

CHAPTER 401

UNIFORM COMMERCIAL CODE — GENERAL PROVISIONS

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

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SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

401.101 Short title. Chapters 401 to 411 shall be known and may be cited as uniform commercial code.

History: 1979 c. 177; 1991 a. 148, 304, 315

401.102 Purposes; rules of construction; variation by agreement. (1) Chapters 401 to 411 shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of chs. 401 to 411 are:

- (a) To simplify, clarify and modernize the law governing commercial transactions;
- (b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
- (c) To make uniform the law among the various jurisdictions.

(3) The effect of chs. 401 to 411 may be varied by agreement, except as otherwise provided in chs. 401 to 411 and except that the obligations of good faith, diligence, reasonableness and care prescribed by chs. 401 to 411 may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of chs. 401 to 411 of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under sub. (3).

(5) In chs. 401 to 411 unless the context otherwise requires:

- (a) Words in the singular number include the plural, and in the plural include the singular;
- (b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: 1979 c. 89; 1991 a. 148, 304, 315

401.103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of chs. 401 to 411 the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: 1979 c. 89; 1991 a. 148, 304, 315.

401.104 Construction against implicit repeal. Chapters 401 to 411 being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly

repealed by subsequent legislation if such construction can reasonably be avoided.

History: 1979 c. 89; 1991 a. 148, 304, 315.

401.105 Territorial application of chs. 401 to 411; parties' power to choose applicable law. (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement chs. 401 to 411 apply to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of chs. 401 to 411 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:

- (a) Section 402.402 on rights of creditors against sold goods.
- (b) Section 404.102 on applicability of ch. 404.
- (c) Section 406.102 on bulk transfers subject to ch. 406.
- (d) Section 408.106 on applicability of ch. 408.
- (e) Section 409.103 on the perfection provisions of ch. 409.
- (f) Section 410.507 on the governing law on funds transfers.
- (g) Sections 411.105 and 411.106 on applicability of ch. 411.

History: 1973 c. 215; 1979 c. 89; 1991 a. 148, 304, 315

NOTE: See 127.18 concerning conflicts between chs. 401 to 411 and ch. 127 concerning warehouse keepers and grain dealers security act.

Reasonable relation and party autonomy under the uniform commercial code. Ryan, 63 MLR 219 (1979)

401.106 Remedies to be liberally administered.

(1) The remedies provided by chs. 401 to 411 shall 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 neither consequential or special nor penal damages may be had except as specifically provided in chs. 401 to 411 or by other rule of law.

(2) Any right or obligation declared by chs. 401 to 411 is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1979 c. 89; 1991 a. 148, 304, 315

401.107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

401.108 Severability. If any provision or clause of chs. 401 to 409 or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of chs. 401 to 409 which can be given effect without

the invalid provision or application, and to this end the provisions of chs. 401 to 409 are declared to be severable.

History: 1979 c. 89.

401.109 Section captions. Section captions are parts of chs. 401 to 411, notwithstanding s. 990.001 (6).

History: 1979 c. 89; 1993 a. 213.

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

401.201 General definitions. Subject to additional definitions contained in chs. 402 to 411 which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in chs. 401 to 411:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

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

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in chs. 401 to 411 (ss. 401.205 and 402.208). Whether an agreement has legal consequences is determined by chs. 401 to 411, if applicable; otherwise by the law of contracts (s. 401.103). (Compare "Contract".)

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

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

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

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

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by chs. 401 to 411 and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a

receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

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

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

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

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

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for chs. 401 to 411 to the extent that under a particular agreement or document unlike units are treated as equivalents.

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

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

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued or endorsed to him or her or to his or her order or to bearer or in blank.

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

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

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(23m) A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by chs. 401 to 411.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

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

- (a) The person has actual knowledge of it; or
- (b) The person has received a notice or notification of it; or
- (c) From all the facts and circumstances known at the time in question the person has reason to know that it exists.

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

1. It comes to the person's attention; or
2. It is duly delivered at the place of business through which the contract was made or at any other place held out by the person as the place for receipt of such communications.

