

Part 3

Territorial Applicability and General Rules

70A-1a-301 Territorial applicability -- Parties' power to choose applicable law.

- (1) Except as 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 of such other state or nation shall govern their rights and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state.
- (2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:
 - (a) rights of creditors against sold goods under Section 70A-2-402;
 - (b) applicability of the chapter on leases under Sections 70A-2a-105 and 70A-2a-106;
 - (c) applicability of the chapter on bank deposits and collections under Section 70A-4-102;
 - (d) applicability of the chapter on funds transfers under Section 70A-4a-507;
 - (e) applicability of the chapter on letters of credit under Section 70A-5-116;
 - (f) applicability of the chapter on investment securities under Section 70A-8-109; or
 - (g) law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens under Sections 70A-9a-301 through 70A-9a-307.

Enacted by Chapter 272, 2007 General Session

70A-1a-302 Variation by agreement.

- (1) Except as otherwise provided in Subsection (2) or elsewhere in this title, the effect of provisions of this title may be varied by agreement.
- (2) The obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.
- (3) The presence in certain provisions of this title of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Enacted by Chapter 272, 2007 General Session

70A-1a-303 Course of performance, course of dealing, and usage of trade.

- (1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
 - (a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
 - (b) the 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.
- (2) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

- (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 must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
- (4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
- (5) Except as otherwise provided in Subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
 - (a) express terms prevail over course of performance, course of dealing, and usage of trade;
 - (b) course of performance prevails over course of dealing and usage of trade; and
 - (c) course of dealing prevails over usage of trade.
- (6) Subject to Section 70A-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
- (7) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Enacted by Chapter 272, 2007 General Session

70A-1a-304 Obligation of good faith.

Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

Enacted by Chapter 272, 2007 General Session

70A-1a-305 Remedies to be liberally administered.

- (1) The remedies provided by this title must 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 damages nor penal damages may be had except as specifically provided in this title or by other rule of law.
- (2) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

Enacted by Chapter 272, 2007 General Session

70A-1a-306 Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Enacted by Chapter 272, 2007 General Session

70A-1a-307 Prima facie evidence by third-party documents.

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 is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Enacted by Chapter 272, 2007 General Session

70A-1a-308 Performance or acceptance under reservation of rights.

- (1) A party that 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.

Enacted by Chapter 272, 2007 General Session

70A-1a-309 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "considers itself insecure," or words of similar import, means that the party has power to do so only if that party 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 which the power has been exercised.

Enacted by Chapter 272, 2007 General Session

70A-1a-310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Enacted by Chapter 272, 2007 General Session