

BILL ANALYSIS

Senate Research Center
78R2091 ATP-F

S.B. 994
By: Williams
Business & Commerce
3/21/2003
As Filed

DIGEST AND PURPOSE

Chapter 1 of the Texas Business and Commerce Code (Article 1 of the Uniform Commercial Code, or UCC) provides general provisions and statutory definitions that are applicable to Chapters 2 through 9 of the Texas Business and Commerce Code, i.e., the remaining substantive articles of the Uniform Commercial Code. During the 1990s, Chapters 3, 4, 5, 8 and 9 of the UCC as originally adopted in 1965 by the 59th Texas Legislature were substantially revised, Chapter 6 was repealed, and Chapters 2A and 4A were added to the Texas UCC. As proposed, S.B. 995 revises Chapter 1 to bring its general provisions and definitions into line with the previous revisions and additions to the other substantive chapters. This proposed revision of Chapter 1 has been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1, Business & Commerce Code, as follows:

CHAPTER 1. GENERAL PROVISIONS SUBCHAPTER A. New heading: GENERAL PROVISIONS

Sec. 1.101. New Heading: SHORT TITLES. (a) Authorizes this title to be cited as the Uniform Commercial Code.

(b) Authorizes this title to be cited as the Uniform Commercial Code—General Provisions.

Sec. 1.102. SCOPE OF CHAPTER. Provides that this chapter applies to a transaction to the extent that it is governed by another chapter of this title.

Sec. 1.103. New Heading: CONSTRUCTION OF TITLE TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW. (a) Authorizes, rather than requires, this title to be liberally construed and applied to promote its underlying purposes and policies. Creates a portion of this Subsection from existing Subsection (b).

(b) Redesignated from former Section 1.103. Deletes former Subsections (c)-(e) relating to varying the effect of certain provisions by agreement and the meaning of certain words.

Sec. 1.104. New Heading: CONSTRUCTION AGAINST IMPLIED REPEAL. Refers to

this title as being a general act, rather than a body of law.

Sec. 1.105. SEVERABILITY. Redesignates this section from former Section 1.108. Makes nonsubstantive changes. Deletes the text of former Section 1.105 relating to the territorial application of the title and parties' power to choose applicable law. Deletes former Section 1.106 relating to the administration of remedies, and former Section 1.107 relating to waiver or renunciation of claim or right after breach.

Sec. 1.106. USE OF SINGULAR AND PLURAL; GENDER. Creates a new Section 1.106 to provide that unless the context of a particular provision of the statute otherwise requires, the singular will include the plural, the plural, the singular, and a reference to one gender will include any gender.

Sec. 1.107. SECTION CAPTIONS. Creates this section from former Section 1.109

Sec. 1.108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Provides that this title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. section 7003(b)).

SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPALS OF INTERPRETATION

Sec. 1.201. GENERAL DEFINITIONS. (a) Provides that unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this title that apply to particular chapters or parts thereof, have the meanings stated.

(b) Creates this subsection from existing text to provide that definitions in this subsection are subject to definitions contained in other chapters of this title.

- (1) Redefines "action."
- (2) Redefines "aggrieved party."
- (3) Redefines "agreement."
- (4) Redefines "bank."
- (5) Redefines "bearer."
- (6) Redefines "bill of lading."
- (7) No changes made.
- (8) Makes nonsubstantive changes.
- (9) Redefines "buyer in ordinary course of business."
- (10) Redefines "conspicuous."
- (11) Defines "consumer."

- (12) Redefines “contract.”
- (13) Redesignated from former Subdivision (12).
- (14) Redesignated from former Subdivision (13) to redefine “defendant.”
- (15) Redesignated from former Subdivision (14) to redefine “delivery.”
- (16) Redesignated from former Subdivision (15).
- (17) Redesignated from former Subdivision (16) to redefine “fault.”
- (18) Redesignated from former Subdivision (17) to redefine “fungible.”
- (19) Redesignated from former Subdivision (18) to redefine “genuine.”
- (20) Redesignated from former Subdivision (19) to redefine “good faith.”
- (21) Redesignated from former Subdivision (20) to redefine “holder.” Deletes former Subdivision (21) defining “honor.”
- (22) Redefines “insolvency proceeding.”
- (23) Redefines “insolvent.”
- (24) Redefines “money.”
- (25) Redesignated from former Subdivision (28) to redefine “organization.” Deletes former Subdivision (25) defining “notice.” Deletes former Subdivisions (26) and (27) relating to notification.
- (26) Redesignated from former Subdivision (29) to redefine “party.”
- (27) Redesignated from former Subdivision (30) to redefine “person.”
- (28) Defines “present value.”
- (29) Redesignated from former Subdivision (32) to redefine “purchase.” Deletes former Subdivision (31) defining “presumption” or “presumed.”
- (30) Redesignated from former Subdivision (33) to redefine “purchaser.”
- (31) Defines “record.”
- (32) Redesignated from former Subdivision (34).
- (33) Redesignated from former Subdivision (35) to redefine “representative.”
- (34) Redesignated from former Subdivision (36) to define “right.”
- (35) Redesignated from former Subdivision (37)(A) to redefine “security interest.”
- (36) Redesignated from former Subdivision (38) to redefine “send.”

