
HOUSE BILL 1092

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Appelwick and Paris.

Read first time January 18, 1991. Referred to Committee on Judiciary.
Referred 2/7/91 to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the uniform commercial code, Article I; and
2 amending RCW 62A.1-201 and 62A.1-207.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 62A.1-201 and 1990 c 228 s 1 are each amended to read
5 as follows:

6 Subject to additional definitions contained in the subsequent
7 Articles of this Title which are applicable to specific Articles or
8 Parts thereof, and unless the context otherwise requires, in this
9 Title:

10 (1) "Action" in the sense of a judicial proceeding includes
11 recoupment, counterclaim, set-off, suit in equity and any other
12 proceedings in which rights are determined.

13 (2) "Aggrieved party" means a party entitled to resort to a remedy.

1 (3) "Agreement" means the bargain of the parties in fact as found
2 in their language or by implication from other circumstances including
3 course of dealing or usage of trade or course of performance as
4 provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an
5 agreement has legal consequences is determined by the provisions of
6 this Title, if applicable; otherwise by the law of contracts (RCW
7 62A.1-103). (Compare "Contract".)

8 (4) "Bank" means any person engaged in the business of banking.

9 (5) "Bearer" means the person in possession of an instrument,
10 document of title, or certificated security payable to bearer or
11 indorsed in blank.

12 (6) "Bill of lading" means a document evidencing the receipt of
13 goods for shipment issued by a person engaged in the business of
14 transporting or forwarding goods, and includes an airbill. "Airbill"
15 means a document serving for air transportation as a bill of lading
16 does for marine or rail transportation, and includes an air consignment
17 note or air waybill.

18 (7) "Branch" includes a separately incorporated foreign branch of
19 a bank.

20 (8) "Burden of establishing" a fact means the burden of persuading
21 the triers of fact that the existence of the fact is more probable than
22 its non-existence.

23 (9) "Buyer in ordinary course of business" means a person who in
24 good faith and without knowledge that the sale to him is in violation
25 of the ownership rights or security interest of a third party in the
26 goods buys in ordinary course from a person in the business of selling
27 goods of that kind but does not include a pawnbroker. All persons who
28 sell minerals or the like (including oil and gas) at wellhead or
29 minehead shall be deemed to be persons in the business of selling goods
30 of that kind. "Buying" may be for cash or by exchange of other

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

5 (10) "Conspicuous": A term or clause is conspicuous when it is so
6 written that a reasonable person against whom it is to operate ought to
7 have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE
8 BILL OF LADING) is conspicuous. Language in the body of a form is
9 "conspicuous" if it is in larger or other contrasting type or color.
10 But in a telegram any stated term is "conspicuous". Whether a term or
11 clause is "conspicuous" or not is for decision by the court.

12 (11) "Contract" means the total legal obligation which results from
13 the parties' agreement as affected by this Title and any other
14 applicable rules of law. (Compare "Agreement".)

15 (12) "Creditor" includes a general creditor, a secured creditor, a
16 lien creditor and any representative of creditors, including an
17 assignee for the benefit of creditors, a trustee in bankruptcy, a
18 receiver in equity and an executor or administrator of an insolvent
19 debtor's or assignor's estate.

20 (13) "Defendant" includes a person in the position of defendant in
21 a cross-action or counterclaim.

22 (14) "Delivery" with respect to instruments, documents of title,
23 chattel paper, or certificated securities means voluntary transfer of
24 possession.

25 (15) "Document of title" includes bill of lading, dock warrant,
26 dock receipt, warehouse receipt or order for the delivery of goods, and
27 also any other document which in the regular course of business or
28 financing is treated as adequately evidencing that the person in
29 possession of it is entitled to receive, hold and dispose of the
30 document and the goods it covers. To be a document of title a document

1 must purport to be issued by or addressed to a bailee and purport to
2 cover goods in the bailee's possession which are either identified or
3 are fungible portions of an identified mass.

4 (16) "Fault" means wrongful act, omission or breach.

