

Part 4 Rights of Third Parties

70A-9a-401 Alienability of debtor's rights.

- (1) Except as otherwise provided in Subsection (2) and Sections 70A-9a-406, 70A-9a-407, 70A-9a-408, and 70A-9a-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.
- (2) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Enacted by Chapter 252, 2000 General Session

70A-9a-402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Enacted by Chapter 252, 2000 General Session

70A-9a-403 Agreement not to assert defenses against assignee.

- (1) In this section, "value" has the meaning provided in Subsection 70A-3-303(1).
- (2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:
 - (a) for value;
 - (b) in good faith;
 - (c) without notice of a claim of a property or possessory right to the property assigned; and
 - (d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Subsection 70A-3-305(1).
- (3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Subsection 70A-3-305(2).
- (4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:
 - (a) the record has the same effect as if the record included such a statement; and
 - (b) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.
- (5) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (6) Except as otherwise provided in Subsection (4), this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Enacted by Chapter 252, 2000 General Session

70A-9a-404 Rights acquired by assignee -- Claims and defenses against assignee.

- (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsections (2) through (5), the rights of an assignee are subject to:
 - (a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
 - (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.
- (2) Subject to Subsection (3) and except as otherwise provided in Subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under Subsection (1) only to reduce the amount the account debtor owes.
- (3) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.
- (5) This section does not apply to an assignment of a health-care-insurance receivable.

Enacted by Chapter 252, 2000 General Session

70A-9a-405 Modification of assigned contract.

- (1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This Subsection (1) is subject to Subsections (2) through (4).
- (2) Subsection (1) applies to the extent that:
 - (a) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
 - (b) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Subsection 70A-9a-406(1).
- (3) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (4) This section does not apply to an assignment of a health-care-insurance receivable.

Enacted by Chapter 252, 2000 General Session

70A-9a-406 Discharge of account debtor -- Notification of assignment -- Identification and proof of assignment -- Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

- (1) Subject to Subsections (2) through (9), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after,

the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

- (2) Subject to Subsection (8), notification is ineffective under Subsection (1):
 - (a) if it does not reasonably identify the rights assigned;
 - (b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or
 - (c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (i) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 - (ii) a portion has been assigned to another assignee; or
 - (iii) the account debtor knows that the assignment to that assignee is limited.
- (3) Subject to Subsection (8), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under Subsection (1).
- (4) Except as otherwise provided in Subsection (5) and Sections 70A-2a-303 and 70A-9a-407, and subject to Subsection (8), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:
 - (a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
 - (b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
- (5) Subsection (4) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 70A-9a-610 or an acceptance of collateral under Section 70A-9a-620.
- (6) Except as otherwise provided in Sections 70A-2a-303 and 70A-9a-407 and subject to Subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:
 - (a) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
 - (b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.
- (7) Subject to Subsection (8), an account debtor may not waive or vary its option under Subsection (2)(c).

- (8) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (9) This section does not apply to an assignment of a health-care-insurance receivable.

Amended by Chapter 225, 2013 General Session

70A-9a-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

- (1) Except as otherwise provided in Subsection (2), a term in a lease agreement is ineffective to the extent that it:
 - (a) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
 - (b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.
- (2) Except as otherwise provided in Subsection 70A-2a-303(7), a term described in Subsection (1) (b) is effective to the extent that there is:
 - (a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
 - (b) a delegation of a material performance of either party to the lease contract in violation of the term.
- (3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Subsection 70A-2a-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Enacted by Chapter 252, 2000 General Session

70A-9a-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

- (1) Except as otherwise provided in Subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:
 - (a) would impair the creation, attachment, or perfection of a security interest; or
 - (b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other

than a sale pursuant to a disposition under Section 70A-9a-610 or an acceptance of collateral under Section 70A-9a-620.

- (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
 - (a) would impair the creation, attachment, or perfection of a security interest; or
 - (b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in Subsection (3) would be effective under law other than this chapter but is ineffective under Subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
 - (a) is not enforceable against the person obligated on the promissory note or the account debtor;
 - (b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
 - (e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
 - (f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

Amended by Chapter 225, 2013 General Session

70A-9a-409 Restrictions on assignment of letter-of-credit rights ineffective.

- (1) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:
 - (a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
 - (b) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

- (2) To the extent that a term in a letter of credit is ineffective under Subsection (1) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:
- (a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;
 - (b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and
 - (c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

Enacted by Chapter 252, 2000 General Session