

IC 26

**TITLE 26. COMMERCIAL LAW**

IC 26-1

**ARTICLE 1. UNIFORM COMMERCIAL CODE**

IC 26-1-1

Chapter 1. General Provisions

IC 26-1-1-0.2

**Transactions entered into after July 1, 1964, and before January 1, 1986; status of certain perfected security interests**

Sec. 0.2. A transaction validly entered into after July 1, 1964, and before January 1, 1986, which:

(1) was subject to this article, as effective on December 31, 1985; and

(2) would be subject to P.L.93-1985 if it had been entered into after December 31, 1985;

and the rights, duties, and interests flowing from such a transaction remain valid after December 31, 1985, and may be terminated, completed, consummated, or enforced as required or permitted by P.L.93-1985. Security interests arising out of such a transaction that are perfected as of January 1, 1986, shall remain perfected until they lapse as provided by sections 0.4 and 0.5 of this chapter and may be continued as permitted by P.L.93-1985 except as stated in section 0.3 of this chapter.

*As added by P.L.220-2011, SEC.412.*

IC 26-1-1-0.3

**Certain security interests considered perfected**

Sec. 0.3. A security interest, for the perfection of which filing or the taking of possession was required under this article, as effective on December 31, 1985, and which attached before January 1, 1986, but was not perfected, is considered perfected on January 1, 1986, if P.L.93-1985 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

*As added by P.L.220-2011, SEC.413.*

IC 26-1-1-0.4

**Status of certain financing statements and continuation statements; effectiveness of certain financing statements; requirement for new financing statements; status of records of certain real estate mortgages**

Sec. 0.4. (a) A financing statement or continuation statement filed before January 1, 1986, that has not lapsed before January 1, 1986, remains effective for the period provided in this article, as effective on December 31, 1985, but not less than five (5) years after the filing.

(b) With respect to any collateral acquired by the debtor after December 31, 1985, any effective financing statement or

continuation statement described in this section applies only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under P.L.93-1985.

(c) The effectiveness of any financing statement or continuation statement filed before January 1, 1986, may be continued by a continuation statement as permitted by P.L.93-1985 except that if P.L.93-1985 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 0.5 of this chapter must be filed in that office.

(d) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described in the mortgage if P.L.93-1985 had been in effect on the date of recording the mortgage, the mortgage is considered effective as a fixture filing as to such goods under IC 26-1-9-402(6), as amended by P.L.93-1985 and before its repeal, on January 1, 1986.

*As added by P.L.220-2011, SEC.414.*

#### **IC 26-1-1-0.5**

##### **Status of certain security interests; conditions; lapsing of perfection; filing of financing statements**

Sec. 0.5. (a) If a security interest is perfected or has priority as of December 31, 1985, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under P.L.93-1985, the perfection and priority rights of the security interest continue until December 31, 1988. The perfection will then lapse unless a financing statement is filed as provided in subsection (d) or unless the security interest is perfected otherwise than by filing.

(b) If a security interest is perfected as of December 31, 1985, under a law other than this article, as effective on December 31, 1985, which requires no further filing, refile, or recording to continue its perfection, perfection continues until and will lapse on December 31, 1988, unless:

- (1) a financing statement is filed as provided in subsection (d);
- (2) the security interest is perfected otherwise than by filing; or
- (3) under IC 26-1-9-302(3), as amended by P.L.93-1985 and before its repeal, the other law continues to govern filing.

(c) If a security interest is perfected by a filing, refile, or recording under a law repealed by P.L.93-1985, which required further filing, refile, or recording to continue its perfection, perfection continues and will lapse on the date provided by the repealed law for the further filing, refile, or recording unless a financing statement is filed as provided in subsection (d) or unless the security interest is perfected otherwise than by filing.

(d) A financing statement may be filed within six (6) months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. The financing statement must identify the security

agreement, statement, or notice (however denominated in any statute or other law repealed or modified by P.L.93-1985), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect to the security agreement, statement, or notice and the filing number, if any, or book and page, if any, of recording, and further state that the security agreement, statement, or notice, however denominated, in another filing office under this article, as amended by P.L.93-1985, or under any statute or other law repealed or modified by P.L.93-1985 is still effective. IC 26-1-9-401 and IC 26-1-9-103, as amended by P.L.93-1985 and before their repeal, determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of IC 26-1-9-403(3), as amended by P.L.93-1985 and before its repeal, for continuation statements apply to such a financing statement.

*As added by P.L.220-2011, SEC.415.*

#### **IC 26-1-1-0.6**

##### **Application of article to certain questions of priority; exceptions**

Sec. 0.6. Except as otherwise provided in sections 0.2, 0.3, 0.4, and 0.5 of this chapter, this article, as effective on December 31, 1985, applies to any questions of priority if the positions of the parties were fixed before January 1, 1986. In other cases, questions of priority shall be determined by this article.

