

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 2172

By: Duncan

4  
5  
6 AS INTRODUCED

7 An Act relating to the Uniform Commercial Code;  
8 amending 12A O.S. 2001, Sections 2-103, as last  
9 amended by Section 1, Chapter 473, O.S.L. 2005, 2-  
10 105, as amended by Section 25, Chapter 139, O.S.L.  
11 2005, 2-201, 2-204, 2-210, 2-310, as amended by  
12 Section 44, Chapter 140, O.S.L. 2005, 2-325, 2-326,  
13 2-402, 2-403, 2-502, 2-506, as amended by Section 49,  
14 Chapter 140, O.S.L. 2005, 2-507, 2-509, as amended by  
15 Section 50, Chapter 140, O.S.L. 2005, and 2-514 (12A  
16 O.S. Supp. 2006, Sections 2-103, 2-105, 2-310, 2-506  
17 and 2-509), which relate to Article 2 of the Uniform  
18 Commercial Code, which pertains to sales; modifying  
19 definitions; providing for transactions that are  
20 subject to other laws; modifying certain procedures  
21 and requirements; modifying rules that apply to  
22 formation of contracts; modifying rules that apply to  
23 assignment of rights and delegation of performance;  
24 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;

1 excluding consumer leases and actions for indemnity  
2 from statute of limitation provision; providing for  
3 codification; and providing an effective date.

4  
5  
6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

7 SECTION 1. AMENDATORY 12A O.S. 2001, Section 2-103, as  
8 last amended by Section 1, Chapter 473, O.S.L. 2005 (12A O.S. Supp.  
9 2006, Section 2-103), is amended to read as follows:

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

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

12 (a) "Buyer" means a person ~~who~~ that buys or contracts to  
13 buy goods.

14 (b) "Conspicuous", with reference to a term, means so  
15 written, displayed, or presented that a reasonable  
16 person against which it is to operate ought to have  
17 noticed it. A term in an electronic record intended  
18 to evoke a response by an electronic agent is  
19 conspicuous if it is presented in a form that would  
20 enable a reasonably configured electronic agent to  
21 take it into account or react to it without review of  
22 the record by an individual. Whether a term is  
23 "conspicuous" or not is a decision for the court.  
24 Conspicuous terms include the following:

1           (i) for a person:

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

7           (B) language in the body of a record or display  
8           in larger type than the surrounding text, or  
9           in contrasting type, font, or color to the  
10           surrounding text of the same size, or set  
11           off from surrounding text of the same size  
12           by symbols or other marks that call  
13           attention to the language; and

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

19           (c) "Delivery" means the voluntary transfer of physical  
20           possession or control of goods.

21           (d) "Electronic" means relating to technology having  
22           electrical, digital, magnetic, wireless, optical,  
23           electromagnetic, or similar capabilities.

1       (e) "Electronic agent" means a computer program or an  
2       electronic or other automated means used independently  
3       to initiate an action or respond to electronic records  
4       or performances in whole or in part, without review or  
5       action by an individual.

6       (f) "Electronic record" means a record created, generated,  
7       sent, communicated, received, or stored by electronic  
8       means.

9       (g) "Foreign exchange transaction" means a transaction in  
10       which one party agrees to deliver a quantity of a  
11       specified money or unit of account in consideration of  
12       the other party's agreement to deliver another  
13       quantity of a different money or unit of account  
14       either currently or at a future date, and in which  
15       delivery is to be through funds transfer, book entry  
16       accounting, or other form of payment order, or other  
17       agreed means to transfer a credit balance. The term  
18       includes a transaction of this type involving two or  
19       more monies and spot, forward, option, or other  
20       products derived from underlying monies and any  
21       combination of these transactions. The term does not  
22       include a transaction involving two or more monies in  
23       which one or both of the parties is obligated to make  
24       physical delivery, at the time of contracting or in

1           the future, of banknotes, coins, or other form of  
2           legal tender or specie.

3           (h) Reserved.

4           (i) "Receipt" of goods means taking physical possession  
5           of ~~them~~ goods.