5 (17) "Fungible" with respect to goods or securities means goods or
6 securities of which any unit is, by nature or usage of trade, the
7 equivalent of any other like unit. Goods which are not fungible shall
8 be deemed fungible for the purposes of this Title to the extent that
9 under a particular agreement or document unlike units are treated as
10 equivalents.

11 (18) "Genuine" means free of forgery or counterfeiting.

12 (19) "Good faith" means honesty in fact in the conduct or
13 transaction concerned.

14 (20) "Holder" with respect to ~~((an instrument, certificated~~
15 ~~security, or document of title means the person in possession if (a) in~~
16 ~~the case of an instrument, it is payable to bearer or to the order of~~
17 ~~the person in possession, (b) in the case of a security, the person in~~
18 ~~possession is the registered owner, or the security has been indorsed~~
19 ~~to the person in possession by the registered owner, or the security is~~
20 ~~in bearer form, or (c) in the case of a document of title, the goods~~
21 ~~are deliverable to bearer or to the order of the person in possession))~~
22 a negotiable instrument, means the person in possession if the
23 instrument is payable to bearer or, in the case of an instrument
24 payable to an identified person, if the identified person is in
25 possession. "Holder" with respect to a document of title means the
26 person in possession if the goods are deliverable to bearer or to the
27 order of the person in possession.

28 (21) To "honor" is to pay or to accept and pay, or where a credit
29 so engages to purchase or discount a draft complying with the terms of
30 the credit.

1 (22) "Insolvency proceedings" includes any assignment for the
2 benefit of creditors or other proceedings intended to liquidate or
3 rehabilitate the estate of the person involved.

4 (23) A person is "insolvent" who either has ceased to pay his debts
5 in the ordinary course of business or cannot pay his debts as they
6 become due or is insolvent within the meaning of the federal bankruptcy
7 law.

8 (24) "Money" means a medium of exchange authorized or adopted by a
9 domestic or foreign government (~~(or intergovernmental organization)~~)
10 and includes a monetary unit of account established by an
11 intergovernmental organization or by agreement between two or more
12 nations.

13 (25) A person has "notice" of a fact when (a) he has actual
14 knowledge of it; or

15 (b) he has received a notice or notification of it; or

16 (c) from all the facts and circumstances known to him at the time
17 in question he has reason to know that it exists.

18 A person "knows" or has "knowledge" of a fact when he has actual
19 knowledge of it. "Discover" or "learn" or a word or phrase of similar
20 import refers to knowledge rather than to reason to know. The time and
21 circumstances under which a notice or notification may cease to be
22 effective are not determined by this Title.

23 (26) A person "notifies" or "gives" a notice or notification to
24 another by taking such steps as may be reasonably required to inform
25 the other in ordinary course whether or not such other actually comes
26 to know of it. A person "receives" a notice or notification when

27 (a) it comes to his attention; or

28 (b) it is duly delivered at the place of business through which the
29 contract was made or at any other place held out by him as the place
30 for receipt of such communications.

1 (27) Notice, knowledge or a notice or notification received by an
2 organization is effective for a particular transaction from the time
3 when it is brought to the attention of the individual conducting that
4 transaction, and in any event from the time when it would have been
5 brought to his attention if the organization had exercised due
6 diligence. An organization exercises due diligence if it maintains
7 reasonable routines for communicating significant information to the
8 person conducting the transaction and there is reasonable compliance
9 with the routines. Due diligence does not require an individual acting
10 for the organization to communicate information unless such
11 communication is part of his regular duties or unless he has reason to
12 know of the transaction and that the transaction would be materially
13 affected by the information.

14 (28) "Organization" includes a corporation, government or
15 governmental subdivision or agency, business trust, estate, trust,
16 partnership or association, two or more persons having a joint or
17 common interest, or any other legal or commercial entity.

18 (29) "Party", as distinct from "third party", means a person who
19 has engaged in a transaction or made an agreement within this Title.

20 (30) "Person" includes an individual or an organization (See RCW
21 62A.1-102).

