

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 5020

By: Sullivan

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5
6 AS INTRODUCED

7 An Act relating to the Uniform Commercial Code;
8 amending 12A O.S. 2001, Section 1-201, as amended by
9 Section 8, Chapter 139, O.S.L. 2005 (12A O.S. Supp.
10 2007, Section 1-201), which relates to definitions;
11 modifying reference to context; and providing an
12 effective date.

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

14 SECTION 1. AMENDATORY 12A O.S. 2001, Section 1-201, as
15 amended by Section 8, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2007,
16 Section 1-201), is amended to read as follows:

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

19 (a) Unless the context otherwise ~~requires~~ implies a different
20 meaning, words or phrases defined in this section, or in the
21 additional definitions contained in other articles of the Uniform
22 Commercial Code that apply to particular articles or parts thereof,
23 have the meanings stated.

1 (b) Subject to definitions contained in other articles of the
2 Uniform Commercial Code that apply to particular articles or parts
3 thereof:

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

7 (2) "Aggrieved party" means a party entitled to pursue a
8 remedy.

9 (3) "Agreement", as distinguished from "contract", means the
10 bargain of the parties in fact as found in their language or
11 inferred from other circumstances including course of performance,
12 course of dealing, or usage of trade as provided in Section 1-303 of
13 this title.

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

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

21 (6) "Bill of lading" means a document of title evidencing the
22 receipt of goods for shipment issued by a person engaged in the
23 business of directly or indirectly transporting or forwarding goods.
24 The term does not include a warehouse receipt.

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

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

6 (9) "Buyer in ordinary course of business" means a person that
7 buys goods in good faith, without knowledge that the sale violates
8 the rights of another person in the goods, and in the ordinary
9 course from a person, other than a pawnbroker, in the business of
10 selling goods of that kind. A person buys goods in the ordinary
11 course if the sale to the person comports with the usual or
12 customary practices in the kind of business in which the seller is
13 engaged or with the seller's own usual or customary practices. A
14 person that sells oil, gas, or other minerals at the wellhead or
15 minehead is a person in the business of selling goods of that kind.
16 A buyer in ordinary course of business may buy for cash, by exchange
17 of other property, or on secured or unsecured credit, and may
18 acquire goods or documents of title under a preexisting contract for
19 sale. Only a buyer that takes possession of the goods or has a
20 right to recover the goods from the seller under Article 2 may be a
21 buyer in ordinary course of business. "Buyer in ordinary course of
22 business" does not include a person that acquires goods in a
23 transfer in bulk or as security for or total or partial satisfaction
24 of a money debt.

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

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

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

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

17 (12) "Contract", as distinguished from "agreement", means the
18 total legal obligation that results from the parties' agreement as
19 determined by the provisions of the Uniform Commercial Code as
20 supplemented by any other applicable laws.

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

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

5 (15) "Delivery" with respect to an electronic document of title
6 means voluntary transfer of control and with respect to an
7 instrument, a tangible document of title, or chattel paper means
8 voluntary transfer of possession.

9 (16) "Document of title" means a record that in the regular
10 course of business or financing is treated as adequately evidencing
11 that the person in possession or control of the record is entitled
12 to receive, control, hold, and dispose of the record and the goods
13 the record covers and that purports to be issued by or addressed to
14 a bailee and to cover goods in the bailee's possession which are
15 either identified or are fungible portions of an identified mass.
16 The term includes a bill of lading, transport document, dock
17 warrant, dock receipt, warehouse receipt, and order for delivery of
18 goods. An electronic document of title means a document of title
19 evidenced by a record consisting of information stored in an
20 electronic medium. A tangible document of title means a document of
21 title evidenced by a record consisting of information that is
22 inscribed on a tangible medium.

23 (17) "Fault" means a default, breach, or wrongful act or
24 omission.

1 (18) "Fungible goods" means:

2 (A) goods of which any unit, by nature or usage of trade,
3 is the equivalent of any other like unit; or

4 (B) goods that by agreement are treated as equivalent.

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

6 (20) "Good faith", except as otherwise provided in Article 5 of
7 this title, means honesty in fact and the observance of reasonable
8 commercial standards of fair dealing.

9 (21) "Holder" means:

10 (A) the person in possession of a negotiable instrument
11 that is payable either to bearer or to an identified
12 person that is the person in possession;

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

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

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

21 (23) "Insolvent" means:

22 (A) having generally ceased to pay debts in the ordinary
23 course of business other than as a result of bona fide
24 dispute;

1 (B) being unable to pay debts as they become due; or

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

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

8 (25) "Organization" means a person other than an individual.

9 (26) "Party", as distinguished from "third party", means a
10 person who has engaged in a transaction or made an agreement subject
11 to the Uniform Commercial Code.

12 (27) "Person" means an individual, corporation, business trust,
13 estate, trust, partnership, limited liability company, association,
14 joint venture, government, governmental subdivision, agency, or
15 instrumentality, public corporation, or any other legal or
16 commercial entity.

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

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

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

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

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

10 (33) "Representative" means a person empowered to act for
11 another, including an agent, an officer of a corporation or
12 association, and a trustee, executor, or administrator of an estate.

13 (34) "Right" includes remedy.

14 (35) "Security interest" means an interest in personal property
15 or fixtures which secures payment or performance of an obligation.

16 "Security interest" includes any interest of a consignor and a buyer
17 of accounts, chattel paper, a payment intangible, or a promissory
18 note in a transaction that is subject to Article 9 of this title.

19 "Security interest" does not include the special property interest
20 of a buyer of goods on identification of those goods to a contract
21 for sale under Section 2-401 of this title, but a buyer may also
22 acquire a "security interest" by complying with the provisions of
23 Article 9 of this title. Except as otherwise provided in Section 2-
24 505 of this title, the right of a seller or lessor of goods under

1 Article 2 or 2A of this title to retain or acquire possession of the
2 goods is not a "security interest", but a seller or lessor may also
3 acquire a "security interest" by complying with Article 9 of this
4 title. The retention or reservation of title by a seller of goods
5 notwithstanding shipment or delivery to the buyer under Section 2-
6 401 of this title is limited in effect to a reservation of a
7 "security interest". Whether a transaction in the form of a lease
8 creates security interest is determined pursuant to Section 1-203 of
9 this title.

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

12 (A) to deposit in the mail or deliver for transmission by
13 any other usual means of communication with postage or
14 cost of transmission provided for and properly
15 addressed and, in the case of an instrument, to an
16 address specified thereon or otherwise agreed, or if
17 there be none, to any address reasonable under the
18 circumstances; or

19 (B) in any other way to cause to be received any record or
20 notice within the time at which it would have arrived
21 if properly sent.

22 (37) "Signed" includes any symbol executed or adopted with
23 present intention to adopt or accept a writing.

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1 (38) "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of the
4 United States.

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

6 (40) "Term" means a portion of an agreement which relates to a
7 particular matter.

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

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

12 (43) "Writing" includes printing, typewriting, or any other
13 intentional reduction to tangible form. "Written" has a
14 corresponding meaning.

15 SECTION 2. This act shall become effective November 1, 2008.

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17 51-2-12006 MAH 11/28/07

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