

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Pryor**

A Bill

ACT 439 OF 1993
HOUSE BILL 1449

For An Act To Be Entitled

"AN ACT TO ADD CHAPTER 2A (LEASES) TO THE UNIFORM
COMMERCIAL CODE; AND FOR OTHER PURPOSES."

Subtitle

"TO ADD CHAPTER 2A (LEASES) TO THE UNIFORM COMMERCIAL
CODE."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title 4 of the Arkansas Code Annotated is hereby amended by
inserting a new Chapter 2A to read as follows:

CHAPTER 2A

LEASES

PART 1

GENERAL PROVISIONS

§4-2A-101. SHORT TITLE.

This chapter shall be known and may be cited as the Uniform Commercial
Code - Leases.

§4-2A-102. SCOPE. This chapter applies to any transaction, regardless
of form, that creates a lease.

§4-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this chapter unless the context otherwise requires:

(a) Buyer in ordinary course of business means a person who in
good faith and without knowledge that the sale to him or her is in violation
of the ownership rights or security interest or leasehold interest of a third
party in the goods, buys in ordinary course from a person in the business of
selling goods of that kind but does not include a pawnbroker. Buying may be
for cash or by exchange of other property or on secured or unsecured credit

1 and includes receiving goods or documents of title under a pre-existing
2 contract for sale but does not include a transfer in bulk or as security for
3 or in total or partial satisfaction of a money debt.

4 (b) Cancellation occurs when either party puts an end to the
5 lease contract for default by the other party.

6 (c) Commercial unit means such a unit of goods as by commercial
7 usage is a single whole for purposes of lease and division of which materially
8 impairs its character or value on the market or in use. A commercial unit may
9 be a single article, as a machine, or a set of articles, as a suite of
10 furniture or a line of machinery, or a quantity, as a gross or carload, or any
11 other unit treated in use or in the relevant market as a single whole.

12 (d) Conforming goods or performance under a lease contract
13 means goods or performance that are in accordance with the obligations under
14 the lease contract.

15 (e) Consumer lease means a lease that a lessor regularly
16 engaged in the business of leasing or selling makes to a lessee who is an
17 individual and who takes under the lease primarily for a personal, family, or
18 household purpose, if the total payments to be made under the lease contract,
19 excluding payments for options to renew or buy, do not exceed twenty-five
20 thousand dollars (\$25,000).

21 (f) Fault means wrongful act, omission, breach, or default.

22 (g) Finance lease means a lease with respect to which:

23 (i) the lessor does not select, manufacture, or supply the
24 goods;

25 (ii) the lessor acquires the goods or the right to
26 possession and use of the goods in connection with the lease; and

27 (iii) one of the following occurs:

28 (A) the lessee receives a copy of the contract by
29 which the lessor acquired the goods or the right to possession and use of the
30 goods before signing the lease contract;

31 (B) the lessee's approval of the contract by which the
32 lessor acquired the goods or the right to possession and use of the goods is a
33 condition to effectiveness of the lease contract;

34 (C) the lessee, before signing the lease contract,
35 receives an accurate and complete statement designating the promises and

1 warranties, and any disclaimers of warranties, limitations or modifications of
2 remedies, or liquidated damages, including those of a third party, such as the
3 manufacturer of the goods, provided to the lessor by the person supplying the
4 goods in connection with or as part of the contract by which the lessor
5 acquired the goods or the right to possession and use of the goods; or

6 (D) if the lease is not a consumer lease, the lessor,
7 before the lessee signs the lease contract, informs the lessee in writing (a)
8 of the identity of the person supplying the goods to the lessor, unless the
9 lessee has selected that person and directed the lessor to acquire the goods
10 or the right to possession and use of the goods from that person, (b) that the
11 lessee is entitled under this chapter to the promises and warranties,
12 including those of any third party, provided to the lessor by the person
13 supplying the goods in connection with or as part of the contract by which the
14 lessor acquired the goods or the right to possession and use of the goods, and
15 (c) that the lessee may communicate with the person supplying the goods to the
16 lessor and receive an accurate and complete statement of those promises and
17 warranties, including any disclaimers and limitations of them or of remedies.

