

Part 3
Bills of Lading - Special Provisions

70A-7a-301 Liability for nonreceipt or misdescription -- "Said to contain" -- "Shipper's weight, load, and count" -- Improper handling.

- (1) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in 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 or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.
- (2) If goods are loaded by the issuer of a bill of lading:
 - (a) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and
 - (b) words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.
- (3) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.
- (4) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.
- (5) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

Enacted by Chapter 42, 2006 General Session

70A-7a-302 Through bills of lading and similar documents of title.

- (1) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

- (2) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.
- (3) The issuer of a through bill of lading or other document of title described in Subsection (1) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:
 - (a) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
 - (b) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

Enacted by Chapter 42, 2006 General Session

70A-7a-303 Diversion -- Reconsignment -- Change of instructions.

- (1) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:
 - (a) the holder of a negotiable bill;
 - (b) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
 - (c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
 - (d) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.
- (2) Unless instructions described in Subsection (1) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Enacted by Chapter 42, 2006 General Session

70A-7a-304 Tangible bills of lading in a set.

- (1) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this Subsection (1).
- (2) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.
- (3) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.
- (4) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

- (5) The bailee shall deliver in accordance with Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Enacted by Chapter 42, 2006 General Session

70A-7a-305 Destination bills.

- (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.
- (2) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 70A-7a-105, may procure a substitute bill to be issued at any place designated in the request.

Enacted by Chapter 42, 2006 General Session

70A-7a-306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Enacted by Chapter 42, 2006 General Session

70A-7a-307 Lien of carrier.

- (1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.
- (2) A lien for charges and expenses under Subsection (1) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under Subsection (1) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.
- (3) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Enacted by Chapter 42, 2006 General Session

70A-7a-308 Enforcement of carrier's lien.

- (1) A carrier's lien on goods 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 carrier is not of itself sufficient to establish

that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier 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) 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 carrier, subject to the terms of the bill of lading and this chapter.
- (3) A carrier may buy at any public sale pursuant to this section.
- (4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.
- (5) A carrier 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 carrier would have been bound to deliver the goods.
- (6) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
- (7) A carrier's lien may be enforced pursuant to either Subsection (1) or the procedure set forth in Subsection 70A-7a-210(2).
- (8) A carrier 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

70A-7a-309 Duty of care -- Contractual limitation of carrier's liability.

- (1) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This Subsection (1) does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.
- (2) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.
- (3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

Enacted by Chapter 42, 2006 General Session