
HOUSE BILL 2969

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Dellwo and Paris

Read first time 02/05/92. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to defining security interests; amending RCW
2 62A.1-201; and creating a new section.

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 security,
15 or document of title means the person in possession if (a) in the case
16 of an instrument, it is payable to bearer or to the order of the person
17 in possession, (b) in the case of a security, the person in possession
18 is the registered owner, or the security has been indorsed to the
19 person in possession by the registered owner, or the security is in
20 bearer form, or (c) in the case of a document of title, the goods are
21 deliverable to bearer or to the order of the person in possession.

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

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

28 (23) A person is "insolvent" who either has ceased to pay his debts
29 in the ordinary course of business or cannot pay his debts as they

1 become due or is insolvent within the meaning of the federal bankruptcy
2 law.

3 (24) "Money" means a medium of exchange authorized or adopted by a
4 domestic or foreign government (~~(or intergovernmental organization)~~)
5 and includes a monetary unit of account established by an
6 intergovernmental organization or by agreement between two or more
7 nations.

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

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

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

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

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

22 (a) it comes to his attention; or

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

26 (27) Notice, knowledge or a notice or notification received by an
27 organization is effective for a particular transaction from the time
28 when it is brought to the attention of the individual conducting that
29 transaction, and in any event from the time when it would have been
30 brought to his attention if the organization had exercised due

1 diligence. An organization exercises due diligence if it maintains
2 reasonable routines for communicating significant information to the
3 person conducting the transaction and there is reasonable compliance
4 with the routines. Due diligence does not require an individual acting
5 for the organization to communicate information unless such
6 communication is part of his regular duties or unless he has reason to
7 know of the transaction and that the transaction would be materially
8 affected by the information.

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

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

15 (30) "Person" includes an individual or an organization (See RCW
16 62A.1-102).

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

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

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

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

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

29 (36) "Rights" includes remedies.

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

21 (a) Whether a transaction creates a lease or security interest is
22 determined by the facts of each case; however, a transaction creates a
23 security interest if the consideration the lessee is to pay the lessor
24 for the right to possession and use of the goods is an obligation for
25 the term of the lease and not subject to termination by the lessee:

26 (i) The original term of the lease is equal to or greater than the
27 remaining economic life of the goods;

28 (ii) The lessee is bound to renew the lease for the remaining
29 economic life of the goods or is bound to become the owner of the
30 goods;

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

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

7 (b) A transaction does not create a security interest merely
8 because it provides that:

9 (i) The present value of the consideration the lessee is obligated
10 to pay the lessor for the right to possession and use of the goods is
11 substantially equal to or is greater than the fair market value of the
12 goods at the time the lease is entered into;

13 (ii) The lessee assumes risk of loss of the goods, or agrees to pay
14 taxes, insurance, filing, recording, or registration fees, or service
15 or maintenance costs with respect to the goods;

16 (iii) The lessee has an option to renew the lease or to become the
17 owner of the goods;

18 (iv) The lessee has an option to renew the lease for a fixed rent
19 that is equal to or greater than the reasonably predictable fair market
20 rent for the use of the goods for the term of the renewal at the time
21 the option is to be performed;

22 (v) The lessee has an option to become the owner of the goods for
23 a fixed price that is equal to or greater than the reasonably
24 predictable fair market value of the goods at the time the option is to
25 be performed; or

26 (vi) The amount of rental payments may or will be increased or
27 decreased by reference to the amount realized by the lessor upon sale
28 or disposition of the goods.

29 (c) For purposes of this subsection (37):

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

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

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

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

3 (40) "Surety" includes guarantor.

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 2.** If section 602 of House Bill No. 1797 is
29 enacted by June 30, 1992, this act is null and void.