18 (h) Goods means all things that are movable at the time of
19 identification to the lease contract, or are fixtures (Section 4-2A-309), but
20 the term does not include money, documents, instruments, accounts, chattel
21 paper, general intangibles, or minerals or the like, including oil and gas,
22 before extraction. The term also includes the unborn young of animals.

23 (i) Installment lease contract means a lease contract that
24 authorizes or requires the delivery of goods in separate lots to be separately
25 accepted, even though the lease contract contains a clause each delivery is a
26 separate lease or its equivalent.

27 (j) Lease means a transfer of the right to possession and use
28 of goods for a term in return for consideration, but a sale, including a sale
29 on approval or a sale or return, or retention or creation of a security
30 interest is not a lease. Unless the context clearly indicates otherwise, the
31 term includes a sublease.

32 (k) Lease agreement means the bargain, with respect to the
33 lease, of the lessor and the lessee in fact as found in their language or by
34 implication from other circumstances including course of dealing or usage of
35 trade or course of performance as provided in this chapter. Unless the

1 context clearly indicates otherwise, the term includes a sublease agreement.

2 (l) _Lease contract_ means the total legal obligation that
3 results from the lease agreement as affected by this chapter and any other
4 applicable rules of law. Unless the context clearly indicates otherwise, the
5 term includes a sublease contract.

6 (m) _Leasehold interest_ means the interest of the lessor or the
7 lessee under a lease contract.

8 (n) _Lessee_ means a person who acquires the right to possession
9 and use of goods under a lease. Unless the context clearly indicates
10 otherwise, the term includes a sublessee.

11 (o) _Lessee in ordinary course of business_ means a person who in
12 good faith and without knowledge that the lease to him or her is in violation
13 of the ownership rights or security interest or leasehold interest of a third
14 party in the goods leased in ordinary course from a person in the business of
15 selling or leasing goods of that kind but does not include a pawnbroker.

16 _Leasing_ may be for cash or by exchange of other property or on secured or
17 unsecured credit and includes receiving goods or documents of title under a
18 pre-existing lease contract but does not include a transfer in bulk or as
19 security for or in total or partial satisfaction of a money debt.

20 (p) _Lessor_ means a person who transfers the right to possession
21 and use of goods under a lease. Unless the context clearly indicates
22 otherwise, the term includes a sublessor.

23 (q) _Lessor's residual interest_ means the lessor's interest in
24 the goods after expiration, termination, or cancellation of the lease
25 contract.

26 (r) _Lien_ means a charge against or interest in goods to secure
27 payment of a debt or performance of an obligation, but the term does not
28 include a security interest.

29 (s) _Lot_ means a parcel or a single article that is the subject
30 matter of a separate lease or delivery, whether or not it is sufficient to
31 perform the lease contract.

32 (t) _Merchant lessee_ means a lessee that is a merchant with
33 respect to goods of the kind subject to the lease.

34 (u) _Present value_ means the amount as of a date certain of one
35 or more sums payable in the future, discounted to the date certain. The

1 discount is determined by the interest rate specified by the parties if the
2 rate was not manifestly unreasonable at the time the transaction was entered
3 into; otherwise, the discount is determined by a commercially reasonable rate
4 that takes into account the facts and circumstances of each case at the time
5 the transaction was entered into.

6 (v) _Purchase_ includes taking by sale, lease, mortgage, security
7 interest, pledge, gift, or any other voluntary transaction creating an
8 interest in goods.

9 (w) _Sublease_ means a lease of goods the right to possession and
10 use of which was acquired by the lessor as a lessee under an existing lease.

11 (x) _Supplier_ means a person from whom a lessor buys or leases
12 goods to be leased under a finance lease.

13 (y) _Supply contract_ means a contract under which a lessor buys
14 or leases goods to be leased.

15 (z) _Termination_ occurs when either party pursuant to a power
16 created by agreement or law puts an end to the lease contract otherwise than
17 for default.

18 (2) Other definitions applying to this chapter and the sections in
19 which they appear are:

20 _Accessions_. Section 4-2A-310(1).

21 _Construction mortgage_. Section 4-2A-309(1)(d).

22 _Encumbrance_. Section 4-2A-309(1)(e).

23 _Fixtures_. Section 4-2A-309(1)(a).

