g)~~ (f) “Finance lease” means a lease with respect to which:
- 3 (i) the lessor does not select, manufacture or supply the goods;
- 4 (ii) the lessor acquires the goods or the right to possession and use
- 5 of the goods in connection with the lease or, in the case of goods
- 6 that have been leased previously by the lessor and are not being
- 7 leased to a consumer, in connection with another lease; and
- 8 (iii) one of the following occurs:
- 9 (A) the lessee receives a copy of the ~~contract~~ agreement by
- 10 which the lessor acquired, or proposes to acquire, the
- 11 goods or the right to possession and use of the goods
- 12 before signing the lease ~~contract~~ agreement;
- 13 (B) the lessee's approval of the ~~contract~~ agreement by which
- 14 the lessor acquired, or proposes to acquire, the goods or
- 15 the right to possession and use of the goods is a condition
- 16 to effectiveness of the lease ~~contract~~ agreement;
- 17 (C) the lessee, before signing the lease ~~contract~~ agreement,
- 18 receives an accurate and complete statement designating
- 19 the promises and warranties, and any disclaimers of
- 20 warranties, limitations or modifications of remedies, or
- 21 liquidated damages, including those of a third party, such
- 22 as the manufacturer of the goods, provided to the lessor

1 by the person supplying the goods in connection with or as
2 part of the contract by which the lessor acquired the goods
3 or the right to possession and use of the goods; or
4 (D) if the lease is not a consumer lease, the lessor, before the
5 lessee signs the lease ~~contract~~ agreement, informs the
6 lessee in ~~writing~~ (a) a record:
7 (I) of the identity of the person supplying the goods to
8 the lessor, unless the lessee has selected that
9 person and directed the lessor to acquire the goods
10 or the right to possession and use of the goods from
11 that person, ~~(b)~~;
12 (II) that the lessee is entitled under this article to the
13 promises and warranties, including those of any
14 third party, provided to the lessor by the person
15 supplying the goods in connection with or as part of
16 the contract by which the lessor acquired the goods
17 or the right to possession and use of the goods; ~~;~~ and
18 ~~(c)~~
19 (III) that the lessee may communicate with the person
20 supplying the goods to the lessor and receive an
21 accurate and complete statement of those promises

1 and warranties, including any disclaimers and
2 limitations of them, or a statement of remedies.

3 ~~(h)~~ (g) “Goods” means all things that are movable at the time of identification
4 to the lease contract, or that are fixtures (Section 2A-309 of this title).
5 The term includes future goods, specially manufactured goods, and the
6 unborn young of animals. The term does not include information, the
7 money in which the price is to be paid, investment securities under
8 Article 8 of the Uniform Commercial Code, minerals or the like,
9 including oil and gas, before extraction, or choses in action.

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

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

19 ~~(k)~~ (j) “Lease agreement” means the bargain, with respect to the lease, of the
20 lessor and the lessee in fact as found in their language or by
21 implication from other circumstances including course of dealing of
22 usage of trade, or course of performance as provided in this article.

1 Unless the context clearly indicates otherwise, the term includes a
2 sublease agreement.

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

7 ~~(m)~~ (l) “Leasehold interest” means the interest of the lessor or the lessee
8 under a lease contract.

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

12 ~~(o)~~ (n) “Lessee in the ordinary course of business” means a person ~~who~~ that
13 leases goods in good faith ~~and,~~ without knowledge that the lease ~~to him~~
14 ~~is in violation~~ violates the rights of the ownership rights or security
15 ~~interest or leasehold interest of a third party in the goods leases~~
16 another person, and in the ordinary course from a person, other than a
17 pawnbroker, in the business of selling or leasing goods of that kind ~~but~~
18 ~~does not include a pawnbroker.~~ “Leasing” A person leases in ordinary
19 course if the lease to the person comports with the usual or customary
20 practices in the kind of business in which the lessor is engaged or with
21 the lessor’s own usual or customary practices. A lessee in ordinary
22 course of business may ~~be~~ lease for cash ~~or,~~ by exchange of other

1 property, or on secured or unsecured credit, and ~~includes acquiring~~
2 may acquire goods or documents of title under a preexisting lease
3 contract ~~but does not include~~. Only a lessee that takes possession of
4 the goods or has a right to recover the goods from the lessor under this
5 article may be a lessee in ordinary course of business. A person that
6 acquires goods in a transfer in bulk or as security for or in total or
7 partial satisfaction of a money debt is not a lessee in ordinary course of
8 business.

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

12 ~~(q)~~ (p) “Lessor's residual interest” means the lessor's interest in the goods
13 after expiration, termination, or cancellation of the lease contract.

14 ~~(r)~~ (q) “Lien” means a charge against or interest in goods to secure payment
15 of a debt or performance of an obligation, ~~but the~~. The term does not
16 include a security interest.

17 ~~(s)~~ (r) “Lot” means a parcel or a single article that is the subject matter of a
18 separate lease or delivery, whether or not it is sufficient to perform the
19 lease contract.

