

## Part 1 General Provisions and Definitions

### **70A-3-101 Short title.**

This chapter is known as "Uniform Commercial Code -- Negotiable Instruments."

Repealed and Re-enacted by Chapter 237, 1993 General Session

### **70A-3-102 Subject matter.**

- (1) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by Title 70A, Chapter 4a, Uniform Commercial Code - Funds Transfers, or to securities governed by Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.
- (2) If there is conflict between this chapter and Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, or Chapter 9a, Uniform Commercial Code - Secured Transactions, Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, or Chapter 9a, Uniform Commercial Code - Secured Transactions, govern.
- (3) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

Repealed and Re-enacted by Chapter 237, 1993 General Session

### **70A-3-103 Definitions.**

- (1) In this chapter:
  - (a) "Acceptor" means a drawee who has accepted a draft.
  - (b) "Drawee" means a person ordered in a draft to make payment.
  - (c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
  - (d) "Good faith" means honesty in fact in the conduct or transaction concerned.
  - (e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
  - (f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative, but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
  - (g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections.
  - (h) "Party" means a party to an instrument.
  - (i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
  - (j) "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in Subsection 70A-1a-201(2)(h).

- (k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
- (2) Other definitions applying to this chapter and the sections in which they appear are:
- (a) "Acceptance," Section 70A-3-409.
  - (b) "Accommodated party," Section 70A-3-419.
  - (c) "Accommodation party," Section 70A-3-419.
  - (d) "Alteration," Section 70A-3-407.
  - (e) "Anomalous indorsement," Section 70A-3-205.
  - (f) "Blank indorsement," Section 70A-3-205.
  - (g) "Cashier's check," Section 70A-3-104.
  - (h) "Certificate of deposit," Section 70A-3-104.
  - (i) "Certified check," Section 70A-3-409.
  - (j) "Check," Section 70A-3-104.
  - (k) "Consideration," Section 70A-3-303.
  - (l) "Demand draft," Section 70A-3-104.
  - (m) "Draft," Section 70A-3-104.
  - (n) "Holder in due course," Section 70A-3-302.
  - (o) "Incomplete instrument," Section 70A-3-115.
  - (p) "Indorsement," Section 70A-3-204.
  - (q) "Indorser," Section 70A-3-204.
  - (r) "Instrument," Section 70A-3-104.
  - (s) "Issue," Section 70A-3-105.
  - (t) "Issuer," Section 70A-3-105.
  - (u) "Negotiable instrument," Section 70A-3-104.
  - (v) "Negotiation," Section 70A-3-201.
  - (w) "Note," Section 70A-3-104.
  - (x) "Payable at a definite time," Section 70A-3-108.
  - (y) "Payable on demand," Section 70A-3-108.
  - (z) "Payable to bearer," Section 70A-3-109.
  - (aa) "Payable to order," Section 70A-3-109.
  - (bb) "Payment," Section 70A-3-602.
  - (cc) "Person entitled to enforce," Section 70A-3-301.
  - (dd) "Presentment," Section 70A-3-501.
  - (ee) "Reacquisition," Section 70A-3-207.
  - (ff) "Special indorsement," Section 70A-3-205.
  - (gg) "Teller's check," Section 70A-3-104.
  - (hh) "Transfer of instrument," Section 70A-3-203.
  - (ii) "Traveler's check," Section 70A-3-104.
  - (jj) "Value," Section 70A-3-303.
- (3) The following definitions in other chapters apply to this chapter:
- (a) "Bank," Section 70A-4-105.
  - (b) "Banking day," Section 70A-4-104.
  - (c) "Clearinghouse," Section 70A-4-104.
  - (d) "Collecting bank," Section 70A-4-105.
  - (e) "Depositary bank," Section 70A-4-105.
  - (f) "Documentary draft," Section 70A-4-104.
  - (g) "Intermediary bank," Section 70A-4-105.
  - (h) "Item," Section 70A-4-104.

