

LEGISLATIVE BILL 861

Approved by the Governor February 7, 1992

Introduced by Executive Board: Warner, 25, Chairperson

AN ACT relating to the Uniform Commercial Code; to amend sections 1-101, 1-102, 1-103, 1-104, 1-106, 1-108, 1-109, 1-203, 1-204, 2-207, 2-401, 2-512, 2-719, 2-725, 5-102, 7-202, 7-503, 9-201, 10-101, 10-102, 10-103, and 10-104, Uniform Commercial Code; to change internal references to this act; to delete obsolete material; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 1-101, Uniform Commercial Code, be amended to read as follows:
U1-101. Short title.

This act Sections 1-101 to 10-104 shall be known and may be cited as the Uniform Commercial Code.

Sec. 2. That section 1-102, Uniform Commercial Code, be amended to read as follows:
U1-102. Purposes; rules of construction; variation by agreement.

(1) This act The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act the code are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this act the code may be varied by agreement, except as otherwise provided in this act the code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act the code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this

act the code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this act the code unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

Sec. 3. That section 1-103, Uniform Commercial Code, be amended to read as follows:
U1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this act the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Sec. 4. That section 1-104, Uniform Commercial Code, be amended to read as follows:
U1-104. Construction against implicit repeal.

This act The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Sec. 5. That section 1-106, Uniform Commercial Code, be amended to read as follows:
U1-106. Remedies to be liberally administered.

(1) The remedies provided by this act the Uniform Commercial Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act the code or by other rule of law.

(2) Any right or obligation declared by this act the code is enforceable by action unless the provision declaring it specifies a different and limited effect.

Sec. 6. That section 1-108, Uniform Commercial Code, be amended to read as follows:
U1-108. Severability.

If any provision or clause of this act the Uniform Commercial Code or application thereof to any

person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act code which can be given effect without the invalid provision or application, and to this end the provisions of this act the code are declared to be severable.

Sec. 7. That section 1-109, Uniform Commercial Code, be amended to read as follows:
U1-109. Section captions.

Section captions are parts of this act the Uniform Commercial Code.

Sec. 8. That section 1-203, Uniform Commercial Code, be amended to read as follows:
U1-203. Obligation of good faith.

Every contract or duty within this act the Uniform Commercial Code imposes an obligation of good faith in its performance or enforcement.

Sec. 9. That section 1-204, Uniform Commercial Code, be amended to read as follows:
U1-204. Time; reasonable time; "seasonably".

(1) Whenever this act the Uniform Commercial Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

Sec. 10. That section 2-207, Uniform Commercial Code, be amended to read as follows:

U2-207. Additional terms in acceptance or confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes

the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of ~~this act~~ the Uniform Commercial Code.

Sec. 11. That section 2-401, Uniform Commercial Code, be amended to read as follows: U2-401. Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by ~~this act~~ the Uniform Commercial Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on Secured Transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where

delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he or she delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Sec. 12. That section 2-512, Uniform Commercial Code, be amended to read as follows:
U2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act the Uniform Commercial Code (section 5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies.

Sec. 13. That section 2-719, Uniform Commercial Code, be amended to read as follows:
U2-719. Contractual modification or limitation of remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act the Uniform

Commercial Code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Sec. 14. That section 2-725, Uniform Commercial Code, be amended to read as follows:
U2-725. Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes the Uniform Commercial Code became effective.

Sec. 15. That section 5-102, Uniform Commercial Code, be amended to read as follows:
U5-102. Scope.

(1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act the Uniform Commercial Code or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article.

Sec. 16. That section 7-202, Uniform Commercial Code, be amended to read as follows:
U7-202. Form of warehouse receipt; essential terms; optional terms.

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman warehouse keeper is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his or her order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman warehouse keeper, which may be made by his or her authorized agent;

(h) if the receipt is issued for goods of which the warehouseman warehouse keeper is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman warehouse keeper claims a lien or security interest (section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman

warehouse keeper or to ~~his~~ the agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman warehouse keeper may insert in his or her receipt any other terms which are not contrary to the provisions of this act the Uniform Commercial Code and do not impair his or her obligation of delivery (section 7-403) or his or her duty of care (section 7-204). Any contrary provisions shall be ineffective.

Sec. 17. That section 7-503, Uniform Commercial Code, be amended to read as follows: U7-503. Document of title to goods defeated in certain cases.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his or her nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 7-403) or with power of disposition under this act the Uniform Commercial Code (sections 2-403 and 9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his or her nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Sec. 18. That section 9-201, Uniform Commercial Code, be amended to read as follows: U9-201. General validity of security agreement.

Except as otherwise provided by this act the Uniform Commercial Code a security agreement is effective according to its terms between the parties,

against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Sec. 19. That section 10-101, Uniform Commercial Code, be amended to read as follows:
U10-101. Operative date.

This act shall become The Uniform Commercial Code became operative at midnight on September 1, 1965. It applies to transactions entered into and events occurring after that date.

Sec. 20. That section 10-102, Uniform Commercial Code, be amended to read as follows:
U10-102. ~~Specific repealer~~; provision Provision for transition.

(1) That sections 8-163-01, 8-163-02, 36-207, 36-209, 36-210, 36-301, 36-302, 36-303, 36-501, 36-502, 62-306, 62-308, 62-309, 62-310, 69-101, 69-102, 69-103, 69-104, 69-105, 69-106, 69-107, and 69-108, Reissue Revised Statutes of Nebraska, 1943, all of Chapter 21, article 2, Reissue Revised Statutes of Nebraska, 1943, all of Chapter 62, articles 1 and 2, Reissue Revised Statutes of Nebraska, 1943, and all amendments thereof contained in the Revised Statutes Supplement, 1961, all of Chapter 69, articles 3, 4, 5, and 7, Reissue Revised Statutes of Nebraska, 1943, and all of Chapter 88, articles 1, 2, and 3, Reissue Revised Statutes of Nebraska, 1943, and all amendments thereof, and section 36-208, Revised Statutes Supplement, 1961, as amended by section 2, Legislative Bill 389, Seventy-third Session, Nebraska State Legislature, 1963, are repealed.

(2) Transactions validly entered into before the operative date specified in section 10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act the Uniform Commercial Code as though such repeal or amendment had not occurred.

Sec. 21. That section 10-103, Uniform Commercial Code, be amended to read as follows:
U10-103. General repealer.

Except as provided in the following section, all acts and parts of acts inconsistent with this act the Uniform Commercial Code are hereby repealed.

Sec. 22. That section 10-104, Uniform

Commercial Code, be amended to read as follows:
U10-104. Laws not repealed.

(1) The article on Documents of Title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 1-201).

(2) This act The Uniform Commercial Code does not repeal the Uniform Act for Simplification of Fiduciary Security Transfers ~~{sections 30-3301 to 30-3311}~~, Revised Statutes Supplement, 1961} (sections 30-3301 to 30-3311), and transfers made under either the code or such act shall be valid and given the effect accorded under the code or act followed.

Sec. 23. That original sections 1-101, 1-102, 1-103, 1-104, 1-106, 1-108, 1-109, 1-203, 1-204, 2-207, 2-401, 2-512, 2-719, 2-725, 5-102, 7-202, 7-503, 9-201, 10-101, 10-102, 10-103, and 10-104, Uniform Commercial Code, are repealed.