# Texas Business And Commerce Code



## UNDERSTANDING THE TEXAS BUSINESS AND COMMERCE CODE

The Texas Business and Commerce Code (BCC) serves as the backbone of commercial law in the Lone Star State. Whether you are a small business owner drafting your first contract, a corporate attorney advising a multinational client, or an entrepreneur launching a new venture, understanding this comprehensive legal framework is essential. The Texas Business and Commerce Code governs everything from sales of goods and negotiable instruments to secured transactions and consumer protections. In this article, we will explore the structure, key provisions, and practical implications of the Texas Business and Commerce Code, providing you with the knowledge you need to navigate commercial activities in Texas with confidence.

## WHAT IS THE TEXAS BUSINESS AND COMMERCE CODE?

The Texas Business and Commerce Code is a codified set of laws that regulate commercial transactions within the state of Texas. It is largely based on the Uniform Commercial Code (UCC), a model set of laws developed by the Uniform Law Commission and the American Law Institute to harmonize commercial law across all 50 states. Texas adopted its version of the UCC in 1965, and the code has been amended numerous times since then to reflect changes in business practices, technology, and legal precedent.

The primary purpose of the Texas Business and Commerce Code is to provide a consistent, predictable, and fair legal framework for commercial transactions. By standardizing rules for sales, leases, negotiable instruments, bank deposits, funds transfers, letters of credit, bulk sales, documents of title, investment securities, and secured transactions, the code reduces uncertainty and facilitates commerce. For businesses operating in Texas, understanding the Texas Business and Commerce Code is not optional; it is a fundamental requirement for sound legal and financial planning.

## STRUCTURE OF THE TEXAS BUSINESS AND COMMERCE CODE

The Texas Business and Commerce Code is organized into titles, chapters, and sections. The major titles of the code align closely with the articles of the Uniform Commercial Code. Here is an overview of the key titles you should be familiar with:

- **Title 1. Uniform Commercial Code** – This is the heart of the Texas Business and Commerce Code. It includes general provisions, definitions, and principles of construction that apply to the entire code.

- **Title 2. Sales** – This title covers contracts for the sale of goods, including formation, performance, breach, warranties, and remedies.
- **Title 3. Leases** – This title governs leases of goods, providing rules for lease agreements, performance, default, and remedies.
- **Title 4. Negotiable Instruments** – This title deals with checks, promissory notes, drafts, and other negotiable instruments, including their issuance, transfer, and enforcement.
- **Title 5. Bank Deposits and Collections** – This title regulates the relationship between banks and their customers, including check collection, electronic funds transfers, and bank deposits.
- **Title 6. Funds Transfers** – This title covers wire transfers and other electronic funds transfers, providing rules for payment orders, acceptance, and settlement.
- **Title 7. Letters of Credit** – This title governs letters of credit, which are widely used in international and domestic trade to ensure payment.
- **Title 8. Investment Securities** – This title deals with the issuance, transfer, and registration of stocks, bonds, and other investment securities.
- **Title 9. Secured Transactions** – This title is one of the most important for businesses. It governs security interests in personal property and fixtures, including how to create, perfect, and enforce liens.

In addition to these UCC-based titles, the Texas Business and Commerce Code also contains several non-UCC provisions. These include the Deceptive Trade Practices Act (DTPA), which protects consumers from false, misleading, and deceptive business practices, and various other consumer protection laws. Understanding the full scope of the Texas Business and Commerce Code requires familiarity with both its UCC and non-UCC components.

## KEY PROVISIONS OF THE TEXAS BUSINESS AND COMMERCE CODE

While every title of the Texas Business and Commerce Code has its importance, certain provisions are particularly relevant for businesses and individuals engaged in commercial activities. Below, we highlight some of the most frequently encountered rules and concepts.

# Sales of Goods (Title 2)

Title 2 of the Texas Business and Commerce Code governs contracts for the sale of goods. Goods are defined as all things movable at the time of identification to the contract, excluding money, investment securities, and certain other items. Key concepts under Title 2 include:

- **Formation of Contracts** – A contract for the sale of goods can be formed in any manner sufficient to show agreement, including conduct by both parties. The statute of frauds requires a written agreement for sales of goods priced at $500 or more, unless certain exceptions apply.

- **Warranties** – The Texas Business and Commerce Code recognizes both express and implied warranties. Express warranties arise from affirmations of fact, promises, descriptions, samples, or models. Implied warranties include the warranty of merchantability (that goods are fit for ordinary purposes) and the warranty of fitness for a particular purpose (when the seller knows the buyer's specific needs).
- **Breach and Remedies** – If a seller or buyer breaches a sales contract, the non-breaching party may seek remedies such as damages, specific performance, or cancellation. The code provides detailed rules for calculating damages, including cover damages, market price damages, and incidental damages.
- **Risk of Loss** – The code establishes rules for determining when the risk of loss passes from seller to buyer, which is critical for insurance and liability purposes. Generally, risk of loss passes upon delivery, but the rules vary depending on whether the contract requires shipment or destination delivery.

