

SECTION 2B-716 - ELECTRONIC-SELF HELP

- (a) Upon cancellation of a license, use of electronic means to exercise a licensor's rights under Section 2B-715(b) ("electronic self-help") is not permitted except as provided below.
- (b) A term in the license must be assented to separately authorizing use of electronic self-help which term shall:
 - (1) provide for notice of exercise as provided in subsection (c);
 - (2) state in the term the person(s) designated by the licensee to whom notice of exercise is to be given; and
 - (3) provide a simple procedure for the licensee to change the designated persons;
- (c) Prior to the exercise of electronic self-help authorized by the term, the licensor shall give notice to the person(s) designated by licensee that states:
 - (1) that the licensor intends to exercise electronic self-help as a remedy on or after 15 days from the receipt by the licensee of the notice;
 - (2) the nature of the breach which entitles the licensor to exercise self-help; and
 - (3) the name, title and address including direct telephone, facsimile and/or e-mail number with whom the licensee may communicate concerning the alleged breach
- (d) The licensee may recover damages caused by wrongful exercise of electronic self-help, whether or not such damages are excluded by the terms or the license, including consequential damages if:
 - (1) the licensee has reason to know that consequential damages may result; or
 - (2) within the 15 days notice required or longer period specified in the licensor's notice, the licensee gives notice to the licensor's designated person(s) describing in good faith the general nature and magnitude of damages.
- (e) Notwithstanding the above, the remedy of self-help shall not be exercised if the licensor has reason to know that irreparable substantial injury or harm to the public health or safety, or grave harm to the public interest substantially impacting uninvolved third parties to the dispute, will result. In such event, the licensor shall be entitled to a prompt consideration of injunctive relief by the courts of this state.
- (f) A court of competent jurisdiction may temporarily or permanently enjoin the licensor from exercising electronic self-help even if authorized by a license term if the court finds:
 - (1) the exercise will result in substantial injury or harm to public health or safety;
 - (2) the exercise will result in grave harm to the public interest substantially impacting third parties uninvolved in the license dispute;
 - (3) with appropriate restraints on misuse of the licensor's computer information the exercise will result in irreparable harm to the licensee;

- (4) the licensor or the licensee who may be adversely affected by a provision of the relief is adequately protected against loss or misuse of computer information that it may suffer because the relief is granted; and
 - (5) all the conditions to entitle a person to the relief under the laws of this state have been met.
- (g) Rights or obligations under this section may not be waived or varied by an agreement made prior to breach, but the parties may specify additional provisions of timing, method and manner of giving notices under subsection (c) and (d) unless the provisions are manifestly unreasonable.

Notes:

- (b)(2) is patterned after accord and satisfaction 3-311
- (d) is patterned after 4A- and 3-
- (f) is patterned after 4A-503 and 5-109