
SECOND SUBSTITUTE HOUSE BILL 1182

State of Washington

54th Legislature

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By House Committee on Law & Justice (originally sponsored by Representatives Hickel and Appelwick)

Read first time 01/15/96.

1 AN ACT Relating to the uniform commercial code; amending RCW 62A.2-
2 511, 62A.3-112, 62A.9-203, 62A.9-206, 62A.9-302, and 62A.9-312; and
3 reenacting and amending RCW 62A.1-201.

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

5 **Sec. 1.** RCW 62A.1-201 and 1993 c 230 s 2A-602 and 1993 c 229 s 1
6 are each reenacted and amended to read as follows:

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

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

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

15 (3) "Agreement" means the bargain of the parties in fact as found
16 in their language or by implication from other circumstances including
17 course of dealing or usage of trade or course of performance as
18 provided in this Title (RCW 62A.1-205 (~~and~~), RCW 62A.2-208, and RCW
19 62A.2A-207). Whether an agreement has legal consequences is determined

1 by the provisions of this Title, if applicable; otherwise by the law of
2 contracts (RCW 62A.1-103). (Compare "Contract".)

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

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

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

13 (7) "Branch" includes a separately incorporated foreign branch of
14 a bank.

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

18 (9) "Buyer in ordinary course of business" means a person who in
19 good faith and without knowledge that the sale to him or her is in
20 violation of the ownership rights or security interest of a third party
21 in the goods buys in ordinary course from a person in the business of
22 selling goods of that kind but does not include a pawnbroker. All
23 persons who sell minerals or the like (including oil and gas) at
24 wellhead or minehead shall be deemed to be persons in the business of
25 selling goods of that kind. "Buying" may be for cash or by exchange of
26 other property or on secured or unsecured credit and includes receiving
27 goods or documents of title under a pre-existing contract for sale but
28 does not include a transfer in bulk or as security for or in total or
29 partial satisfaction of a money debt.

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

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

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

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

8 (14) "Delivery" with respect to instruments, documents of title,
9 chattel paper, or certificated securities means voluntary transfer of
10 possession.

11 (15) "Document of title" includes bill of lading, dock warrant,
12 dock receipt, warehouse receipt or order for the delivery of goods, and
13 also any other document which in the regular course of business or
14 financing is treated as adequately evidencing that the person in
15 possession of it is entitled to receive, hold and dispose of the
16 document and the goods it covers. To be a document of title a document
17 must purport to be issued by or addressed to a bailee and purport to
18 cover goods in the bailee's possession which are either identified or
19 are fungible portions of an identified mass.

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

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

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

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

30 (20) "Holder" with respect to a negotiable instrument, means the
31 person in possession if the instrument is payable to bearer or, in the
32 case of an instrument payable to an identified person, if the
33 identified person is in possession. "Holder" with respect to a
34 document of title means the person in possession if the goods are
35 deliverable to bearer or to the order of the person in possession.

36 (21) To "honor" is to pay or to accept and pay, or where a credit
37 so engages to purchase or discount a draft complying with the terms of
38 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 or
5 her debts in the ordinary course of business or cannot pay his or her
6 debts as they become due or is insolvent within the meaning of the
7 federal bankruptcy law.

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

12 (25) A person has "notice" of a fact when

13 (a) he or she has actual knowledge of it; or

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

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

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

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

26 (a) it comes to his or her attention; or

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

30 (27) Notice, knowledge or a notice or notification received by an
31 organization is effective for a particular transaction from the time
32 when it is brought to the attention of the individual conducting that
33 transaction, and in any event from the time when it would have been
34 brought to his or her attention if the organization had exercised due
35 diligence. An organization exercises due diligence if it maintains
36 reasonable routines for communicating significant information to the
37 person conducting the transaction and there is reasonable compliance
38 with the routines. Due diligence does not require an individual acting
39 for the organization to communicate information unless such

1 communication is part of his or her regular duties or unless he or she
2 has reason to know of the transaction and that the transaction would be
3 materially affected by the information.