*As added by P.L.220-2011, SEC.416.*

#### **IC 26-1-1-101**

##### **Short title; application**

Sec. 101. (1) IC 26-1 shall be known and may be cited as Uniform Commercial Code.

(2) IC 26-1 applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

*(Formerly: Acts 1963, c.317, s.1-101.) As amended by P.L.152-1986, SEC.110; P.L.143-2007, SEC.1.*

#### **IC 26-1-1-102**

##### **Purposes; rules of construction; variation by agreement**

Sec. 102. (1) IC 26-1 shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of IC 26-1 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 provisions of IC 26-1 may be varied by agreement, except as otherwise provided in IC 26-1 and except that the obligations of good faith, diligence, reasonableness, and care prescribed by IC 26-1 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 IC 26-1 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 subsection (3).

(5) In IC 26-1, 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.

*(Formerly: Acts 1963, c.317, s.1-102.) As amended by P.L.152-1986, SEC.111.*

### **IC 26-1-1-103**

#### **Supplementary general principles of law applicable**

Sec. 103. Unless displaced by the particular provisions of IC 26-1, 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 the provisions of IC 26-1.

*(Formerly: Acts 1963, c.317, s.1-103.) As amended by P.L.152-1986, SEC.112.*

### **IC 26-1-1-104**

#### **Construction against implicit repeal**

Sec. 104. IC 26-1 being a general statute 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.

*(Formerly: Acts 1963, c.317, s.1-104.) As amended by P.L.152-1986, SEC.113.*

### **IC 26-1-1-105**

#### **Repealed**

*(Repealed by P.L.143-2007, SEC.78.)*

### **IC 26-1-1-106**

#### **Remedies to be liberally administered**

Sec. 106. (1) The remedies provided by IC 26-1 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 IC 26-1 or by other rule of law.

(2) Any right or obligation declared by IC 26-1 is enforceable by action unless the provision declaring it specifies a different and limited effect.

*(Formerly: Acts 1963, c.317, s.1-106.) As amended by P.L.152-1986, SEC.114.*

### **IC 26-1-1-107**

#### **Waiver or renunciation of claim or right after breach**

Sec. 107. 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. *(Formerly: Acts 1963, c.317, s.1-107.)*

### **IC 26-1-1-108**

#### **Severability**

Sec. 108. The provisions of IC 26-1 are severable in the manner provided by IC 1-1-1-8(b).

*(Formerly: Acts 1963, c.317, s.1-108.) As amended by P.L.152-1986, SEC.115.*

### **IC 26-1-1-108.1**

#### **Powers of secretary of state; filing; acceptance of payment for fees**

Sec. 108.1. (a) The secretary of state may provide that a document required to be filed under this article with the secretary of state may be filed by telecopy, facsimile, or other form of electronic transmission meeting the requirements established by the secretary of state.

(b) The secretary of state may accept payment of a filing fee for a document filed by electronic transmission by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit.

(c) The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. The fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

*As added by P.L.11-1996, SEC.33.*

### **IC 26-1-1-108.2**

#### **Effect on Electronic Signatures in Global and National Commerce Act**

Sec. 108.2. This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

However, this article does not:

- (a) modify, limit, or supersede 15 U.S.C. 7001(c); or
- (b) authorize the electronic delivery of a notice described in 15 U.S.C. 7003(b).

*As added by P.L.143-2007, SEC.2.*

### **IC 26-1-1-109**

#### **Repealed**

*(Repealed by P.L.16-1983, SEC.23(a).)*

### **IC 26-1-1-201 Version a**

#### **General definitions**

*Note: This version of section effective until 7-1-2013. See also following version of this section, effective 7-1-2013.*

Sec. 201. Subject to additional definitions contained in IC 26-1-2 through IC 26-1-10 which are applicable to specific provisions, and unless the context otherwise requires, in IC 26-1:

- (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 IC 26-1-1-205. Whether an agreement has legal consequences is determined by the provisions of IC 26-1, if applicable; otherwise by the law of contracts (IC 26-1-1-103). (Compare "Contract".)
- (4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
- (5) "Bearer" means the person:
  - (A) in control of a negotiable electronic document of title; or
  - (B) in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.
- (6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt. The term 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 that

buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may require goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from that seller under IC 26-1-2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(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: NONNEGOTIABLE 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 this Act 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" means the following:

(A) With respect to an electronic document of title, voluntary transfer of control.