6       ~~(e)~~ (j) Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 "Entrusting". Section 2-403 of this title.  
2 "Financing agency". Section 2-104 of this title.  
3 "Future goods". Section 2-105 of this title.  
4 "Goods". Section 2-105 of this title.  
5 "Identification". Section 2-501 of this title.  
6 "Installment contract". Section 2-612 of this title.  
7 ~~"Letter of credit". Section 2-325 of this title.~~  
8 "Lot". Section 2-105 of this title.  
9 "Merchant". Section 2-104 of this title.  
10 "Overseas". Section 2-323 of this title.  
11 "Person in position of seller". Section 2-707 of this  
12 title.  
13 "Present sale". Section 2-106 of this title.  
14 "Sale". Section 2-106 of this title.  
15 "Sale on approval". Section 2-326 of this title.  
16 "Sale or return". Section 2-326 of this title.  
17 "Termination". Section 2-106 of this title.

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

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

21 "Consignee". Paragraph (3) of subsection (a) of Section 7-  
22 102 of this title.

23 "Consignor". Paragraph (4) of subsection (a) of Section  
24 7-102 of this title.

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

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

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

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

7 "Injunction against honor". Subsection (b) of Section 5-  
8 109 of this title.

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

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

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

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

19 (1) "Goods" means all things ~~(including specially manufactured~~  
20 ~~goods) which~~ that are movable at the time of identification to ~~the a~~  
21 contract for sale ~~other than the money in which the price is to be~~  
22 ~~paid, investment securities (Article 8) and things in action.~~  
23 "~~Goods~~" ~~also~~ The term includes future goods, specially manufactured  
24 goods, the unborn young of animals and, growing crops, and other

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

7 (2) Goods must be both existing and identified before any  
8 interest in them can pass. Goods which are not both existing and  
9 identified are "future" goods. A purported present sale of future  
10 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  
12 identified goods.

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

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

22 (6) "Commercial unit" means such a unit of goods as by  
23 commercial usage is a single whole for purposes of sale and division  
24 of which materially impairs its character or value on the market or

1 in use. A commercial unit may be a single article (as a machine) or  
2 a set of articles (as a suite of furniture or an assortment of  
3 sizes) or a quantity (as a bale, gross, or carload) or any other  
4 unit treated in use or in the relevant market as a single whole.

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

8 TRANSACTIONS SUBJECT TO OTHER LAW.

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

11 (a) certificate of title statutes of this state covering  
12 automobiles, other motor vehicles, trailers,  
13 manufactured or mobile homes, or boats, except with  
14 respect to the rights of a buyer in ordinary course  
15 of business under subsection (2) of Section 2-403 of  
16 Title 12A of the Oklahoma Statutes which arise before  
17 a certificate of title covering the goods is  
18 effective in the name of any other buyer;

19 (b) statute that establishes a different rule for  
20 consumers; or

21 (c) statute of this state applicable to the transaction,  
22 such as a statute dealing with:

23 (i) the sale or lease of agricultural products;

24

- 1           (ii) the transfer of human blood, blood products,  
2           tissues, or parts;  
3           (iii) the consignment or transfer by artists of works  
4           of art or fine prints;  
5           (iv) distribution agreements, franchises, and other  
6           relationships through which goods are sold;  
7           (v) the misbranding or adulteration of food products  
8           or drugs; and  
9           (vi) dealers in particular products, such as  
10           automobiles, motorized wheelchairs, agricultural  
11           equipment, and hearing aids.

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

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

19           (4) This article modifies, limits, and supersedes the federal  
20 Electronic Signatures in Global and National Commerce Act, 15  
21 U.S.C., Section 7001 et seq., except that nothing in this article  
22 modifies, limits, or supersedes Section 7001(c) of that act or  
23 authorizes electronic delivery of any of the notices described in  
24 Section 7003(b) of that act. In part to effectuate the ability to

1 supersede the federal Electronic Signatures in Global and National  
2 Commerce Act, any reference in this article to a "writing" or  
3 "written" document shall be deemed to mean a "record", as defined by  
4 Section 1-201 of Title 12A of the Oklahoma Statutes.