(37) Redesignated from former Subdivision (39) to redefine “signed.”

(38) Defines “state.”

(39) Redesignated from former Subdivision (40) to redefine “surety.”

(40) Redesignated from former Subdivision (42). Deletes former subdivision (41) defining “telegram.”

(41) Redesignated from former Subdivision (43) to redefine unauthorized.”

(42) Redesignated from former Subdivision (45). Deletes former Subdivision (44) defining “value.”

(43) Redesignated from former Subdivision (46) to redefine “writing.”

Sec. 1.202. NOTICE; KNOWLEDGE. (a) Defines “notice,” subject to Subsection (f).

(b) Defines “knowledge,” and “knows.”

(c) Provides that “discover,” “learn,” or words of similar import refer to knowledge rather than to reason to know.

(d) Provides that a person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Provides that, subject to Subsection (f), a person “receives” a notice or notification when it comes to the that person’s attention or it is duly delivered in a reasonable form under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Provides that notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. Provides that an organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Provides that due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information. Deletes reference to prima facie evidence by third party documents.

Sec. 1.203. LEASE DISTINGUISHED FROM SECURITY INTEREST. (a) Provides that whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) Provides that a transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and meets certain other conditions.

(c) Provides conditions whereby a transaction in the form of a lease does not create a security interest.

(d) Provides that additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Provides that additional consideration is not nominal under certain conditions.

(e) Requires the "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement to be determined with reference to the facts and circumstances at the time the transaction is entered into. Deletes references to an obligation of good faith.

Sec. 1.204. VALUE. Provides that except as otherwise provided in Chapters 3, 4, and 5, a person gives value for rights if the person acquires them in a certain manner.

Sec. 1.205. New Heading: REASONABLE TIME; SEASONABLENESS. (a) Provides that whether a time for taking an action required by this title is reasonable depends on the nature, purpose, and circumstances of the action.

(b) Creates this subsection from existing Subsection (c).

Sec. 1.206. PRESUMPTIONS. Requires the trier of fact to find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence, whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed."

SUBCHAPTER C. TERRITORIAL APPLICABILITY AND GENERAL RULES

Sec. 1.301. TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW. (a) Authorizes the parties to agree that the law either of this state or of such other state or nation shall govern their rights and duties, except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation. Provides that failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(b) Provides that where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2.402.

Applicability of the chapter on Leases. Sections 2A.105 and 2A.106.

Applicability of the chapter on Bank Deposits and Collections. Section 4.102.

Governing law in the chapter on Funds Transfers. Section 4A.507.

Letters of Credit. Section 5.116.

Applicability of the chapter on Investment Securities. Section 8.110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9.301-9.307.

(c) Provides that if a transaction that is subject to this title is a "qualified transaction," as defined in Section 35.51 of this code, then except as provided in Subsection (b) of this section, Section 35.51 governs the effect of an agreement by the parties that the law of a particular jurisdiction governs an issue relating to the transaction or that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement.

Sec. 1.302. VARIATION BY AGREEMENT. (a) Authorizes the effect of provisions of this title to be varied by agreement, except as otherwise provided in Subsection (b) or elsewhere in this title.

(b) Prohibits the obligations of good faith, diligence, reasonableness, and care prescribed by this title from being disclaimed by agreement. Authorizes the parties, by agreement, to determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Authorizes a time that is not manifestly unreasonable to be fixed by agreement, whenever this title requires an action to be taken within a reasonable time.