(B) With respect to instruments, tangible documents of title, chattel paper, or certificated securities, voluntary transfer of possession.

(15) "Document of title" means a record that:

(A) in the regular course of business or financing, is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods it covers; and

(B) purports to be issued by or addressed to a bailee and purports to cover goods in the bailee's possession which are

either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(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 the purposes of IC 26-1 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", except as otherwise provided by IC 26-1-4 or IC 26-1-5.1, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(20) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person if the identified person is in possession of the instrument;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(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 the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

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

(a) the person has actual knowledge of it;

(b) the person has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the time in question, the person has reason to know that it exists.

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 IC 26-1.

(26) 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:

(a) it comes to the person's attention; or

(b) 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.

(27) Notice, knowledge, or a notice of 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 person's attention if the organization 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 person's regular duties or unless the person 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, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

(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, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

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

(33a) "Registered mail" includes certified mail.

(33b) "Record", except as used in IC 26-1-1.5-2 and IC 26-1-2.1-309, means information that is inscribed on a tangible medium or that is stored in an electronic or other

medium and is retrievable in perceivable form.

(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) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to IC 26-1-9.1. The special property interest of a buyer of goods on identification of such goods to a contract for sale under IC 26-1-2-401 is not a security interest, but a buyer may also acquire a security interest by complying with IC 26-1-9.1. Except as otherwise provided in IC 26-1-2-505, the right of a seller or lessor of goods under IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with IC 26-1-9.1. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (IC 26-1-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration 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:

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

(b) 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;

(c) 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; or

(d) 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.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration 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 at the time the lease is entered into;

(b) 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;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) 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 at the time the option is to be performed;

or

(e) 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 at the time the option is to be performed.

For purposes of this subsection:

(x) Additional consideration is not nominal if:

(i) 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 at the time the option is to be performed; or

(ii) 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 at the time 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.

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was 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 be 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 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 (IC 26-1-3.1-303, IC 26-1-4-208, and IC 26-1-4-209) 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 chargeback is provided for in the event of difficulties in collection;

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

(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 document of title 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.

*(Formerly: Acts 1963, c.317, s.1-201.) As amended by P.L.93-1985, SEC.3; P.L.120-1987, SEC.46; P.L.3-1990, SEC.93; P.L.189-1991, SEC.2; P.L.222-1993, SEC.1; P.L.57-2000, SEC.12; P.L.143-2007, SEC.3; P.L.135-2009, SEC.1.*

## **IC 26-1-1-201 Version b**

### **General definitions**

*Note: This version of section effective 7-1-2013. See also preceding version of this section, effective until 7-1-2013.*

Sec. 201. Subject to additional definitions contained in IC 26-1-2 through IC 26-1-10 which are applicable to specific provisions, and unless the context otherwise requires, in IC 26-1:

(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 IC 26-1-1-205. Whether an agreement has legal consequences is determined by the provisions of IC 26-1, if applicable; otherwise by the law of contracts (IC 26-1-1-103). (Compare "Contract".)

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

and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means the person:

- (A) in control of a negotiable electronic document of title; or
- (B) in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt. The term 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 that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may require goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from that seller under IC 26-1-2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(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: NONNEGOTIABLE 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 this Act 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" means the following:

(A) With respect to an electronic document of title, voluntary transfer of control.

(B) With respect to instruments, tangible documents of title, chattel paper, or certificated securities, voluntary transfer of possession.

(15) "Document of title" means a record that:

(A) in the regular course of business or financing, is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods it covers; and

(B) purports to be issued by or addressed to a bailee and purports to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(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 the purposes of IC 26-1 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", except as otherwise provided by IC 26-1-4 or IC 26-1-5.1, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(20) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person if the identified person is in possession of the instrument;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(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 the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

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

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

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 IC 26-1.

(26) 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:

- (a) it comes to the person's attention; or
- (b) 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.

(27) Notice, knowledge, or a notice of 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 person's attention if the organization 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 person's regular duties or unless the person 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, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

(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, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

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

(33a) "Registered mail" includes certified mail.

(33b) "Record", except as used in IC 26-1-2.1-309, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(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) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to IC 26-1-9.1. The special property interest of a buyer of goods on identification of such goods to a contract for sale under IC 26-1-2-401 is not a security interest, but a buyer may also acquire a security interest by complying with IC 26-1-9.1. Except as otherwise provided in IC 26-1-2-505, the right of a seller or lessor of goods under IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with IC 26-1-9.1. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (IC 26-1-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration 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:

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) 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;
- (c) 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; or
- (d) 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.