(b) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to the individual's attention if the orga-

nization had exercised due diligence. 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. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "3rd party", means a person who has engaged in a transaction or made an agreement within chs. 401 to 411.

(30) "Person" includes an individual or an organization (See s. 401.102).

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

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

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

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

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

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper that is subject to ch. 409. The special property interest of a buyer of goods on identification of such goods to a contract for sale under s. 402.401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with ch. 409. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to s. 402.326.

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. A transaction 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 not subject to termination by the lessee and any of the following applies:

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 nominal additional consideration upon compliance with the lease agreement.

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

(c) A transaction does not create a security interest merely because it provides any of the following:

1. That the present value, as defined in s. 411.103 (1) (u), of the consideration that the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal

to or is greater than the fair market value of the goods when the lease is entered into.

2. That the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods.

3. That the lessee has an option to renew the lease or to become the owner of the goods.

4. That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal when the option is to be performed.

5. That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods when the option is to be performed.

(d) For purposes of this subsection:

1. Additional consideration is not nominal if, when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined when the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined when the option is to be performed. 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.

2. Reasonably predictable and remaining economic life of the goods are determined with reference to the facts and circumstances when the transaction is entered into.

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

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

(40) "Surety" includes guarantor.

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

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

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

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (ss. 403.303, 404.208 and 404.209) a person gives "value" for rights if the person acquires them:

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

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

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

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

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

History: 1973 c. 215; 1979 c. 89; 1983 a. 189; 1985 a. 237; 1991 a. 148, 304, 315, 316.

The creditor bank was not a holder in due course as to the contractor's checks because the bank, having canceled the checks received from the contractor and presumably having returned them to the contractor on whose account they were drawn, was not established to be "in possession," a requirement of holder status under the definition of (20) *Schneider Fuel v. West Allis State Bank*, 70 W (2d) 1041, 236 NW (2d) 266.

See note to 409.307, citing *Daniels v. Bank of Hayward*, 144 W (2d) 931, 425 NW (2d) 416 (1988).

Buyer in ordinary course of business under article 9 of the uniform commercial code (and related matters) *Skilton*, 1974 WLR 1.

401.202 Prima facie evidence by third party documents. 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 shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

401.203 Obligation of good faith. Every contract or duty within chs. 401 to 411 imposes an obligation of good faith in its performance or enforcement.

History: 1979 c. 89; 1991 a. 148, 304, 315.

Economic duress discussed. *Wurtz v. Fleischman*, 97 W (2d) 100, 293 NW (2d) 155 (1980).

Good faith under the code. *Eisenberg*, 54 MLR 1.

401.204 Time; reasonable time; "seasonably".

(1) Whenever chs. 401 to 411 require any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: 1979 c. 89; 1991 a. 148, 304, 315.

401.205 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until the party has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: 1991 a. 316

401.206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in sub. (2) a contract for the sale of personal property for the price of \$5,000 or more is not enforceable by way of action or defense unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by the party's authorized agent.

(2) Subsection (1) does not apply to contracts for the sale of goods (s. 402.201) nor of securities (s. 408.319) nor to security agreements (s. 409.203).

(3) A contract which, but for sub. (1) would be enforceable, is enforceable:

(a) If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under sub. (1) beyond the quantity or extent of personal property admitted; or

(b) With respect to personal property for which payment has been made and accepted or which has been received and accepted.

History: 1991 a. 316.

Memo regarding negotiations for sale didn't satisfy statute of frauds. *Dairyland Financial Corp v. FICB of St. Paul*, 852 F (2d) 242 (7th Cir. 1988).

401.207 Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

This section does not apply to "full payment" checks. Three rules relating to consideration and accord and satisfaction discussed. *Flambeau Products v. Honeywell Systems*, 116 W (2d) 95, 341 NW (2d) 655 (1984).

401.208 Option to accelerate at will. A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems himself or herself insecure" or in words of similar import shall be construed to mean that the party may do so only if the party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: 1991 a. 316

401.209 Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate the creditor's right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History: 1991 a. 316.