

Part 2 Warehouse Receipts - Special Provisions

70A-7a-201 Person that may issue a warehouse receipt -- Storage under bond.

- (1) A warehouse receipt may be issued by any warehouse.
- (2) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is considered to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

Enacted by Chapter 42, 2006 General Session

70A-7a-202 Form of warehouse receipt -- Effect of omission.

- (1) A warehouse receipt need not be in any particular form.
- (2) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:
 - (a) a statement of the location of the warehouse facility where the goods are stored;
 - (b) the date of issue of the receipt;
 - (c) the unique identification code of the receipt;
 - (d) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or that person's order;
 - (e) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
 - (f) a description of the goods or the packages containing them;
 - (g) the signature of the warehouse or its agent;
 - (h) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
 - (i) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.
- (3) A warehouse may insert in its receipt any terms that are not contrary to this title and do not impair its obligation of delivery under Section 70A-7a-403 or its duty of care under Section 70A-7a-204. Any contrary provision is ineffective.

Enacted by Chapter 42, 2006 General Session

70A-7a-203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or

- (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

Enacted by Chapter 42, 2006 General Session

70A-7a-204 Duty of care -- Contractual limitation of warehouse's liability.

- (1) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.
- (2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.
- (3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

Enacted by Chapter 42, 2006 General Session

70A-7a-205 Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Enacted by Chapter 42, 2006 General Session

70A-7a-206 Termination of storage at warehouse's option.

- (1) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 70A-7a-210.
- (2) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in Subsection (1) and Section 70A-7a-210, the warehouse may specify in the notice given under Subsection (1) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.
- (3) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

- (4) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.
- (5) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

Enacted by Chapter 42, 2006 General Session

70A-7a-207 Goods must be kept separate -- Fungible goods.

- (1) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
- (2) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

Enacted by Chapter 42, 2006 General Session

70A-7a-208 Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Enacted by Chapter 42, 2006 General Session

70A-7a-209 Lien of warehouse.

- (1) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.
- (2) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in Subsection (1), such as for money advanced and interest. The security interest is governed by Chapter 9a, Uniform Commercial Code - Secured Transactions.

- (3) A warehouse's lien for charges and expenses under Subsection (1) or a security interest under Subsection (2) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:
 - (a) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (i) actual or apparent authority to ship, store, or sell;
 - (ii) power to obtain delivery under Section 70A-7a-403; or
 - (iii) power of disposition under Section 70A-2-403, Subsection 70A-2a-304(2), Subsection 70A-2a-305(2), Section 70A-9a-320, or Subsection 70A-9a-321(3) or other statute or rule of law; or
 - (b) acquiesce in the procurement by the bailor or its nominee of any document.
- (4) A warehouse's lien on household goods for charges and expenses in relation to the goods under Subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this Subsection (4), "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.
- (5) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Enacted by Chapter 42, 2006 General Session

70A-7a-210 Enforcement of warehouse's lien.

- (1) Except as otherwise provided in Subsection (2), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.
- (2) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:
 - (a) All persons known to claim an interest in the goods must be notified.
 - (b) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
 - (c) The sale must conform to the terms of the notification.
 - (d) The sale must be held at the nearest suitable place to where the goods are held or stored.

- (e) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.
- (3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.
- (4) A warehouse may buy at any public sale held pursuant to this section.
- (5) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
- (6) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.
- (7) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
- (8) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with Subsection (1) or (2).
- (9) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Enacted by Chapter 42, 2006 General Session