

BILL ANALYSIS

Senate Research Center

H.B. 1394
By: Elkins (Williams)
Business & Commerce
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Engrossed

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9 of the UCC as originally adopted in Texas by the 59th Legislature in 1965 were substantially revised, Chapter 6 was repealed, and Chapters 2A and 4A were added to the Texas UCC. This proposed revision of Chapter 1 brings 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. It contains few substantive revisions to current Chapter 1. These revisions will be discussed below in the section-by-section analysis. In summary, the most important of the proposed revisions concern expanding the definition of good faith in Section 1.201(19) and changing the choice of law rules in Section 1.301 (current Section 1.105). The remaining substantive changes pertain to the scope of Chapter 2 (Section 1.102), the applicability of supplementary principles of law (Section 1.103), and the relevance of course of performance between the parties (Section 1.303).

A final substantive change is the deletion of current Section 1.206, the statute of frauds "for kinds of personal property not otherwise covered" by subsequent articles of the Uniform Commercial Code. This deletion is recommended because all subsequent articles of the Code contain provisions regarding writing requirements for transactions within their scope. Thus the only function of current Section 1.206 is to impose a writing requirement on transactions not governed by the Uniform Commercial Code.

The remaining changes in this proposed revision are primarily structural. Current Chapter 1 is divided into two parts. The proposed revision is divided into three parts. Part I is entitled "General Provisions" and contains general rules applicable throughout the Uniform Commercial Code. Part II is entitled "General Definitions and Principles of Interpretation" and contains the Code's primary definitions as well as the Code's general rules of interpretation. Part III is entitled "Territorial Applicability and General Rules" and contains the substantive rules that are applicable throughout the Code.

Four definitions in current Section 1.201, which are in reality substantive rules, have been deleted from the definitions section and included elsewhere. These are: 1 & 2. the rules pertaining to notice and knowledge currently in three separate subsections of Section 1.201 (moved to Section 2.202); 3. the rules for distinguishing leases from security interests in Section 1.202(37) (moved to Section 1.203); and 4. whether one acquires rights "for value" as provided in Section 1.201(44) (moved to Section 1.204).

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 chapter to be cited as 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) Requires this title to be liberally construed and applied to promote its underlying purposes and policies.

(b) Creates this subsection from former Section 1.103. Deletes former Subsections (c), (d), and (e) in relation to the effect of provisions of this title.

Sec. 1.104. New heading: CONSTRUCTION AGAINST IMPLIED REPEAL. Refers to this as being a general act, rather than body of law.

Sec. 1.105. SEVERABILITY. Redesignated from Section 1.108. Deletes former Section 1.105 titled TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW. Deletes former Section 1.106 titled REMEDIES TO BE LIBERALLY ADMINISTERED. Deletes former Section 1.107 titled WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. Makes nonsubstantive changes.

Sec. 1.106. USE OF SINGULAR AND PLURAL; GENDER. Provides that in this title, unless the statutory context otherwise requires:

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

(2) words of any gender also refer to any other gender.

Sec. 1.107. SECTION CAPTIONS. Redesignated from Section 1.109 to provide that section captions are parts of this title.

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 PRINCIPLES 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) Defines certain terms.

Sec. 1.202. NOTICE; KNOWLEDGE. (a) Defines "notice."

(b) Defines "knowledge."

(c) Defines "discover," "learn," or words of similar import.

(d) Defines when a person "notifies" or "gives" a notice or notification to another person.

(e) Defines when a person "receives" a notice or notification.

(f) Provides an explanation of due diligence. Deletes text relating 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:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

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

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

(c) Provides that a transaction in the form of a lease does not create a security interest merely because of certain considerations.

(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 in certain situations.

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

Sec. 1.204. VALUE. Defines when an individual gives "value" for rights.

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) Redesignated from Subsection (c). Makes nonsubstantive changes.

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 when a transaction bears a reasonable relation to this state and also to another state or nation, except as provided hereafter in this section. 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. Redesignated from Section 1.205 (a) Defines "course of performance."

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

(c) Redesignated from former Subsection (b) to define "usage of trade."

(d) Redesignated from former Subsection (c) to authorize a course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, to give particular meaning to specific terms of the agreement, and to supplement or qualify the terms of the agreement. 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:

- (1) express terms prevail over course of performance, course of dealing, and usage of trade;
- (2) course of performance prevails over course of dealing and usage of trade; and
- (3) course of dealing prevails over usage of trade.

(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) Redesignated from former Subsection (f). Deletes former Subsection (e). Makes conforming and nonsubstantive changes.

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 provides that neither consequential or special damages nor penal damages may be 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 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. Redesignated from Section 1.207. Deletes former Section 1.206. STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED.

Sec. 1.309. OPTION TO ACCELERATE AT WILL. Redesignated 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 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 Subdivision (2). Deletes definition of "good faith."

SECTION 3. Amends Section 2.202, Business & Commerce Code, to add a reference to Section 1.303 and delete references to Sections 1.205 and 2.208. Makes a nonsubstantive 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 replace reference to Section 1.106(a) with Section 1.305(a).

SECTION 6. Amends Section 2A.518(b), Business & Commerce Code, to add Section 1.302 and delete Section 1.102(c) in relation to agreement of the parties.

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) [Reserved for expansion.] Deletes definition of "good faith."

(10) Adds a reference to Subsection (b) to Section 1.201(8)

SECTION 11. Amends Section 4.102(c), Business & Commerce Code, to replace the reference to Section 1.105 with Section 1.301.

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) [Reserved for expansion.] Makes a conforming change.

(7) Makes a conforming change.

SECTION 14. Amends Section 4A.106(a), Business & Commerce Code, replace the reference to Section 1.201 with Section 1.202.

SECTION 15. Amends Section 4A.204(b), Business & Commerce Code, to replace reference to Section 1.204 with Section 1.302(b).

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) for expansion and make a conforming change.

SECTION 19. Amends Section 9.102(a)(43), Business & Commerce Code, to reserve Subdivision (43) for expansion 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.