

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 369

An Act to amend and reenact §§ 8.1A-204, 8.1A-301, 8.2-403, 59.1-352.7, 59.1-481, and 59.1-501.3 of the Code of Virginia and to repeal Title 8.6A (§§ 8.6A-101 through 8.6A-110) of the Code of Virginia, relating to bulk sales.

[H 2206]

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.1A-204, 8.1A-301, 8.2-403, 59.1-352.7, 59.1-481, and 59.1-501.3 of the Code of Virginia are amended and reenacted as follows:

§ 8.1A-204. Value.

Except as otherwise provided in Titles 8.3A, 8.4, and 8.5A, ~~and 8.6A~~, a person gives value for rights if the person acquires them:

(1) 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;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

§ 8.1A-301. Territorial applicability; parties' power to choose applicable law.

(a) This section applies to a transaction to the extent that it is governed by another title of the Uniform Commercial Code.

(b) Except as otherwise 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 such other state or nation shall govern their rights and duties.

(c) In the absence of an agreement effective under subsection (b), the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of laws principles.

(d) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Rights of creditors against sold goods. § 8.2-402;

(2) Applicability of the title on leases. §§ 8.2A-105 and 8.2A-106;

(3) Applicability of the title on bank deposits and collections. § 8.4-102;

(4) Applicability of the title on funds transfers. § 8.4A-507;

(5) Letters of credit. § 8.5A-116;

(6) ~~Bulk transfers subject to the title on bulk sales. § 8.6A-103;~~

(7) ~~Applicability of the title on investment securities. § 8.8A-110;~~

(8) (7) Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. §§ 8.9A-301 through 8.9A-307.

§ 8.2-403. Power to transfer; good faith purchase of goods; "entrusting."

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale," or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the titles on secured transactions (Title 8.9A); ~~bulk sales (Title 8.6A)~~ and documents of title (Title 8.7).

§ 59.1-352.7. Uniform commercial practice.

A. This chapter does not affect a security interest of the supplier in the inventory of the dealer.

B. A repurchase of inventory under this chapter shall not be subject to the bulk sales provisions of Title 8.6A. (§ 8.6A-101 et seq.) of the Uniform Commercial Code.

C. The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within sixty days shall result in automatic acceptance by the supplier of all returned items.

§ 59.1-481. Scope.

(a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; and

(2) Title 8.1A except § 8.1A-306, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.6A, Title 8.7, Title 8.8A, Title 8.9A, Title 8.10, and Title 8.11.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

§ 59.1-501.3. Scope; exclusions.

(a) This chapter applies to computer information transactions.

(b) Except for subject matter excluded in subsection (d), if a computer information transaction includes subject matter other than computer information or subject matter excluded under subsection (d), the following rules apply:

(1) If a transaction includes computer information and goods, this chapter applies to the part of the transaction involving computer information, informational rights in it, and creation or modification of it. However, if a copy of a computer program is contained in and sold or leased as part of goods, this chapter applies to the copy and the computer program only if:

(A) the goods are a computer or computer peripheral; or

(B) giving the buyer or lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold or leased.

(2) Subject to subsection (d) (2) (A), if a transaction includes an agreement for creating or for obtaining rights to create computer information and a motion picture, this chapter does not apply to the agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion picture. In all other such agreements, this chapter does not apply to the part of the agreement that involves a motion picture excluded under subsection (d) (2), but does apply to the computer information.

(3) In all other cases, this chapter applies to the entire transaction if the computer information and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the part of the transaction involving computer information, informational rights in it, and creation or modification of it.

(c) To the extent of a conflict between this chapter and Title 8.9A, Title 8.9A governs.

(d) This chapter does not apply to:

(1) a financial services transaction;

(2) an insurance services transaction;

(3) an agreement to create, perform or perform in, include information in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:

(A) a motion picture or audio or visual programming other than in (i) a mass-market transaction or (ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording, other than in the submission of an idea or information or release of informational rights that may result in the creation of such material or a similar information product.

(4) a compulsory license;

(5) a contract of employment of an individual, other than an individual hired as an independent contractor, unless such independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) a contract that does not require that information be furnished as computer information or in which under the agreement the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information;

(7) unless otherwise agreed in a record between the parties:

(A) telecommunications products or services provided pursuant to federal or state tariffs; or

(B) telecommunications products or services provided pursuant to agreements required or permitted to be filed by the service provider with a federal or state authority regulating these services or under pricing subject to approval by a federal or state regulatory authority; or

(8) subject matter within the scope of Titles 8.3, 8.4, 8.4A, 8.5A, ~~8.6A~~, 8.7, or 8.8A.

(e) As used in subsection (d) (2) (B), "enhanced sound recording" means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) As used in this section, "motion picture" means:

(1) "motion picture" as defined in Title 17 of the United States Code as of July 1, 1999; or

(2) a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information so long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) As used in this section, "audio or visual programming" means audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the federal Communications Act of 1934 (47 U.S.C. § 151 et seq.) and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

2. That Title 8.6A (§§ 8.6A-101 through 8.6A-110) of the Code of Virginia is repealed.