

Part 2 Issue and Issuer

70A-8-201 Issuer.

- (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:
 - (a) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;
 - (b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;
 - (c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or
 - (d) becomes responsible for, or in place of, another person described as an issuer in this section.
- (2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.
- (3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-202 Issuer's responsibility and defenses -- Notice of defect or defense.

- (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.
- (2) The following rules apply if an issuer asserts that a security is not valid:
 - (a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.
 - (b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.
- (3) Except as otherwise provided in Section 70A-8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

- (4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.
- (5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.
- (6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Amended by Chapter 324, 2010 General Session

70A-8-203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

- (1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or
- (2) is not covered by Subsection (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-204 Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

- (1) the security is certificated and the restriction is noted conspicuously on the security certificate;
or
- (2) the security is uncertificated and the registered owner has been notified of the restriction.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-205 Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

- (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
- (2) an employee of the issuer, or of any of the persons listed in Subsection (1), entrusted with responsible handling of the security certificate.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-206 Completion or alteration of security certificate.

- (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
 - (a) any person may complete it by filling in the blanks as authorized; and
 - (b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.
- (2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-207 Rights and duties of issuer with respect to registered owners.

- (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.
- (2) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-208 Effect of signature of authenticating trustee, registrar, or transfer agent.

- (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:
 - (a) the certificate is genuine;
 - (b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
 - (c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.
- (2) Unless otherwise agreed, a person signing under Subsection (1) does not assume responsibility for the validity of the security in other respects.

Repealed and Re-enacted by Chapter 204, 1996 General Session

70A-8-209 Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

Enacted by Chapter 204, 1996 General Session

70A-8-210 Overissue.

- (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.
- (2) Except as otherwise provided in Subsections (3) and (4), the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

- (3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.
- (4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

Enacted by Chapter 204, 1996 General Session