20 ~~(t)~~ (s) “Merchant lessee” means a lessee that is a merchant with respect to
21 goods of the kind subject to the lease.

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

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

4 “Encumbrance”. Paragraph (e) of subsection (1) of Section 2A-309 of this
5 title.

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

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

8 “Purchase money lease”. Paragraph (c) of subsection (1) of Section 2A-309 of
9 this title.

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

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

12 “Between merchants”. Subsection (3) of Section 2-104 of this title.

13 “Buyer”. Paragraph (a) of subsection (1) of Section 2-103 of this title.

14 “Chattel paper”. Paragraph (11) of subsection (a) of Section 1-9-102 of this
15 title.

16 “Consumer goods”. Paragraph (23) of subsection (a) of Section 1-9-102 of this
17 title.

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

19 “Entrusting”. Paragraph (3) of Section 2-403 of this title.

20 ~~“General intangible”. Paragraph (42) of subsection (a) of Section 1-9-102 of
21 this title.~~

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

1 ~~“Letter of credit”. Paragraph 10 of subsection (a) of Section 5-102 of this title.~~

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

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

4 ~~“Pursuant to commitment”. Paragraph (68) of subsection (a) of Section~~
5 ~~1-9-102 of this title.~~

6 “Receipt”. ~~Subsection (e) Paragraph (c) of paragraph subsection~~ subsubsection (1) of Section
7 2-103 of this title.

8 “Sale”. ~~Paragraph~~ Subsection (1) of Section 2-106 of this title.

9 “Sale on approval”. Section 2-326 of this title.

10 “Sale or return”. Section 2-326 of this title.

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

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

14 SECTION 21. AMENDATORY 12A O.S. 2001, Section 2A-211, is amended to
15 read as follows:

16 Section 2A-211.

17 WARRANTIES AGAINST INTERFERENCE AND AGAINST
18 INFRINGEMENT; LESSEE'S OBLIGATION AGAINST
19 INFRINGEMENT

20 (1) ~~There is in a lease contract a warranty that for the lease term no person holds a~~
21 ~~claim to or interest in the goods that arose from an act or omission of the lessor, other~~

1 than a claim by way of infringement or the like, which will interfere with the lessee's
2 enjoyment of its leasehold interest.

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

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

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

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

20 (3) A Except in a finance lease, a lessor that is a merchant regularly dealing in
21 goods of the kind warrants that the goods will be delivered free of the rightful claim of a
22 third party by way of infringement or the like. However, a lessee who that furnishes

1 specifications to a lessor or a supplier ~~shall hold~~ holds the lessor and the supplier
2 harmless against any claim ~~by way~~ of infringement or the like that arises out of
3 compliance with the specifications.

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

9 SECTION 22. AMENDATORY 12A O.S. 2001, Section 2A-303, is amended to
10 read as follows:

11 Section 2A-303.

12 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT

13 OR OF LESSOR'S RESIDUAL INTEREST IN GOODS;

14 DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS

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

18 (2) ~~Except as provided in~~ Subject to subsection (3) of this section and except as
19 provided in Section 1-9-407 of this title or as otherwise agreed, a provision in a lease
20 agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer
21 by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or
22 other judicial process, of an interest of a party under the lease contract or of the lessor's

1 residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise
2 to the rights and remedies provided in subsection (4) of this section, ~~but~~. However, a
3 transfer that is prohibited or is an event of default under the lease agreement is
4 otherwise effective.

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

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

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

1 the transfer agrees at any time to the transfer in the lease contract or
2 otherwise, then, except as limited by contract, (i) the transferor is
3 liable to the party not making the transfer for damages caused by the
4 transfer to the extent that the damages could not reasonably be
5 prevented by the party not making the transfer and (ii) a court having
6 jurisdiction may grant other appropriate relief, including cancellation
7 of the lease contract or an injunction against the transfer.

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

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

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

20 SECTION 23. AMENDATORY 12A O.S. 2001, Section 2A-506, is amended to
21 read as follows:

22 Section 2A-506.

1 STATUTE OF LIMITATIONS

2 (1) An action for default under a lease contract, including breach of warranty or
3 indemnity, must be commenced within four (4) years after the cause of action accrued.

4 ~~By~~ Except in a consumer lease or an action for indemnity, the original lease ~~contract~~ ~~the~~
5 ~~parties~~ agreement may reduce the period of limitation to not less than one (1) year.

6 (2) A cause of action for default accrues when the act or omission on which the
7 default or breach of warranty is based is or should have been discovered by the aggrieved
8 party, or when the default occurs, whichever is later. A cause of action for indemnity
9 accrues when the act or omission on which the claim for indemnity is based is or should
10 have been discovered by the indemnified party, whichever is later.

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

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

19 SECTION 24. This act shall become effective July 1, 2008.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
21 dated 03-01-07 - DO PASS, As Coauthored.