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

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

10 (30) "Person" includes an individual or an organization (See RCW
11 62A.1-102).

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

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

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

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

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

24 (36) "Rights" includes remedies.

25 (37) "Security interest" means an interest in personal property or
26 fixtures which secures payment or performance of an obligation, except
27 for lease-purchase agreements under chapter 63.19 RCW. The retention
28 or reservation of title by a seller of goods notwithstanding shipment
29 or delivery to the buyer (RCW 62A.2-401) is limited in effect to a
30 reservation of a "security interest". The term also includes any
31 interest of a buyer of accounts or chattel paper which is subject to
32 Article 9. The special property interest of a buyer of goods on
33 identification of such goods to a contract for sale under RCW 62A.2-401
34 is not a "security interest", but a buyer may also acquire a "security
35 interest" by complying with Article 9. Unless a consignment is
36 intended as security, reservation of title thereunder is not a
37 "security interest" but a consignment in any event is subject to the
38 provisions on consignment sales (RCW 62A.2-326).

1 Whether a transaction creates a lease or security interest is
2 determined by the facts of each case. However, a transaction creates
3 a security interest if the consideration the lessee is to pay the
4 lessor for the right to possession and use of the goods is an
5 obligation for the term of the lease not subject to termination by the
6 lessee, and:

7 (a) The original term of the lease is equal to or greater than the
8 remaining economic life of the goods;

9 (b) The lessee is bound to renew the lease for the remaining
10 economic life of the goods or is bound to become the owner of the
11 goods;

12 (c) The lessee has an option to renew the lease for the remaining
13 economic life of the goods for no additional consideration or nominal
14 additional consideration upon compliance with the lease agreement; or

15 (d) The lessee has an option to become the owner of the goods for
16 no additional consideration or nominal additional consideration upon
17 compliance with the lease agreement.

18 A transaction does not create a security interest merely because it
19 provides that:

20 (a) The present value of the consideration the lessee is obligated
21 to pay the lessor for the right to possession and use of the goods is
22 substantially equal to or is greater than the fair market value of the
23 goods at the time the lease is entered into;

24 (b) The lessee assumes risk of loss of the goods, or agrees to pay
25 taxes, insurance, filing, recording, or registration fees, or service
26 or maintenance costs with respect to the goods;

27 (c) The lessee has an option to renew the lease or to become the
28 owner of the goods;

29 (d) The lessee has an option to renew the lease for a fixed rent
30 that is equal to or greater than the reasonably predictable fair market
31 rent for the use of the goods for the term of the renewal at the time
32 the option is to be performed;

33 (e) The lessee has an option to become the owner of the goods for
34 a fixed price that is equal to or greater than the reasonably
35 predictable fair market value of the goods at the time the option is to
36 be performed; or

37 (f) The amount of rental payments may or will be increased or
38 decreased by reference to the amount realized by the lessor upon sale
39 or disposition of the goods.

1 For purposes of this subsection (37):

2 (a) Additional consideration is not nominal if (i) when the option
3 to renew the lease is granted to the lessee the rent is stated to be
4 the fair market rent for the use of the goods for the term of the
5 renewal determined at the time the option is to be performed, or (ii)
6 when the option to become the owner of the goods is granted to the
7 lessee the price is stated to be the fair market value of the goods
8 determined at the time the option is to be performed. Additional
9 consideration is nominal if it is less than the lessee's reasonably
10 predictable cost of performing under the lease agreement if the option
11 is not exercised;

12 (b) "Reasonably predictable" and "remaining economic life of the
13 goods" are to be determined with reference to the facts and
14 circumstances at the time the transaction is entered into; and

15 (c) "Present value" means the amount as of a date certain of one or
16 more sums payable in the future, discounted to the date certain. The
17 discount is determined by the interest rate specified by the parties if
18 the rate is not manifestly unreasonable at the time the transaction is
19 entered into; otherwise, the discount is determined by a commercially
20 reasonable rate that takes into account the facts and circumstances of
21 each case at the time the transaction was entered into.