24 _Fixture filing_. Section 4-2A-309(1)(b).

25 _Purchase money lease_. Section 4-2A-309(1)(c).

26 (3) The following definitions in other chapters apply to this chapter:

27 _Accounts_. Section 4-9-106.

28 _Between merchants_. Section 4-2-104(3).

29 _Buyer_. Section 4-2-103(1)(a).

30 _Chattel paper_. Section 4-9-105(1)(b).

31 _Consumer goods_. Section 4-9-109(1).

32 _Documents_". Section 4-9-105(1)(f).

33 _Entrusting_. Section 4-2-403(3).

34 _General intangibles_. Section 4-9-106.

35 _Good faith_. Section 4-2-103(1)(b).

- 1 _Instrument_. Section 4-9-105(1)(i).
- 2 _Merchant_. Section 4-2-104(1).
- 3 _Mortgage_. Section 4-9-105(1)(j).
- 4 _Pursuant to commitment_. Section 4-9-105(1)(k).
- 5 _Receipt_. Section 4-2-103(1)(c).
- 6 _Sale_. Section 4-2-106(1).
- 7 _Sale on approval_. Section 4-2-326.
- 8 _Sale or return_. Section 4-2-326.
- 9 _Seller_. Section 4-2-103(1)(d).

10 (4) In addition, chapter 1 (4-1-101 et seq.) contains general
11 definitions and principles of construction and interpretation applicable
12 throughout this chapter.

13 §4-2A-104. LEASES SUBJECT TO OTHER LAW.

14 (1) A lease, although subject to this chapter, is also subject to any
15 applicable:

16 (a) certificate of title statute of this state, including, but not
17 limited to §§27-14-801 - 27-14-804 concerning the filing of liens and
18 encumbrances on motor vehicles;

19 (b) certificate of title statute of another jurisdiction (Section
20 4-2A-105);

21 (c) consumer protection statute of this state, or final consumer
22 protection decision of a court of this state existing on the effective date of
23 this chapter.

24 (d) statute of this state creating conditions for the
25 effectiveness and enforceability of the lease contract, including, but not
26 limited to §§6-62-601 - 6-62-613; 12-8-301 - 12-8-310; 14-16-108 - 14-16-110;
27 14-94-110; 14-138-111; 14-169-1003 and 1011; 14-184-119; 14-219-101; 14-362-
28 126; 19-1-213; 22-2-114 and 22-2-115; 22-3-1101; 22-4-105; 22-4-501; 23-11-
29 314; 23-112-404; 27-65-114; 28-51-203 and 303; and 28-72-204; or

30 (e) statute of this state dealing with a person's capacity or
31 authority to enter into a lease contract.

32 (2) In case of conflict between this chapter, other than Sections 4-2A-
33 105, 4-2A-304(3), and 4-2A-305(3), and a statute or decision referred to in
34 subsection (1), the statute or decision controls.

35 (3) Failure to comply with an applicable law has only the effect

1 specified therein.

2 §4-2A-105. TERRITORIAL APPLICATION OF CHAPTER TO GOODS COVERED BY
3 CERTIFICATE OF TITLE.

4 Subject to the provisions of Sections 4-2A-304(3) and 4-2A-305(3), with
5 respect to goods covered by a certificate of title issued under a statute of
6 this State or of another jurisdiction, compliance and the effect of compliance
7 or noncompliance with a certificate of title statute are governed by the law
8 (including the conflict of laws rules) of the jurisdiction issuing the
9 certificate until the earlier of (a) surrender of the certificate, or (b) four
10 months after the goods are removed from that jurisdiction and thereafter until
11 a new certificate of title is issued by another jurisdiction.

12 §4-2A-106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE
13 APPLICABLE LAW AND JUDICIAL FORUM.

14 (1) If the law chosen by the parties to a consumer lease is that of a
15 jurisdiction other than a jurisdiction in which the lessee resides at the time
16 the lease agreement becomes enforceable or within thirty (30) days thereafter
17 or in which the goods are to be used, the choice is not enforceable.

18 (2) If the judicial forum chosen by the parties to a consumer lease is
19 a forum that would not otherwise have jurisdiction over the lessee, the choice
20 is not enforceable.