A transaction does not create a security interest merely because it provides that:

- (a) the present value of the consideration 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 at the time the lease is entered into;
- (b) 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;
- (c) the lessee has an option to renew the lease or to become the owner of the goods;
- (d) 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 at the time the option is to be performed; or
- (e) 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 at the time the option is to be performed.

For purposes of this subsection:

- (x) Additional consideration is not nominal if:
  - (i) 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 at the time the option is to be performed; or
  - (ii) 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 at the time 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.

- (y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was 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 be 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 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 (IC 26-1-3.1-303, IC 26-1-4-208, and IC 26-1-4-209) 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 chargeback is provided for in the event of difficulties in collection;

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

(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 document of title 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.

*(Formerly: Acts 1963, c.317, s.1-201.) As amended by P.L.93-1985, SEC.3; P.L.120-1987, SEC.46; P.L.3-1990, SEC.93; P.L.189-1991, SEC.2; P.L.222-1993, SEC.1; P.L.57-2000, SEC.12; P.L.143-2007, SEC.3; P.L.135-2009, SEC.1; P.L.54-2011, SEC.1.*

### **IC 26-1-1-202**

#### **Prima facie evidence by third party documents**

Sec. 202. 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.

*(Formerly: Acts 1963, c.317, s.1-202.)*

### **IC 26-1-1-203**

#### **Obligation of good faith**

Sec. 203. Every contract or duty within IC 26-1 imposes an obligation of good faith in its performance or enforcement.

*(Formerly: Acts 1963, c.317, s.1-203.) As amended by P.L.152-1986, SEC.116.*

### **IC 26-1-1-204**

#### **Time; reasonable time; "seasonably"**

Sec. 204. (1) Whenever IC 26-1 requires 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.

*(Formerly: Acts 1963, c.317, s.1-204.) As amended by P.L.152-1986, SEC.117.*

### **IC 26-1-1-205**

#### **Course of dealing, course of performance, and usage of trade**

Sec. 205. (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 course of performance is a sequence of conduct between the parties to a particular transaction that exists if the:

(a) agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(3) 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.

(4) A course of dealing or course of performance 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.

(5) Except as provided in subsection (8), the express terms of an agreement and an applicable course of dealing, course of performance, or usage of trade shall be construed wherever reasonable as consistent with each other. If such a construction is unreasonable:

(a) express terms prevail over course of dealing and course of performance;

(b) course of performance prevails over course of dealing and usage of trade; and

(c) course of dealing prevails over usage of trade.

(6) 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.

(7) 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.

(8) Subject to IC 26-1-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

*(Formerly: Acts 1963, c.317, s.1-205.) As amended by P.L.143-2007, SEC.4.*

#### **IC 26-1-1-206**

##### **Statute of frauds for kinds of personal property not otherwise covered**

Sec. 206. (1) Except in the cases described in subsection (2), a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy 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 his authorized agent.

(2) Subsection (1) does not apply to contracts for the sale of goods (IC 26-1-2-201) nor to security agreements (IC 26-1-9.1-201).

*(Formerly: Acts 1963, c.317, s.1-206.) As amended by P.L.152-1986, SEC.118; P.L.247-1995, SEC.2; P.L.57-2000, SEC.13.*

#### **IC 26-1-1-207**

##### **Performance or acceptance under reservation of rights**

Sec. 207. (1) 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.

(2) Subsection (1) does not apply to an accord and satisfaction.  
*(Formerly: Acts 1963, c.317, s.1-207.) As amended by P.L.222-1993, SEC.2.*

### **IC 26-1-1-208**

#### **Option to accelerate at will**

Sec. 208. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he 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.

*(Formerly: Acts 1963, c.317, s.1-208.)*

### **IC 26-1-1-301**

#### **Choice of law**

Sec. 301. (1) Except as otherwise provided in this section, if a transaction bears a reasonable relation to Indiana and also to another state or nation, the parties may agree that the law either of Indiana or of the other state or nation shall govern their rights and duties.

(2) In the absence of an agreement under subsection (1), and except as provided in subsection (3), IC 26-1 applies to transactions bearing an appropriate relation to Indiana.

(3) If any of the following provisions specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law so specified:

- (a) IC 26-1-2-402.
- (b) IC 26-1-2.1-105 and IC 26-1-2.1-106.
- (c) IC 26-1-4-102.
- (d) IC 26-1-4.1-507.
- (e) IC 26-1-5.1-116.
- (f) IC 26-1-8.1-110.
- (g) IC 26-1-9.1-301 through IC 26-1-9.1-307.

*As added by P.L.143-2007, SEC.5.*

### **IC 26-1-1-302**

#### **Subordination**

Sec. 302. (1) An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate the creditor's right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated.

(2) Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

*As added by P.L.143-2007, SEC.6.*