22 (38) "Send" in connection with any writing or notice means to
23 deposit in the mail or deliver for transmission by any other usual
24 means of communication with postage or cost of transmission provided
25 for and properly addressed and in the case of an instrument to an
26 address specified thereon or otherwise agreed, or if there be none to
27 any address reasonable under the circumstances. The receipt of any
28 writing or notice within the time at which it would have arrived if
29 properly sent has the effect of a proper sending.

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

32 (40) "Surety" includes guarantor.

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

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

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

1 (44) "Value". Except as otherwise provided with respect to
2 negotiable instruments and bank collections (RCW 62A.3-303, RCW
3 (~~62A.4-208~~) 62A.4-210, and RCW (~~62A.4-209~~) 62A.4-211) a person
4 gives "value" for rights if he or she acquires them

5 (a) in return for a binding commitment to extend credit or for the
6 extension of immediately available credit whether or not drawn upon and
7 whether or not a charge-back is provided for in the event of
8 difficulties in collection; or

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

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

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

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

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

19 **Sec. 2.** RCW 62A.2-511 and 1965 ex.s. c 157 s 2-511 are each
20 amended to read as follows:

21 (1) Unless otherwise agreed tender of payment is a condition to the
22 seller's duty to tender and complete any delivery.

23 (2) Tender of payment is sufficient when made by any means or in
24 any manner current in the ordinary course of business unless the seller
25 demands payment in legal tender and gives any extension of time
26 reasonably necessary to procure it.

27 (3) Subject to the provisions of this Title on the effect of an
28 instrument on an obligation (RCW (~~62A.3-802~~) 62A.3-310), payment by
29 check is conditional and is defeated as between the parties by dishonor
30 of the check on due presentment.

31 **Sec. 3.** RCW 62A.3-112 and 1993 c 229 s 14 are each amended to read
32 as follows:

33 (a) Unless otherwise provided in the instrument or in RCW
34 19.52.010, (i) an instrument is not payable with interest, and (ii)
35 interest on an interest-bearing instrument is payable from the date of
36 the instrument.

1 (b) Interest may be stated in an instrument as a fixed or variable
2 amount of money or it may be expressed as a fixed or variable rate or
3 rates. The amount or rate of interest may be stated or described in
4 the instrument in any manner and may require reference to information
5 not contained in the instrument. If an instrument provides for
6 interest, but the amount of interest payable cannot be ascertained from
7 the description, then except as otherwise provided in RCW 19.52.010,
8 interest is payable at the judgment rate in effect at the place of
9 payment of the instrument and at the time interest first accrues.

10 **Sec. 4.** RCW 62A.9-203 and 1995 c 48 s 63 are each amended to read
11 as follows:

12 (1) Subject to the provisions of RCW (~~62A.4-208~~) 62A.4-210 on the
13 security interest of a collecting bank, RCW 62A.9-115 and 62A.9-116 on
14 security interests in investment property, and RCW 62A.9-113 on a
15 security interest arising under the Article on Sales, a security
16 interest is not enforceable against the debtor or third parties with
17 respect to the collateral and does not attach unless:

18 (a) the collateral is in the possession of the secured party
19 pursuant to agreement, the collateral is investment property and the
20 secured party has control pursuant to agreement, or the debtor has
21 signed a security agreement which contains a description of the
22 collateral and in addition, when the security interest covers crops
23 growing or to be grown or timber to be cut, a description of the land
24 concerned;

25 (b) value has been given; and

26 (c) the debtor has rights in the collateral.

27 (2) A security interest attaches when it becomes enforceable
28 against the debtor with respect to the collateral. Attachment occurs
29 as soon as all of the events specified in subsection (1) have taken
30 place unless explicit agreement postpones the time of attaching.

