

Measure: HB2588

Author: Representative David Braddock

Subject: Uniform Commercial Code

Provisions:

Section 1: Amends statutory reference

Section 2: Provides amendatory language stating: The obligation of good faith does not support an independent cause of action in tort or otherwise for a failure to perform or enforce in good faith. Rather, the obligation means that a failure to perform or enforce in good faith a specific duty or obligation under the contract or this act constitutes a breach of that contract or duty or makes unavailable, under the particular circumstances, a remedial right or power. The obligation of good faith in this title displaces any common law or other statutory obligation or duty of good faith with respect to each contract or duty with the Uniform Commercial Code.

Section 3: Adds certain definitions to terms to be used in this bill.

Section 4: Amends a section to be consistent with electronic commerce and the Uniform Electronic Transactions Act enacted in Oklahoma at 12A Okla. Stat. 315-101 et seq. It does so by deleting a requirement for a “writing” and substituting “record” so as to include electronic transmissions that can be preserved.

Section 5: Eliminates language as it relates to joint and several liability that is covered by another provision of law.

Section 6: As it relates to statute of limitations, adds language stating that “a claim for relief accrues in an action for conversion that involves a series of instruments converted by the same person, or in a like action based on conversion, when each instrument is converted.”

Sections 7-8: Clarifying language

Section 9: Amends to clarify when suit may be brought on a lost instrument to overturn early cases that denied recovery when a subsequent party took over a failed institution and the instrument could not be located.

Section 10: Provides clarifying language

Section 11: Amends this section to revise the suretyship rules to better conform to modern suretyship law as reflected in the Restatement of Suretyship

Section 12: Amends this section to conform to modern conditions where the debtor does not necessarily have payments recorded on the instrument. Cases have held that debtors must pay twice if they fail to pay the actual holder of a note even though they had no notice of its assignment. The amendment brings the negotiable instruments law into conformity with general contract law, the Consumer Credit Code and modern real estate practice

Section 13: Adds clarifying language

Section 14: Adds amendatory language as it relates to discharge of secondary obligors, providing guidelines; defines impairing the value of an interest in collateral. This is language brings the section into conformity with modern suretyship law.

Section 15: As it relates to banks and collections/payments, adds language stating: In the case of action or nonaction, the bank's liability is governed by the law of the place where the branch or separate office is located.

Section 16-18: Amends statutory reference and modifies definitions.

Section 19: Amends to conform to electronic check collection practices.

Section 20: Modifies definitions

Section 21: Clarifying language

Section 22: Corrects an omission that occurred when Article 7 was amended

Sections 23-25: Repealer, effective date of November 1, 2008, emergency clause.

Prepared by: Dante Giancola, Deputy Director

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