

1 SENATE BILL NO. 370
2 INTRODUCED BY S. FITZPATRICK, E. BUTTREY, D. SALOMON, E. BOLDMAN, S. MORIGEAU, J. SMALL,
3 J. KASSMIER, B. MERCER, K. SULLIVAN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
6 UPDATING TERMINOLOGY FOR THE DIGITAL AGE; PROVIDING RULES FOR TRANSACTIONS
7 INVOLVING CERTAIN DIGITAL ASSETS; AND AMENDING SECTIONS 30-1-101, 30-1-107, 30-1-201, 30-1-
8 212, 30-1-301, 30-2-102, 30-2-106, 30-2-201, 30-2-202, 30-2-203, 30-2-205, 30-2-209, 30-2A-102, 30-2A-103,
9 30-2A-107, 30-2A-201, 30-2A-202, 30-2A-203, 30-2A-205, 30-2A-208, 30-3-104, 30-3-125, 30-3-401, 30-3-605,
10 30-4A-103, 30-4A-201, 30-4A-202, 30-4A-203, 30-4A-207, 30-4A-208, 30-4A-210, 30-4A-211, 30-4A-305, 30-5-
11 124, 30-5-136, 30-7-102, 30-7-107, 30-8-112, 30-8-113, 30-8-116, 30-8-120, 30-8-333, 30-9A-102, 30-9A-104,
12 30-9A-105, 30-9A-203, 30-9A-204, 30-9A-207, 30-9A-208, 30-9A-209, 30-9A-210, 30-9A-301, 30-9A-304, 30-
13 9A-305, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-316, 30-9A-317, 30-9A-323, 30-9A-324, 30-9A-
14 330, 30-9A-331, 30-9A-332, 30-9A-334, 30-9A-341, 30-9A-404, 30-9A-406, 30-9A-408, 30-9A-509, 30-9A-513,
15 30-9A-601, 30-9A-605, 30-9A-608, 30-9A-611, 30-9A-613, 30-9A-614, 30-9A-615, 30-9A-616, 30-9A-619, 30-
16 9A-620, 30-9A-621, 30-9A-624, 30-9A-628, 30-18-115, AND 45-6-315, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 **Section 1.** Section 30-1-101, MCA, is amended to read:

21 **"30-1-101. Short titles -- scope of chapter.** (1) Chapters 1 through 9A and [sections 93 through 108]
22 of this title may be cited as Uniform Commercial Code.

23 (2) As used in chapters 1 through 9A and [sections 93 through 108] of this title "code" means
24 "Uniform Commercial Code" unless the context indicates otherwise.

25 (3) This chapter may be cited as the Uniform Commercial Code--General Provisions.

26 (4) This chapter applies to a transaction to the extent that it is governed by chapters 2 through 5,
27 7, 8, and 9A and [sections 93 through 108] of this title."

Amendment - 1st Reading/2nd House-blue - Requested by: Joe Read - (H) Business and Labor

- 2023

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Drafter: Todd Everts, 406-444-4023

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1

2 **Section 2.** Section 30-1-107, MCA, is amended to read:

3 **"30-1-107. Waiver or renunciation of claim or right after breach.** A claim or right arising out of an
4 alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved
5 party in ~~an authenticated~~ a signed record."

6

7 **Section 3.** Section 30-1-201, MCA, is amended to read:

8 **"30-1-201. General definitions.** (1) Unless the context requires otherwise, words or phrases defined
9 in this section, or in the additional definitions contained in other chapters of the code that apply to particular
10 chapters or parts of chapters, have the meanings stated.

11 (2) Subject to additional definitions contained in other chapters of this code that apply to specific
12 chapters or parts of chapters:

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

15 (b) "Aggrieved party" means a party entitled to pursue a remedy.

16 (c) "Agreement" means the bargain of the parties in fact, as found in their language or inferred
17 from other circumstances, including course of performance, course of dealing, or usage of trade as provided in
18 30-1-205.

19 ~~(d) "Authenticate" means to:~~

20 ~~(i) sign; or~~

21 ~~(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:~~

22 ~~(A) identify the authenticating party; and~~

23 ~~(B) adopt, accept, or establish the authenticity of a record or term.~~

24 ~~(e)~~(d) "Bank" means any person engaged in the business of banking and includes a savings bank,
25 savings and loan association, credit union, and trust company.

26 ~~(f)~~(e) "Bearer" means a person in control of a negotiable electronic document of title or a person in
27 possession of a negotiable instrument, negotiable tangible document of title, or certificated security payable to

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1 bearer or endorsed in blank.

2 ~~(g)~~(f) (i) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued
3 by a person engaged in the business of directly or indirectly transporting or forwarding goods.

4 (ii) The term does not include a warehouse receipt.

5 ~~(h)~~(g) "Branch" includes a separately incorporated foreign branch of a bank.

6 ~~(i)~~(h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the
7 existence of the fact is more probable than its nonexistence.

8 ~~(j)~~(i) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without
9 knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a
10 person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the
11 ordinary course if the sale to the person comports with the usual or customary practices in the kind of business
12 in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas,
13 or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer
14 in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured
15 credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that
16 takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a
17 buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in
18 total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

19 ~~(k)~~(j) "Conspicuous", with reference to a term, means so written, displayed, or presented that, based
20 on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it.
21 Whether a term is "conspicuous" or not is for decision by the court. ~~Conspicuous terms include the following:~~

22 ~~(i) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type,~~
23 ~~font, or color to the surrounding text of the same or lesser size; and~~

24 ~~(ii) language in the body of a record or display in larger type than the surrounding text, or in contrasting~~
25 ~~type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by~~
26 ~~symbols or other marks that call attention to the language.~~

27 ~~(l)~~(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or

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1 household purposes.