# Secured Transactions (Title 9)

Title 9 of the Texas Business and Commerce Code is perhaps the most complex and significant for businesses that extend credit or borrow money. A secured transaction occurs when a debtor grants a creditor a security interest in collateral to secure payment or performance of an obligation. Key concepts under Title 9 include:

- **Attachment** – A security interest attaches to collateral when there is a security agreement, value has been given, and the debtor has rights in the collateral. Attachment gives the creditor enforceable rights against the debtor.
- **Perfection** – To protect a security interest against third parties, such as other creditors or bankruptcy trustees, the creditor must perfect the interest. Perfection is typically achieved by filing a financing statement with the Texas Secretary of State, but other methods include possession, control, or automatic perfection.
- **Priority** – When multiple creditors claim an interest in the same collateral, the Texas Business and Commerce Code provides rules for determining who has priority. In general, the first creditor to perfect has priority, but there are exceptions for purchase-money security interests, buyers in the ordinary course of business, and certain statutory liens.
- **Default and Enforcement** – If a debtor defaults, the secured creditor may repossess the collateral and sell it to satisfy the debt. The code requires that the creditor act in a commercially reasonable manner and provide notice to the debtor and other interested parties.

# Negotiable Instruments (Title 4)

Title 4 of the Texas Business and Commerce Code governs negotiable instruments, which include checks, promissory notes, drafts, and certificates of deposit. A negotiable instrument is a signed writing that promises or orders the payment of a fixed sum of money, with or without interest or other charges. Key concepts under Title 4 include:

- **Negotiability** – For an instrument to be negotiable, it must be in writing, signed by the maker or drawer, contain an unconditional promise or order to pay a fixed amount of money, be payable on demand or at a definite time, and be payable to order or to bearer.
- **Holder in Due Course** – A holder in due course is a person who takes a negotiable instrument for value, in good faith, and without notice of any defenses or claims. A holder in due course takes the instrument free from most defenses that the issuer could assert against the original payee.
- **Liability** – Parties to a negotiable instrument, such as makers, drawers, indorsers, and accommodation parties, may be liable for payment. The code specifies the order and conditions under which each party is liable.

# Consumer Protection: The Deceptive Trade Practices Act

One of the most important non-UCC components of the Texas Business and Commerce Code is the Deceptive Trade Practices Act (DTPA), found in Chapter 17 of the code. The DTPA is a consumer protection law that prohibits false, misleading, or deceptive acts or practices in the conduct of trade or commerce. Key features of the DTPA include:

- **Unlawful Practices** – The DTPA provides a list of prohibited practices, such as passing off goods as those of another, causing confusion as to the source of goods, using deceptive representations about the quality or price of goods, and failing to disclose known defects.
- **Consumer Standing** – The DTPA gives consumers the right to sue for actual damages, additional damages (up to three times actual damages for knowing or intentional violations), and attorney's fees. A consumer must have been adversely affected by a violation of the DTPA.
- **Laundry List and Tie-In Statutes** – The DTPA includes a "laundry list" of specific deceptive acts and also incorporates violations of other laws, known as tie-in statutes, such as the Texas Insurance Code and the Texas

Business Opportunities Act.
- **Defenses** – Sellers may assert defenses under the DTPA, including that the consumer was not a consumer, that the alleged act was not a producing cause of damages, or that the consumer failed to provide proper notice before filing suit.

## PRACTICAL IMPLICATIONS FOR BUSINESSES IN TEXAS

Understanding the Texas Business and Commerce Code is not merely an academic exercise. The code has real-world implications for virtually every business transaction in Texas. Below are some practical considerations that businesses should keep in mind.

# Contract Drafting and Review

When drafting or reviewing contracts for the sale of goods, leases, or secured transactions, it is essential to ensure compliance with the Texas Business and Commerce Code. For example, a sales contract should clearly address warranties, risk of loss, and remedies in the event of breach. A security agreement must adequately describe the collateral and include a grant of a security interest. Failing to follow the requirements of the code can result in unenforceable contracts or lost priority.

# Filing and Perfection of Security Interests

For businesses that extend credit or take collateral, properly perfecting security interests is critical. Filing a financing statement with the Texas Secretary of State is the most common method of perfection, but accuracy matters. A financing statement must include the debtor's name, the secured party's name, and a description of the collateral. Errors in the debtor's name or collateral description can render the filing ineffective, leaving the creditor unsecured in a bankruptcy or dispute.

# Consumer Protection Compliance

Businesses that deal with consumers must be aware of the DTPA and other consumer protection provisions of the Texas Business and Commerce Code. Making false representations, failing to disclose important information, or engaging in unconscionable conduct can lead to costly lawsuits and penalties. It is wise for businesses to have clear policies, training programs, and legal review procedures to minimize DTPA exposure.

# Electronic Transactions and

# Digital Signatures

The Texas Business and Commerce Code has been updated to accommodate electronic commerce. The Uniform Electronic Transactions Act (UETA), adopted in Texas and codified in Chapter 43 of the code, gives electronic records and signatures the same legal effect as paper documents and handwritten signatures. Businesses that conduct transactions electronically should ensure that their systems and procedures comply with UETA requirements, including obtaining proper consent from parties and maintaining accurate records.

## RECENT AMENDMENTS AND UPDATES TO THE TEXAS BUSINESS AND COMMERCE CODE

Like all bodies of law, the Texas Business