537.3404 Assignee subject to claims and defenses.

1. With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer against the seller or lessor arising from the sale or lease of property or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments in section 537.3307; unless the consumer has agreed in writing not to assert against an assignee a claim or defense arising out of such sale, and the consumer's contract has been assigned to an assignee not related to the seller who acquired the consumer's contract in good faith and for value and who gives the consumer notice of the assignment as provided in this subsection and who within thirty days after the mailing of the notice receives no written notice of the facts giving rise to the consumer's claim or defense. Such agreement not to assert a claim or defense is not valid if the assignee receives such written notice from the consumer within such thirty-day period. The notice of assignment shall be in writing and addressed to the consumer at the consumer's address as stated in the contract, identify the contract, describe the property purchased by the consumer, state the names of the seller and consumer, the name and address of the assignee, the amount payable by the consumer and the number, amounts and due dates of the installments, and contain a conspicuous notice to the consumer that the consumer has thirty days from the date of the mailing of the notice to the consumer within which to notify the assignee in writing of any claims or defenses the consumer may have against the seller and that if written notification of any such claims or defenses is not received by the assignee within such thirty-day period, the assignee will have the right to enforce the contract free of any claims or defenses the consumer may have against the seller. An assignee does not acquire a consumer's contract in good faith within the meaning of this subsection if the assignee has knowledge or, from the assignee's course of dealing with the seller or the assignee's records, notice of substantial complaints by other consumers of the seller's failure or refusal to perform the seller's contracts with them and of the seller's failure to remedy the seller's defaults within a reasonable time after the assignee notifies the seller of the complaints.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the assignee under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense, and only to the extent of the amount owing to the assignee with respect to the sale or lease of the property or services as to which the claim or defense arose, at the time the assignee has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

a. Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open end credit, are deemed to have been first applied to the payment of the sales first made, and if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales.

b. Payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.3404]

Referred to in **§537.5201**