31 (3) Unless otherwise agreed a security agreement gives the secured
32 party the rights to proceeds provided by RCW 62A.9-306.

33 (4) A transaction, although subject to this Article, is also
34 subject to chapters 31.04, 31.12, 31.16, 31.20, and 31.24 RCW, and in
35 the case of conflict between the provisions of this Article and any
36 such statute, the provisions of such statute control. Failure to
37 comply with any applicable statute has only the effect which is
38 specified therein.

1 **Sec. 5.** RCW 62A.9-206 and 1965 ex.s. c 157 s 9-206 are each
2 amended to read as follows:

3 (1) Subject to any statute or decision which establishes a
4 different rule for buyers or lessees of consumer goods, an agreement by
5 a buyer or lessee that he will not assert against an assignee any claim
6 or defense which he may have against the seller or lessor is
7 enforceable by an assignee who takes his assignment for value, in good
8 faith and without notice of a claim or defense, except as to defenses
9 of a type which may be asserted against a holder in due course of a
10 negotiable instrument under the Article on (~~Commercial Paper~~)
11 Negotiable Instruments (Article 3).

12 (2) When a seller retains a purchase money security interest in
13 goods the Article on Sales (Article 2) governs the sale and any
14 disclaimer, limitation or modification of the seller's warranties.

15 **Sec. 6.** RCW 62A.9-302 and 1995 c 48 s 65 are each amended to read
16 as follows:

17 (1) A financing statement must be filed to perfect all security
18 interests except the following:

19 (a) a security interest in collateral in possession of the secured
20 party under RCW 62A.9-305;

21 (b) a security interest temporarily perfected in instruments,
22 certificated securities, or documents without delivery under RCW 62A.9-
23 304 or in proceeds for a ten day period under RCW 62A.9-306;

24 (c) a security interest created by an assignment of a beneficial
25 interest in a trust or a decedent's estate;

26 (d) a purchase money security interest in consumer goods; but
27 filing is required for a motor vehicle required to be registered and
28 other property subject to subsection (3) of this section; and fixture
29 filing is required for priority over conflicting interests in fixtures
30 to the extent provided in RCW 62A.9-313;

31 (e) a security interest of a collecting bank (~~(RCW 62A.4-208)~~)
32 (RCW 62A.4-210) or arising under the Articles on Sales and Leases (RCW
33 62A.9-113) or covered in subsection (3) of this section;

34 (f) an assignment for the benefit of all the creditors of the
35 transferor, and subsequent transfers by the assignee thereunder;

36 (g) a security interest in investment property which is perfected
37 without filing under RCW 62A.9-115 or 62A.9-116.

1 (2) If a secured party assigns a perfected security interest, no
2 filing under this Article is required in order to continue the
3 perfected status of the security interest against creditors of and
4 transferees from the original debtor.

5 (3) The filing of a financing statement otherwise required by this
6 Article is not necessary or effective to perfect a security interest in
7 property subject to

8 (a) a statute or treaty of the United States which provides for a
9 national or international registration or a national or international
10 certificate of title or which specifies a place of filing different
11 from that specified in this Article for filing of the security
12 interest; or

13 (b) the following statute of this state: RCW 46.12.095 or
14 88.02.070; but during any period in which collateral is inventory held
15 for sale by a person who is in the business of selling goods of that
16 kind, the filing provisions of this Article (Part 4) apply to a
17 security interest in that collateral created by him as debtor; or

18 (c) a certificate of title statute of another jurisdiction under
19 the law of which indication of a security interest on the certificate
20 is required as a condition of perfection (subsection (2) of RCW 62A.9-
21 103).

22 (4) Compliance with a statute or treaty described in subsection (3)
23 is equivalent to the filing of a financing statement under this
24 Article, and a security interest in property subject to the statute or
25 treaty can be perfected only by compliance therewith except as provided
26 in RCW 62A.9-103 on multiple state transactions. Duration and renewal
27 of perfection of a security interest perfected by compliance with the
28 statute or treaty are governed by the provisions of the statute or
29 treaty; in other respects the security interest is subject to this
30 Article.

