

TITLE 29
CONTRACTS

CHAPTER 1
GENERAL PROVISIONS RELATING TO CONTRACTS

29-101. WHO MAY CONTRACT. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

[(29-101) 1863, p. 515, sec. 1; R.S., sec. 3220; reen. R.C. & C.L., sec. 3312; C.S., sec. 5661; I.C.A., sec. 28-101.]

29-102. ENFORCEMENT BY BENEFICIARY. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

[(29-102) R.S., sec. 3221; reen. R.C. & C.L., sec. 3313; C.S., sec. 5662; I.C.A., sec. 28-102.]

29-103. PRESUMPTION OF CONSIDERATION. A written instrument is presumptive evidence of a consideration.

[(29-103) R.S., sec. 3222; reen. R.C. & C.L., sec. 3314; C.S., sec. 5663; I.C.A., sec. 28-103.]

29-104. WANT OF CONSIDERATION -- BURDEN OF PROOF. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

[(29-104) R.S., sec. 3223; reen. R.C. & C.L., sec. 3315; C.S., sec. 5664; I.C.A., sec. 28-104.]

29-105. CONTRACTS MAY BE ORAL. All contracts may be oral except such as are specially required by statute to be in writing.

[(29-105) R.S., sec. 3224; reen. R.C. & C.L., sec. 3316; C.S., sec. 5665; I.C.A., sec. 28-105.]

29-106. CONTRACT NOT PUT IN WRITING THROUGH FRAUD. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

[(29-106) R.S., sec. 3225; reen. R.C. & C.L., sec. 3317; C.S., sec. 5666; I.C.A., sec. 28-106.]

29-107. CORPORATE OR OFFICIAL SEAL -- HOW AFFIXED. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

[(29-107) R.S., sec. 3226; reen. R.C. & C.L., sec. 3318; C.S., sec. 5667; I.C.A., sec. 28-107.]

29-108. DISTINCTION AS TO SEALED INSTRUMENTS ABOLISHED. All distinctions between sealed and unsealed instruments are abolished.

[(29-108) R.S., sec. 3227; reen. R.C. & C.L., sec. 3319; C.S., sec. 5668; I.C.A., sec. 28-108.]

29-109. CONSTRUCTION OF CONFLICTING PROVISIONS. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form, and if the two are absolutely repugnant, the latter must be so far disregarded.

[(29-109) R.S., sec. 3228; reen. R.C. & C.L., sec. 3320; C.S., sec. 5669; I.C.A., sec. 28-109.]

29-110. LIMITATIONS ON RIGHT TO SUE UNDER CONTRACT OR FRANCHISE AGREEMENT. (1) Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho. Nothing in this section shall affect contract provisions relating to arbitration so long as the contract does not require arbitration to be conducted outside the state of Idaho.

(2) Any condition, stipulation or provision in a franchise agreement is void to the extent it purports to waive, or has the effect of waiving, venue or jurisdiction of the state of Idaho's court system. Any condition, stipulation or provision in a franchise agreement, to the extent it purports to assert, or has the effect of asserting, the choice of law is enforceable. This subsection shall apply to any franchise agreement entered into or renewed on or after July 1, 2003, by any person who at the time of entering into or renewing such franchise agreement was a resident of this state or incorporated or organized under the laws of this state.

(3) As used in this section "franchise agreement" means a written contract or agreement by which:

(a) A person ("franchisee") is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a third party ("franchisor");

(b) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor of such plan or system; and

(c) The franchisee is required to pay the franchisor one thousand dollars (\$1,000) or more for the right to transact business pursuant to the plan or system. Such payments shall not include amounts paid:

(i) As a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card; or

(ii) For the purchase of goods at a bona fide wholesale price.

[(29-110) R.S., sec. 3229; reen. R.C. & C.L., sec. 3321; C.S., sec. 5670; I.C.A., sec. 28-110; am. 2003, ch. 378, sec. 1, p. 1010; am. 2012, ch. 328, sec. 1, p. 909.]

29-111. DEBTOR MAY DEMAND RECEIPT. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

[(29-111) R.S., sec. 3230; reen. R.C. & C.L., sec. 3322; C.S., sec. 5671; I.C.A., sec. 28-111.]

29-112. OBJECTION TO OFFER OF PERFORMANCE. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor if not then stated.