2 ~~(m)~~(l) "Contract" means the total legal obligation that results from the parties' agreement as affected
3 by this code and as supplemented by any other applicable rules of law.

4 ~~(n)~~(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative
5 of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and
6 an executor or administrator of an insolvent debtor's or assignor's estate.

7 ~~(o)~~(n) "Defendant" includes a person in the position of defendant in a counterclaim or third-party
8 claim.

9 ~~(p)~~(o) "Delivery", with respect to an electronic document of title, means voluntary transfer of control
10 and, with respect to ~~instruments, tangible documents of title, or an instrument, a tangible document of title, or~~
11 an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

12 ~~(q)~~(p) (i) "Document of title" means a record:

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

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

18 (ii) The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse
19 receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of
20 information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of
21 information that is inscribed on a tangible medium.

22 ~~(r)~~ (q) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
23 electromagnetic, or similar capabilities.

24 (r) "Fault" means wrongful act, omission, breach, or default.

25 (s) "Fungible goods" means:

26 (i) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

27 (ii) goods which by agreement are treated as equivalent.

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- 1 (t) "Genuine" means free of forgery or counterfeiting.
- 2 (u) "Good faith", except as otherwise provided in chapter 5, means honesty in fact and the
3 observance of reasonable commercial standards of fair dealing.
- 4 (v) "Holder" means:
- 5 (i) the person in possession of a negotiable instrument that is payable either to bearer or to an
6 identified person that is the person in possession;
- 7 (ii) a the person in possession of a negotiable tangible document of title if the goods are
8 deliverable either to bearer or to the order of the person in possession; or
- 9 (iii) a the person in control, other than pursuant to 30-7-107(7) of a negotiable electronic document
10 of title.
- 11 (w) "Insolvency proceedings" includes an assignment for the benefit of creditors or other
12 proceeding intended to liquidate or rehabilitate the estate of the person involved.
- 13 (x) "Insolvent" means:
- 14 (i) having generally ceased to pay debts in the ordinary course of business other than as a result
15 of bona fide dispute;
- 16 (ii) unable to pay debts as they become due; or
- 17 (iii) insolvent within the meaning of the federal bankruptcy law.
- 18 (y) (i) "Money" means a medium of exchange that is currently authorized or adopted by a domestic
19 or foreign government. The term includes a monetary unit of account established by an intergovernmental
20 organization or by pursuant to an agreement between two or more countries.
- 21 (ii) The term does not include:
- 22 (A) an electronic record that is a medium of exchange recorded and transferable in a system that
23 existed and operated for the medium of exchange before the medium of exchange was authorized or adopted
24 by the government; or-
- 25 (B) any central bank digital currency or any requirement to accept or use a central bank digital
26 currency, unless the central bank digital currency is specifically recognized and approved by Montana law.
- 27 (z) "Organization" means a person other than an individual.

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1 (aa) "Party", as distinct from "third party", means a person that has engaged in a transaction or
2 made an agreement subject to this code.

3 (bb) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited
4 liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality,
5 ~~public corporation~~, or any other legal or commercial entity. The term includes a protected series, however
6 denominated, of an entity if the protected series is established under law other than this code that limits, or
7 limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other
8 protected series of the entity to satisfy a claim from assets of the protected series.

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

11 (dd) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security
12 interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

13 (ee) "Purchaser" means a person that takes by purchase.

14 (ff) "Record" means information that is inscribed on a tangible medium or that is stored in an
15 electronic or other medium and is retrievable in perceivable form.

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

18 (hh) "Representative" means any other person empowered to act for another, including an agent, an
19 officer of a corporation or association, and a trustee, executor, or administrator of an estate.

20 (ii) "Right" includes a remedy.

21 (jj) "Security interest" means an interest in personal property or fixtures which secures payment or
22 performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts,
23 chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9A. The
24 special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-
25 401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9A.
26 Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain
27 or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security

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1 interest" by complying with chapter 9A. The retention or reservation of title by a seller of goods notwithstanding
2 shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". Whether
3 a transaction in the form of a lease creates a "security interest" is determined pursuant to 30-1-211.

4 (kk) "Send" in connection with a ~~writing, record, or notice~~ notification, means:

5 (i) to deposit in the mail, ~~or deliver for transmission, or transmit~~ by any other usual means of
6 communication, with postage or cost of transmission provided for, ~~and properly addressed, and in the case of~~
7 ~~an instrument, to an address specified thereon or otherwise agreed, or if there be none~~ addressed to any
8 address reasonable under the circumstances; or

9 (ii) ~~in any other way to cause to be received any record or notice within the time it would have~~
10 ~~arrived if properly sent to cause the record or notification to be received within the time it would have been~~
11 received if properly sent under subsection (2)(kk)(i).

12 (ll) (i) ~~"Signed" includes any symbol executed or adopted with present intention to adopt or accept~~
13 ~~a writing. "Sign" means, with present intent to authenticate or adopt a record:~~

14 (A) execute or adopt a tangible symbol; or

15 (B) attach to or logically associate with the record an electronic symbol, sound, or process.

16 (ii) "Signed", "signing", and "signature" have corresponding meanings.

17 (mm) "Surety" includes a guarantor or other secondary obligor.

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

19 (oo) "Unauthorized" signature means a signature made without actual, implied, or apparent
20 authority. The term includes a forgery.

21 (pp) "Warehouse receipt" means a document of title issued by a person engaged in the business of
22 storing goods for hire.

23 (qq) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written"
24 has a corresponding meaning."

25

26 **Section 4.** Section 30-1-212, MCA, is amended to read:

27 **"30-1-212. Value.** Except as otherwise provided in chapters 3 through 5 and [sections 93 through