31 (5) Part 4 of this Article does not apply to a security interest in
32 property of any description created by a deed of trust or mortgage made
33 by any corporation primarily engaged in the railroad or street railway
34 business, the furnishing of telephone or telegraph service, the
35 transmission of oil, gas or petroleum products by pipe line, or the
36 production, transmission or distribution of electricity, steam, gas or
37 water, but such security interest may be perfected under this Article
38 by filing such deed of trust or mortgage with the department of
39 licensing. When so filed, such instrument shall remain effective until

1 terminated, without the need for filing a continuation statement.
2 Assignments and releases of such instruments may also be filed with the
3 department of licensing. The director of licensing shall be a filing
4 officer for the foregoing purposes.

5 **Sec. 7.** RCW 62A.9-312 and 1995 c 48 s 70 are each amended to read
6 as follows:

7 (1) The rules of priority stated in other sections of this Part and
8 in the following sections shall govern when applicable: RCW ((~~62A.4-~~
9 ~~208~~)) 62A.4-210 with respect to the security interests of collecting
10 banks in items being collected, accompanying documents and proceeds;
11 RCW 62A.9-103 on security interests related to other jurisdictions; RCW
12 62A.9-114 on consignments; RCW 62A.9-115 on security interests in
13 investment property.

14 (2) Conflicting priorities between security interests in crops
15 shall be governed by chapter 60.11 RCW.

16 (3) A perfected purchase money security interest in inventory has
17 priority over a conflicting security interest in the same inventory and
18 also has priority in identifiable cash proceeds received on or before
19 the delivery of the inventory to a buyer if

20 (a) the purchase money security interest is perfected at the time
21 the debtor receives possession of the inventory; and

22 (b) the purchase money secured party gives notification in writing
23 to the holder of the conflicting security interest if the holder had
24 filed a financing statement covering the same types of inventory (i)
25 before the date of the filing made by the purchase money secured party,
26 or (ii) before the beginning of the twenty-one day period where the
27 purchase money security interest is temporarily perfected without
28 filing or possession (subsection (5) of RCW 62A.9-304); and

29 (c) the holder of the conflicting security interest receives the
30 notification within five years before the debtor receives possession of
31 the inventory; and

32 (d) the notification states that the person giving the notice has
33 or expects to acquire a purchase money security interest in inventory
34 of the debtor, describing such inventory by item or type.

35 (4) A purchase money security interest in collateral other than
36 inventory has priority over a conflicting security interest in the same
37 collateral or its proceeds if the purchase money security interest is

1 perfected at the time the debtor receives possession of the collateral
2 or within twenty days thereafter.

3 (5) In all cases not governed by other rules stated in this section
4 (including cases of purchase money security interests which do not
5 qualify for the special priorities set forth in subsections (3) and (4)
6 of this section), priority between conflicting security interests in
7 the same collateral shall be determined according to the following
8 rules:

9 (a) Conflicting security interests rank according to priority in
10 time of filing or perfection. Priority dates from the time a filing is
11 first made covering the collateral or the time the security interest is
12 first perfected, whichever is earlier, provided that there is no period
13 thereafter when there is neither filing nor perfection.

14 (b) So long as conflicting security interests are unperfected, the
15 first to attach has priority.

16 (6) For the purposes of subsection (5) a date of filing or
17 perfection as to collateral is also a date of filing or perfection as
18 to proceeds.

19 (7) If future advances are made while a security interest is
20 perfected by filing, the taking of possession, or under RCW 62A.9-115
21 or 62A.9-116 on investment property, the security interest has the same
22 priority for the purposes of subsection (5) with respect to the future
23 advances as it does with respect to the first advance. If a commitment
24 is made before or while the security interest is so perfected, the
25 security interest has the same priority with respect to advances made
26 pursuant thereto. In other cases a perfected security interest has
27 priority from the date the advance is made.

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