[(29-112) R.S., sec. 3231; reen. R.C. & C.L., sec. 3323; C.S., sec. 5672; I.C.A., sec. 28-112.]

29-113. RELEASE FOR PERSONAL INJURY. Any agreement entered into by any person within fifteen (15) days after he incurs a personal injury, which may adversely affect his right to be compensated for such injury, may be disavowed by such injured person within one (1) year after the making of the agreement. No agreement disavowed may be introduced as evidence in any subsequent court or administrative proceeding.

[29-113, added 1961, ch. 160, sec. 1, p. 231.]

29-114. INDEMNIFICATION OF PROMISEE FOR NEGLIGENCE -- EFFECT ON EXISTING AGREEMENTS. A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, highway, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee, his agents or employees, or indemnitees, is against public policy and is void and unenforceable.

This act will not be construed to affect or impair the obligations of contracts or agreements, which are in existence at the time the act becomes effective.

[29-114, added 1971, ch. 46, sec. 1, p. 100.]

29-115. CONSTRUCTION CONTRACTS. (1) This section is applicable with respect to all contracts entered into on or after July 1, 1990, between owners and original contractors relating to the construction of any private work of improvement.

(2) In any contract relating to the construction of any private work of improvement, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed five percent (5%) of the payment and in no event shall the total retention withheld exceed five percent (5%) of the contract price. However, the five percent (5%) maximum that may be withheld does not

apply if the original contractor or the subcontractor fails to provide a performance bond issued by a surety acceptable to the owner or original contractor if requested to do so by the owner or original contractor respectively. The five percent (5%) maximum shall not apply to any contract for the performance of a private work of improvement to residential real property consisting of one (1) to four (4) units occupied or to be occupied by the owner.

(3) Within thirty-five (35) days from the date on which the work of improvement is substantially complete, as mutually agreed to by the parties to the contract, the retention withheld by the owner shall be reduced to the lesser of one hundred fifty percent (150%) of the estimated value of work yet to be completed in accordance with the contract or the retention then withheld by the owner, not to exceed five percent (5%) of the contract price.

Within thirty-five (35) days from the date of final completion of the work of improvement, the retention withheld by the owner shall be released, except in the event of a dispute between the owner and the original contractor, the owner may withhold from the final retention payment an amount not to exceed one hundred fifty percent (150%) of the estimated value of the issue in dispute. The owner may condition the final release of the retention upon receipt of satisfactory lien waivers from all persons with actual or potential lien claims on the work of improvement.

(4) Subject to subsection (5) of this section, within ten (10) days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor.

(5) The original contractor shall not be required to pay the retention to a subcontractor if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed one hundred fifty percent (150%) of the estimated value of the work yet to be completed or issue in dispute.

(6) It shall be against public policy for any party to require any other party to waive any provision of this statute.

[29-115, added 1990, ch. 415, sec. 1, p. 1151; am. 1998, ch. 271, sec. 1, p. 900.]

29-116. COMPUTER INFORMATION AGREEMENTS. (1) In an action based on a computer information agreement that contains a choice of laws provision that would result in application of the uniform computer information transactions act to such computer information agreement, such choice of laws provision is voidable by the party against whom enforcement is sought, and the agreement will be governed by the laws of the state of Idaho if either party is a resident of this state or has its principal place of business located in this state.

(2) In an action based on a computer information agreement that does not contain a choice of laws provision, any party may object to the application of the uniform computer information transactions act to such computer information agreement. If such an objection is made, the agreement will be governed by the laws of the state of Idaho if either party is a resident of this state or has its principal place of business in this state.

(3) This section may not be varied or invalidated by the agreement of the parties.

(4) As used in this section:

(a) "Computer information" means information in electronic form that is obtained from or through the use of a computer or that is in a form capable of being processed by a computer.

(b) "Computer information agreement" means a contract or agreement to create, modify, transfer, license or otherwise use computer information or rights in computer information, or to perform or support such creation, modification, transfer, license or use.

(c) "Party" means a party to a computer information agreement.

(d) "Uniform computer information transactions act" means the uniform computer information transactions act as approved by the national conference of commissioners on uniform state laws and enacted in any jurisdiction, or any substantially similar law enacted in any jurisdiction.

[29-116, added 2007, ch. 286, sec. 1, p. 815.]