22 (31) "Presumption" or "presumed" means that the trier of fact must
23 find the existence of the fact presumed unless and until evidence is
24 introduced which would support a finding of its nonexistence.

25 (32) "Purchase" includes taking by sale, discount, negotiation,
26 mortgage, pledge, lien, issue or re-issue, gift or any other voluntary
27 transaction creating an interest in property.

28 (33) "Purchaser" means a person who takes by purchase.

29 (34) "Remedy" means any remedial right to which an aggrieved party
30 is entitled with or without resort to a tribunal.

1 (35) "Representative" includes an agent, an officer of a
2 corporation or association, and a trustee, executor or administrator of
3 an estate, or any other person empowered to act for another.

4 (36) "Rights" includes remedies.

5 (37) "Security interest" means an interest in personal property or
6 fixtures which secures payment or performance of an obligation. The
7 retention or reservation of title by a seller of goods notwithstanding
8 shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect
9 to a reservation of a "security interest". The term also includes any
10 interest of a buyer of accounts or chattel paper which is subject to
11 Article 9. The special property interest of a buyer of goods on
12 identification of such goods to a contract for sale under RCW 62A.2-401
13 is not a "security interest", but a buyer may also acquire a "security
14 interest" by complying with Article 9. Unless a lease or consignment
15 is intended as security, reservation of title thereunder is not a
16 "security interest" but a consignment is in any event subject to the
17 provisions on consignment sales (RCW 62A.2-326). Whether a lease is
18 intended as security is to be determined by the facts of each case;
19 however, (a) the inclusion of an option to purchase does not of itself
20 make the lease one intended for security, and (b) an agreement that
21 upon compliance with the terms of the lease the lessee shall become or
22 has the option to become the owner of the property for no additional
23 consideration or for a nominal consideration does make the lease one
24 intended for security.

25 (38) "Send" in connection with any writing or notice means to
26 deposit in the mail or deliver for transmission by any other usual
27 means of communication with postage or cost of transmission provided
28 for and properly addressed and in the case of an instrument to an
29 address specified thereon or otherwise agreed, or if there be none to
30 any address reasonable under the circumstances. The receipt of any

1 writing or notice within the time at which it would have arrived if
2 properly sent has the effect of a proper sending.

3 (39) "Signed" includes any symbol executed or adopted by a party
4 with present intention to authenticate a writing.

5 (40) "Surety" includes guarantor.

6 (41) "Telegram" includes a message transmitted by radio, teletype,
7 cable, any mechanical method of transmission, or the like.

8 (42) "Term" means that portion of an agreement which relates to a
9 particular matter.

10 (43) "Unauthorized" signature means one made without actual,
11 implied, or apparent authority and includes a forgery.

12 (44) "Value". Except as otherwise provided with respect to
13 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-
14 208 and RCW 62A.4-209) a person gives "value" for rights if he acquires
15 them

16 (a) in return for a binding commitment to extend credit or for the
17 extension of immediately available credit whether or not drawn upon and
18 whether or not a charge-back is provided for in the event of
19 difficulties in collection; or

20 (b) as security for or in total or partial satisfaction of a
21 preexisting claim; or

22 (c) by accepting delivery pursuant to a pre-existing contract for
23 purchase; or

24 (d) generally, in return for any consideration sufficient to
25 support a simple contract.

26 (45) "Warehouse receipt" means a receipt issued by a person engaged
27 in the business of storing goods for hire.

28 (46) "Written" or "writing" includes printing, typewriting or any
29 other intentional reduction to tangible form.

1 **Sec. 2.** RCW 62A.1-207 and 1965 ex.s. c 157 s 1-207 are each
2 amended to read as follows:

3 (1) A party who, with explicit reservation of rights performs or
4 promises performance or assents to performance in a manner demanded or
5 offered by the other party does not thereby prejudice the rights
6 reserved. Such words as "without prejudice", "under protest" or the
7 like are sufficient.

8 (2) Subsection (1) of this section shall not apply to an accord and
9 satisfaction.