- (i) "Payor bank," Section 70A-4-105.
- (j) "Suspends payments," Section 70A-4-104.
- (4) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Chapter 272, 2007 General Session

**70A-3-104 Negotiable instrument.**

- (1) Except as provided in Subsections (3) and (4), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
  - (a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
  - (b) is payable on demand or at a definite time; and
  - (c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
    - (i) an undertaking or power to give, maintain, or protect collateral to secure payment;
    - (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or
    - (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.
- (2) "Instrument" means a negotiable instrument.
- (3) An order that meets all of the requirements of Subsection (1), except Subsection (1)(a), and otherwise falls within the definition of "check" in Subsection (6) is a negotiable instrument and a check.
- (4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.
- (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.
- (6)
  - (a) "Check" means:
    - (i) a draft, other than a documentary draft, payable on demand and drawn on a bank;
    - (ii) a cashier's check or teller's check; or
    - (iii) a demand draft.
  - (b) An instrument may be a check even though it is described on its face by another term, such as "money order."
- (7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
- (8) "Teller's check" means a draft drawn by a bank either on another bank, or payable at or through a bank.
- (9) "Traveler's check" means an instrument that:
  - (a) is payable on demand;
  - (b) is drawn on or payable at or through a bank;
  - (c) is designated by the term "traveler's check" or by a substantially similar term; and

- (d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
- (10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.
- (11)
  - (a) "Demand draft" means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank.
  - (b) A demand draft:
    - (i) shall contain the customer's account number;
    - (ii) may contain any or all of the following:
      - (A) the customer's printed or typewritten name;
      - (B) a notation that the customer authorized the draft; or
      - (C) the statement "No Signature Required" or words to that effect; and
    - (iii) may not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in Section 70A-3-307.

Amended by Chapter 60, 1998 General Session

**70A-3-105 Issue of instrument.**

- (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.
- (2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.
- (3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-106 Unconditional promise or order.**

- (1) Except as provided in this section, for the purposes of Subsection 70A-3-104(1), a promise or order is unconditional unless it states an express condition to payment, that the promise or order is subject to or governed by another writing, or that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.
- (2) A promise or order is not made conditional by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or because payment is limited to resort to a particular fund or source.
- (3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Subsection 70A-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

- (4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Subsection 70A-3-104(1). However, if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-107 Instrument payable in foreign money.**

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-108 Payable on demand or at definite time.**

- (1) A promise or order is "payable on demand" if it states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or does not state any time of payment.
- (2) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
- (3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-109 Payable to bearer or to order.**

- (1) A promise or order is payable to bearer if it:
  - (a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
  - (b) does not state a payee; or
  - (c) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
- (2) A promise or order that is not payable to bearer is payable to order if it is payable to the order of an identified person, or to an identified person or order. A promise or order that is payable to order is payable to the identified person.
- (3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Subsection 70A-3-205(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Subsection 70A-3-205(2).

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-110 Identification of person to whom instrument is payable.**

- (1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.
- (2) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.
- (3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:
  - (a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
  - (b) If an instrument is payable to:
    - (i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;
    - (ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;
    - (iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or
    - (iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.
- (4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-111 Place of payment.**

Except as otherwise provided for items in Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-112 Interest.**

- (1) Unless otherwise provided in the instrument, an instrument is not payable with interest, and interest on an interest-bearing instrument is payable from the date of the instrument.
- (2) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-113 Date of instrument.**

- (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after the date. Except as provided in Subsection 70A-4-401(3), an instrument payable on demand is not payable before the date of the instrument.
- (2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-114 Contradictory terms of instrument.**

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-115 Incomplete instrument.**

- (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.
- (2) Subject to Subsection (3), if an incomplete instrument is an instrument under Section 70A-3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 70A-3-104, but, after completion, the requirements of Section 70A-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.
- (3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 70A-3-407.
- (4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-116 Joint and several liability -- Contribution.**

- (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.
- (2) Except as provided in Subsection 70A-3-419(5) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.
- (3) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under Subsection (2) of a party having the same joint and several liability to receive contribution from the party discharged.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-117 Other agreements affecting instrument.**

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-118 Statute of limitations.**

- (1) Except as provided in Subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.
- (2) Except as provided in Subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.
- (3) Except as provided in Subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.
- (4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.
- (5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.
- (6) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.



- (7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or like action based on conversion, for breach of warranty, or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three years after the cause of action accrues.

Repealed and Re-enacted by Chapter 237, 1993 General Session

**70A-3-119 Notice of right to defend action.**

In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Title 70A, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend, and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Repealed and Re-enacted by Chapter 237, 1993 General Session