

7-16a-203 Contractual waiver of Uniform Commercial Code provisions.

- (1)
- (a) Subject to Subsections (1)(b) and (2), if the application of Title 70A, Uniform Commercial Code, is inconsistent with the operation of an automated teller machine, a point-of-sale terminal, or both, the requirements of Title 70A, Uniform Commercial Code, may be varied by contractual agreement of any:
 - (i) depository institution;
 - (ii) switching facility; or
 - (iii) clearinghouse as defined by Section 70A-4-104.
 - (b) A contractual agreement under Subsection (1)(a) may not disclaim responsibility for or limit the measure of damages for a depository institution's, switching facility's, or clearing house's:
 - (i) lack of good faith; or
 - (ii) failure to exercise ordinary care.
- (2) Notwithstanding Subsection (1)(a), the commissioner may, after notice and hearing, require rescission or modification of any provision of a contractual agreement permitted by Subsection (1)(a) if:
- (a) that provision relates to the rights and obligations of:
 - (i) account holders of depository institutions;
 - (ii) merchants;
 - (iii) merchant customers; or
 - (iv) others using or having access to automated teller machines, point-of-sale terminals, or both; and
 - (b) the commissioner finds the provision is unconscionable or contrary to the public interest.

Enacted by Chapter 111, 1997 General Session