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

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

8 (1) ~~Except as otherwise provided in this section a~~ A contract  
9 for the sale of goods for the price of ~~Five Hundred Dollars~~  
10 ~~(\$500.00)~~ Five Thousand Dollars (\$5,000.00) or more is not  
11 enforceable by way of action or defense unless there is some ~~writing~~  
12 record sufficient to indicate that a contract for sale has been made  
13 between the parties and signed by the party against ~~whom~~ which  
14 enforcement is sought or by ~~his~~ the party's authorized agent or  
15 broker. A ~~writing~~ record is not insufficient because it omits or  
16 incorrectly states a term agreed upon but the contract is not  
17 enforceable under this ~~paragraph~~ subsection beyond the quantity of  
18 goods shown in ~~such writing~~ the record.

19 (2) Between merchants if within a reasonable time a ~~writing~~  
20 record in confirmation of the contract and sufficient against the  
21 sender is received and the party receiving it has reason to know its  
22 contents, it satisfies the requirements of subsection (1) of this  
23 section against ~~such party~~ the recipient unless ~~written~~ notice of  
24

1 objection to its contents is given in a record within ten (10) days  
2 after it is received.

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

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

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

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

23  
24

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

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

6       Section 2-204.   Formation in General.

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

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

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

19       (4) Except as otherwise provided in Sections 2-211 through 2-  
20 213 of this title, the following rules apply:

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

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

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

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

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

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

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

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

23          (a) Subject to paragraph (b) of this subsection and except as  
24 otherwise provided in Section 1-9-406 of this title, unless or

1 otherwise agreed, all rights of ~~either~~ the seller or the buyer ~~can~~  
2 may be assigned ~~except where~~ unless the assignment would materially  
3 change the duty of the other party, ~~or~~ increase materially the  
4 burden or risk imposed on ~~him~~ that party by ~~his~~ the contract, or  
5 impair materially ~~his~~ that party's chance of obtaining return  
6 performance. A right to damages for breach of the whole contract or  
7 a right arising out of the assignor's due performance of ~~his~~ its  
8 entire obligation ~~can~~ may be assigned despite an agreement  
9 otherwise.

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

1 or an injunction against enforcement of the security interest or  
2 consummation of the enforcement.

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

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

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

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

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

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

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

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

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

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

21       LEGAL RECOGNITION OF ELECTRONIC CONTRACTS, RECORDS, AND  
22 SIGNATURES.

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

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

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

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

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

13 ATTRIBUTION.

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

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

20 ELECTRONIC COMMUNICATION.

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

24

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

5 SECTION 10. AMENDATORY 12A O.S. 2001, Section 2-310, as  
6 amended by Section 44, Chapter 140, O.S.L. 2005 (12A O.S. Supp.  
7 2006, Section 2-310), is amended to read as follows:

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

10 Unless otherwise agreed:

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

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

20 (c) if tender of delivery is ~~authorized and~~ agreed to be made  
21 by way of documents of title otherwise than by ~~subsection~~ paragraph

22 (b) of this section, then payment is due regardless of where the  
23 goods are to be received (i) at the time and place at which the  
24 buyer is to receive delivery of the tangible documents or (ii) at

1 the time the buyer is to receive delivery of the electronic  
2 documents and at the seller's place of business or if none, the  
3 seller's residence; and

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

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

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

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

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

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

21 ~~(3) Unless otherwise agreed the term "letter of credit" or~~  
22 ~~"banker's credit" in a contract for sale means an irrevocable credit~~  
23 ~~issued by a financing agency of good repute and, where the shipment~~  
24 ~~is overseas, of good international repute. The term "confirmed~~

1 ~~credit" means that the credit must also carry the direct obligation~~  
2 ~~of such an agency which does business in the seller's financial~~  
3 ~~market~~ issued or confirmed by a financing agency of good repute in  
4 which the issuer and any confirmer undertake to pay against  
5 presentation of documents that evidence delivery of the goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

23

24

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

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

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

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

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

19 (1) A purchaser of goods acquires all title ~~which his~~ that the  
20 purchaser's transferor had or had power to transfer except that a  
21 purchaser of a limited interest acquires rights only to the extent  
22 of the interest purchased. A person with voidable title has power  
23 to transfer a good title to a ~~good-faith~~ good-faith purchaser for  
24

1 value. ~~When~~ If goods have been delivered under a transaction of  
2 purchase the purchaser has such power even ~~though~~ if:

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

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

7 (c) it was agreed that the transaction was to be a "cash  
8 sale", ~~i~~ or

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

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

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

22 (4) The rights of other purchasers of goods and of lien  
23 creditors are governed by ~~the articles on Secured Transactions~~

24

1 ~~(Article 9) and Documents of Title (Article 7) Articles 7 and 9 of~~  
2 the Uniform Commercial Code.

