

HOUSE BILL REPORT

HB 1015

As Amended by the Senate

Title: An act relating to the Uniform Commercial Code.

Brief Description: Adopting the Uniform Commercial Code article on leases.

Sponsors: Representatives Appelwick and Riley.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1993, DP;
Passed House, March 8, 1993, 94-0;
Amended by Senate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 17 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt;
Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: Washington has adopted the Uniform Commercial Code (UCC) which governs many aspects of commerce involving personal property. The UCC is divided into "articles" covering various topics. Included in the UCC, for instance, are articles related to sales and to secured transactions. A main goal of the UCC is to provide codified predictability and uniformity nationwide for the conduct of business.

Leasing personal property is a common form of commerce. One chapter of law, 63.10 RCW, covers some aspects of leases of consumer goods. However, there is no comprehensive treatment of the subject in Washington's UCC or other statutes. Some lease arrangements may closely resemble an outright sale, while others may look much like a secured transaction or other loan agreement. The response to issues of classifying what are ostensibly "leases" has been on a case-by-case basis. The State Supreme Court, for example, has held some consumer leases to be loans, in response to which the Legislature exempted those leases from state usury laws.

Significant consequences may result from a court declaring a nominal lease to be a sale or a secured transaction. For instance, a "lessor" will have to file a financing statement or take other action to perfect his or her interest if the "lease" is really a secured transaction. On the other hand, a "lessee" may have express and implied warranty rights if the "lease" is really a sale.

In 1985, the National Conference of Commissioners on Uniform State Laws approved a Uniform Personal Property Leasing Act and recommended its adoption by the states. This proposed legislation was modified in 1987. In drafting the proposal, the conference generally concluded that leases are more analogous to sales than to secured transactions. The proposal was also redrafted in light of amendments made to it when it was adopted in some states, particularly California, and in light of significant commentary by bar groups and others who reviewed earlier versions. The conference, as well as the American Law Institute, have recommended adoption of this new UCC article governing leases.

Summary of Bill: The Uniform Law Commission's recommended article on leasing of personal property is added to the Uniform Commercial Code.

The new article defines and sets forth the rules governing commercial leases. The article is divided into six parts: General Provisions; Formation and Construction of Leases; Effect of Lease Contract; Performance of Lease Contract; Default; and Amendatory Sections.

GENERAL PROVISIONS. Extensive definitions of many terms related to leases are provided. Generally, the article defines leases by exclusion as not being sales or secured transactions and by inclusion as a "transfer of the right to possession and use of goods for a term in return for consideration." The "goods" which are subject to leases within the meaning of the article include fixtures and movable personal property, but do not include money, intangibles, or minerals before extraction.

Leases subject to the article are also expressly subject to certain other statutes. Specifically, statutes concerning certificates of title and consumer protection generally take precedence when conflicts arise between their coverage and the coverage of the article on leases.

The article also allows a court to refuse to enforce any lease, or portion of a lease, that it finds to be unconscionable.

FORMATION AND CONSTRUCTION OF LEASES. Detailed rules are provided for the creation and interpretation of leases. Generally, leases must be in writing if the value of the lease is more than \$1,000. A lease may take any form "sufficient to show agreement" between the parties.

A lessor is held to have created express warranties that goods conform to any affirmations, promises or descriptions made, or samples provided. Implied warranties of merchantability and fitness for a particular use are also imposed.

Generally, the risk of loss of the goods after formation of a lease but before delivery remains with the lessor.

EFFECT OF LEASE CONTRACT. A lease is enforceable as between the parties according to the terms of the lease. Generally, leases are effective against the interests of purchasers of the goods and against creditors of the parties who take subject to the terms of the lease.

Specific rules are provided for the alienation of lessors' and lessees' interests in a lease. Special rules are also provided for situations in which goods that are subject to a lease become fixtures to real property or accessions to other goods.

PERFORMANCE OF LEASE CONTRACT. The article prescribes the methods by which parties may repudiate, substitute, or excuse a lease contract.

DEFAULT. Remedies and procedures are provided for lessors and lessees in the event of default on a lease contract by the other party. A four-year statute of limitations is provided, but the parties to a lease may agree to a period as short as one year.

AMENDATORY SECTIONS. Existing sections of the UCC are amended to conform definitions to the new provisions in the article on leases.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment effects the priority of lease interests in "accessions." Accessions are goods that are installed in or affixed to other goods.

The House Bill provides that a lease interest acquired in goods **before** the goods become an accession is generally superior to any interest in the whole of which the accession is a part. The bill provides that if a lease interest in an accession is acquired **after** the goods became an accession, the lease interest is generally subordinate to existing interests in the whole. However, the bill also provides

that a lease interest in an accession, **whenever** acquired, is subject to the interest of a subsequent good faith buyer or lessee in the ordinary course of business and is subject to the perfected security interest of a creditor who advances credit without knowledge of the lease interest in the accession.

The Senate amendment provides that the lease interest of Washington Natural Gas company in a residential conversion burner is superior to any other interest in the heating system to which the burner is attached, regardless of when the burner became an accession or when or how the other interest arose.

Fiscal Note: Not requested.

Effective Date: The bill takes effect July 1, 1994.

Testimony For: None.

Testimony Against: None.

Witnesses: None.

VOTE ON FINAL PASSAGE:

Yeas 94; Excused 1; Absent 3

Excused: Representative Miller

Absent: Representatives Brough, Peery, Sommers