(c) Provides that the presence in certain provisions of this title of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Sec. 1.303. New Heading: COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE. (a) Creates this section from former Section 1.205. Defines "course of performance."

(b) Creates this subsection from existing text to redefine "course of dealing."

(c) Creates this subsection from former Subsection (b) to redefine "usage of trade."

(d) Creates this subsection from former Subsection (c) to include "course of performance" along with course of dealing and usage of trade in ascertaining the meaning of an agreement between parties. Authorizes a usage of trade applicable in the place in which part of the performance under the agreement is to occur to be so utilized as to that part of the performance.

(e) Requires the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade to be construed whenever reasonable as consistent with each other. Provides that if such a construction is unreasonable express terms prevail over course of performance, course of dealing, and usage of trade, course of performance prevails over course of dealing and usage of trade and course of dealing prevails over usage of trade, except as otherwise provided in Subsection (f).

(f) Provides that subject to Section 2.209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Creates this subsection from former Subsection (f). Makes nonsubstantive changes. Deletes former Subsection (e) relating to the requirement of an applicable usage of trade in the place where any part of performance occurs to be used in interpreting an agreement as to that part of the performance.

Sec. 1.304. OBLIGATION OF GOOD FAITH. Provides that every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

Sec. 1.305. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) Requires the remedies provided by this title to 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 prohibits either consequential or special damages or penal damages from being had except as specifically provided in this title or by other rule of law.

(b) Provides that any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

Sec. 1.306. **WAIVER OF RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.** Authorizes a claim or right arising out of an alleged breach to be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Sec. 1.307. **PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS.** Provides that a document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Sec. 1.308. **PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.** Creates this section from former Section 1.207. Makes nonsubstantive changes. Deletes former Section 1.206 (**STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED**).

Sec. 1.309. **OPTION TO ACCELERATE AT WILL.** Creates this section from former Section 1.208. Makes nonsubstantive changes.

Sec. 1.310. **SUBORDINATED OBLIGATIONS.** Authorizes an obligation to be issued as subordinated to performance of another obligation of the person obligated, or authorizes a creditor to subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Provides that subordination does not create a security interest as against either the common debtor or a subordinated creditor.

SECTION 2. Amends Section 2.103(a)(2), Business & Commerce Code, to reserve the section and delete the definition of "good faith."

SECTION 3. Amends Section 2.202, Business & Commerce Code, to make a conforming change.

SECTION 4. Amends Section 2A.103(c), Business & Commerce Code, to make a conforming change.

SECTION 5. Amends Section 2A.501(d), Business & Commerce Code, to make a conforming change.

SECTION 6. Amends Section 2A.518(b), Business & Commerce Code, to make a conforming change.

SECTION 7. Amends Section 2A.519(a), Business & Commerce Code, to make a conforming change.

SECTION 8. Amends Section 2A.527(b), Business & Commerce Code, to make a conforming change.

SECTION 9. Amends Section 2A.528(a), Business & Commerce Code, to make a conforming change.

SECTION 10. Amends Sections 3.103(a)(4) and (10), Business & Commerce Code, as follows:

(4) Reserves this subdivision and deletes definition of "good faith."

(10) Makes a conforming change.

SECTION 11. Amends Section 4.102(c), Business & Commerce Code, to make a conforming change.

SECTION 12. Amends Section 4.104(c), Business & Commerce Code, to make a conforming change.

SECTION 13. Amends Sections 4A.105(a)(6) and (7), Business & Commerce Code, as follows:

(6) Reserves this subdivision and makes a conforming change.

(7) Makes a conforming change.

SECTION 14. Amends Section 4A.106(a), Business & Commerce Code, to make a conforming change.

SECTION 15. Amends Section 4A.204(b), Business & Commerce Code, to make a conforming change.

SECTION 16. Amends Section 4A.507(b), Business & Commerce Code, to make a conforming change.

SECTION 17. Amends Section 5.103(c), Business & Commerce Code, to make a conforming change.

SECTION 18. Amends Section 8.102(a)(10), Business & Commerce Code, to reserve Subdivision (10) and make a conforming change.

SECTION 19. Amends Section 9.102(a)(43), Business & Commerce Code, to reserve subdivision (43) and make a conforming change.

SECTION 20. Repealer: Sections 2.208 (Course of Performance or Practical Construction) and 2A.207 (Course of Performance or Practical Construction), Business & Commerce Code.

SECTION 21. Effective date: September 1, 2003.