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

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

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

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

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

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

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

1 SECTION 16. AMENDATORY 12A O.S. 2001, Section 2-506, as  
2 amended by Section 49, Chapter 140, O.S.L. 2005 (12A O.S. Supp.  
3 2006, Section 2-506), is amended to read as follows:

4 Section 2-506. Rights of Financing Agency.

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

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

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

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

22 (1) Tender of delivery is a condition to the buyer's duty to  
23 accept the goods and, unless otherwise agreed, to ~~his~~ the buyer's  
24

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

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

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

13 SECTION 18. AMENDATORY 12A O.S. 2001, Section 2-509, as  
14 amended by Section 50, Chapter 140, O.S.L. 2005 (12A O.S. Supp.  
15 2006, Section 2-509), is amended to read as follows:

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

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

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

23 (b) if it does require ~~him~~ the seller to deliver them at a  
24 particular destination and the goods are there ~~duly~~ tendered while

1 in the possession of the carrier, the risk of loss passes to the  
2 buyer when the goods are there ~~duly~~ so tendered as to enable the  
3 buyer to take delivery.

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

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

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

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

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

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

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

24

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

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

8 SECTION 20. AMENDATORY 12A O.S. 2001, Section 2A-103, as  
9 last amended by Section 2, Chapter 473, O.S.L. 2005 (12A O.S. Supp.  
10 2006, Section 2A-103), is amended to read as follows:

11 Section 2A-103.

12 DEFINITIONS AND INDEX OF DEFINITIONS

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

14 (a) ~~"Buyer in the ordinary course of business" means a~~  
15 ~~person who in good faith and without knowledge that~~  
16 ~~the sale to him is in violation of the ownership~~  
17 ~~rights or security interest or leasehold interest of a~~  
18 ~~third party in the goods, buys in the ordinary course~~  
19 ~~from a person in the business of selling goods of that~~  
20 ~~kind but does not include a pawnbroker. "Buying" may~~  
21 ~~be for cash or by exchange of other property or on~~  
22 ~~secured or unsecured credit and includes acquiring~~  
23 ~~goods or documents of title under a preexisting~~  
24 ~~contract for sale but does not include a transfer in~~

1 ~~bulk or as security for or in total or partial~~  
2 ~~satisfaction of a money debt.~~

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

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

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

18 ~~(e)~~ (d) "Consumer lease" means a lease that a lessor regularly  
19 engaged in the business of leasing or selling makes to  
20 a lessee who is an individual and who takes under the  
21 lease primarily for a personal, family, or household  
22 purpose, if the total payments to be made under the  
23 lease contract, excluding payments for options to  
24

1 renew or buy, do not exceed Forty-five Thousand  
2 Dollars (\$45,000.00).

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

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

6 (i) the lessor does not select, manufacture or supply  
7 the goods;

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

14 (iii) one of the following occurs:

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

20 (B) the lessee's approval of the ~~contract~~  
21 agreement by which the lessor acquired, or  
22 proposes to acquire, the goods or the right  
23 to possession and use of the goods is a  
24

1 condition to effectiveness of the lease  
2 ~~contract~~ agreement;

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

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

20 (I) of the identity of the person supplying  
21 the goods to the lessor, unless the  
22 lessee has selected that person and  
23 directed the lessor to acquire the  
24

1 goods or the right to possession and  
2 use of the goods from that person, ~~(b)~~;

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

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

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

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

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

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

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

24



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

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

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

20 ~~(r)~~ (q) "Lien" means a charge against or interest in goods to  
21 secure payment of a debt or performance of an  
22 obligation, ~~but the.~~ The term does not include a  
23 security interest.



1 ~~(x)~~ (w) "Supplier" means a person from ~~whom~~ which a lessor  
2 buys or leases goods to be leased under a finance  
3 lease.

