

**UNIFORM COMMERCIAL CODE (EXCERPT)**  
**Act 174 of 1962**  
**PART 3**  
**TERRITORIAL APPLICABILITY AND GENERAL RULES**

**440.1301 Applicability of law of this state or other state or nation; applicability of act to transactions bearing relation to state; provisions specifying applicable law.**

Sec. 1301.

(1) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of that other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1), and except as provided in subsection (3), this act applies to transactions bearing an appropriate relation to this state.

(3) If 1 of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (a) Section 2402.
- (b) Sections 2A105 and 2A106.
- (c) Section 4102.
- (d) Section 4A507.
- (e) Section 5116.
- (f) Section 8110.
- (g) Sections 9301 through 9307.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

**440.1302 Agreements; "unless otherwise agreed"; implication.**

Sec. 1302.

(1) Except as otherwise provided in subsection (2) or elsewhere in this act, the effect of any provision of this act may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this act may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this act requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this act of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

**440.1303 Course of performance, course of dealing, or usage of trade.**

Sec. 1303.

(1) For purposes of this act, a "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if both of the following are met:

(a) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party.

(b) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) For purposes of this act, a "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3) For purposes of this act, a "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage of trade must be proved as facts. If it is established that a usage of trade is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5) Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. All of the following apply if that construction is unreasonable:

(a) Express terms prevail over course of performance, course of dealing, and usage of trade.

(b) Course of performance prevails over course of dealing and usage of trade.

(c) Course of dealing prevails over usage of trade.

(6) Subject to section 2209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by 1 party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1304 Good faith obligation.**

Sec. 1304.

Every contract or duty within this act imposes an obligation of good faith in its performance and enforcement.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1305 Administration of remedies; enforcement of right or obligation.**

Sec. 1305.

(1) The remedies provided in this act must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1306 Claim or right arising out of alleged breach; discharge.**

Sec. 1306.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1307 Prima facie evidence of certain documents.**

Sec. 1307.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1308 Performance or promise of performance; effect of reservation of rights; applicability of subsection (1) to accord and satisfaction.**

Sec. 1308.

(1) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not prejudice the rights reserved by that performance, promise, or assent. Words such as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1309 Accelerating payment or performance or requiring collateral or additional collateral.**

Sec. 1309.

A term providing that 1 party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**History:** Add. 2012, Act 86, Eff. July 1, 2013

#### **440.1310 Subordination.**

Sec. 1310.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or

another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**History:** Add. 2012, Act 86, Eff. July 1, 2013