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

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

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

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

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

15 "Encumbrance". Paragraph (e) of subsection (1) of Section  
16 2A-309 of this title.

17 "Fixtures". Paragraph (a) of subsection (1) of Section 2A-  
18 309 of this title.

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

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

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

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

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

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

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

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

11 ~~"Document". Paragraph (30) of subsection (a) of Section~~  
12 ~~1-9-102 of this title.~~

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

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

17 ~~"Instrument". Paragraph (47) of subsection (a) of Section~~  
18 ~~1-9-102 of this title.~~

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

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

22 ~~"Mortgage". Paragraph (55) of subsection (a) of Section~~  
23 ~~1-9-102 of this title.~~

24

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

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

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

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

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

9 "Seller". Subparagraph ~~(d)~~ of paragraph (1) of Section 2-  
10 103 of this title.

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

14 SECTION 21. AMENDATORY 12A O.S. 2001, Section 2A-211, is  
15 amended to 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~~  
21 ~~term no person holds a claim to or interest in the goods that arose~~  
22 ~~from an act or omission of the lessor, other than a claim by way of~~  
23 ~~infringement or the like, which will interfere with the lessee's~~  
24 ~~enjoyment of its leasehold interest.~~

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

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

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

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

16           (a) a claim or interest in the goods that arose from an  
17           act or omission of the lessor which will interfere  
18           with the lessee's enjoyment of its leasehold interest;  
19           or

20           (b) a colorable claim to or interest in the goods that  
21           arose from an act or omission of the lessor which will  
22           unreasonably expose the lessee to litigation.

23       (3) A Except in a finance lease, a lessor that is a merchant  
24 regularly dealing in goods of the kind warrants that the goods will

1 be delivered free of the rightful claim of a third party by way of  
2 infringement or the like. However, a lessee who that furnishes  
3 specifications to a lessor or a supplier ~~shall hold~~ holds the lessor  
4 and the supplier harmless against any claim ~~by way~~ of infringement  
5 or the like that arises out of compliance with the specifications.

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

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

15 Section 2A-303.

16 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT

17 OR OF LESSOR'S RESIDUAL INTEREST IN GOODS;

18 DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS

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

23 (2) ~~Except as provided in~~ Subject to subsection (3) of this  
24 section and except as provided in Section 1-9-407 of this title or

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

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

21 (4) Subject to subsection (3) of this section and Section  
22 1-9-407 of this ~~article~~ title:

23 (a) if a transfer is made ~~which~~ that is made an event of  
24 default under a lease agreement, the party to the

1 lease contract not making the transfer, unless that  
2 party waives the default or otherwise agrees, has the  
3 rights and remedies described in subsection (2) of  
4 Section 2A-501 of this title; or

5 (b) if paragraph (a) of this subsection is not applicable  
6 and if a transfer is made that (i) is prohibited under  
7 a lease agreement or (ii) materially impairs the  
8 prospect of obtaining return performance by,  
9 materially changes the duty of, or materially  
10 increases the burden or risk imposed on, the other  
11 party to the lease contract, unless the party not  
12 making the transfer agrees at any time to the transfer  
13 in the lease contract or otherwise, then, except as  
14 limited by contract, (i) the transferor is liable to  
15 the party not making the transfer for damages caused  
16 by the transfer to the extent that the damages could  
17 not reasonably be prevented by the party not making  
18 the transfer and (ii) a court having jurisdiction may  
19 grant other appropriate relief, including cancellation  
20 of the lease contract or an injunction against the  
21 transfer.

22 (5) A transfer of "the lease" or of "all my rights under the  
23 lease", or a transfer in similar general terms, is a transfer of  
24 rights and, unless the language or the circumstances, as in a

1 transfer for security, indicate the contrary, the transfer is a  
2 delegation of duties by the transferor to the transferee.  
3 Acceptance by the transferee constitutes a promise by the transferee  
4 to perform those duties. The promise is enforceable by either the  
5 transferor or the other party to the lease contract.

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

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

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

16 Section 2A-506.

17 STATUTE OF LIMITATIONS

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

24

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

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

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

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

20

21 51-1-6180 SD 01/17/07

22

23

24