21 §4-2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT.

22 Any claim or right arising out of an alleged default or breach of
23 warranty may be discharged in whole or in part without consideration by a
24 written waiver or renunciation signed and delivered by the aggrieved party.

25 §4-2A-108. UNCONSCIONABILITY.

26 (1) If the court as a matter of law finds a lease contract or any
27 clause of a lease contract to have been unconscionable at the time it was made
28 the court may refuse to enforce the lease contract, or it may enforce the
29 remainder of the lease contract without the unconscionable clause, or it may
30 so limit the application of any unconscionable clause as to avoid any
31 unconscionable result.

32 (2) With respect to a consumer lease, if the court as a matter of law
33 finds that a lease contract or any clause of a lease contract has been induced
34 by unconscionable conduct or that unconscionable conduct has occurred in the
35 collection of a claim arising from a lease contract, the court may grant

1 appropriate relief.

2 (3) Before making a finding of unconscionability under subsection (1)
3 or (2), the court, on its own motion or that of a party, shall afford the
4 parties a reasonable opportunity to present evidence as to the setting,
5 purpose, and effect of the lease contract or clause thereof, or of the
6 conduct.

7 (4) In an action in which the lessee claims unconscionability with
8 respect to a consumer lease:

9 (a) If the court finds unconscionability under subsection (1) or
10 (2), the court shall award reasonable attorney's fees to the lessee.

11 (b) If the court does not find unconscionability and the lessee
12 claiming unconscionability has brought or maintained an action he or she knew
13 to be groundless, the court shall award reasonable attorney's fees to the
14 party against whom the claim is made.

15 (c) In determining attorney's fees, the amount of the recovery on
16 behalf of the claimant under subsections (1) and (2) is not controlling.

17 §4-2A-109. OPTION TO ACCELERATE AT WILL.

18 (1) A term providing that one party or his or her successor in interest
19 may accelerate payment or performance or require collateral or additional
20 collateral at will or when he or she deems himself or herself insecure or
21 in words of similar import must be construed to mean that he or she has power
22 to do so only if he or she in good faith believes that the prospect of payment
23 or performance is impaired.

24 (2) With respect to a consumer lease, the burden of establishing lack
25 of good faith under subsection (1) is on the party who exercised the power;
26 otherwise the burden of establishing lack of good faith is on the party
27 against whom the power has been exercised.

28 PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

29 §4-2A-201. STATUTE OF FRAUDS.

30 (1) A lease contract is not enforceable by way of action or defense
31 unless:

32 (a) the total payments to be made under the lease contract,
33 excluding payments for options to renew or buy, are less than one thousand
34 dollars (\$1,000); or

35 (b) there is a writing, signed by the party against whom

1 enforcement is sought or by that party's authorized agent, sufficient to
2 indicate that a lease contract has been made between the parties and to
3 describe the goods leased and the lease term.

4 (2) Any description of leased goods or of the lease term is sufficient
5 and satisfies subsection (1)(b), whether or not it is specific, if it
6 reasonably identifies what is described.

7 (3) A writing is not insufficient because it omits or incorrectly
8 states a term agreed upon, but the lease contract is not enforceable under
9 subsection (1)(b) beyond the lease term and the quantity of goods shown in the
10 writing.

11 (4) A lease contract that does not satisfy the requirements of
12 subsection (1), but which is valid in other respects, is enforceable:

13 (a) if the goods are to be specially manufactured or obtained for
14 the lessee and are not suitable for lease or sale to others in the ordinary
15 course of the lessor's business, and the lessor, before notice of repudiation
16 is received and under circumstances that reasonably indicate that the goods
17 are for the lessee, has made either a substantial beginning of their
18 manufacture or commitments for their procurement;

19 (b) if the party against whom enforcement is sought admits in that
20 party's pleading, testimony or otherwise in court that a lease contract was
21 made, but the lease contract is not enforceable under this provision beyond
22 the quantity of goods admitted; or

23 (c) with respect to goods that have been received and accepted by
24 the lessee.

25 (5) The lease term under a lease contract referred to in subsection (4)
26 is:

27 (a) if there is a writing signed by the party against whom
28 enforcement is sought or by that party's authorized agent specifying the lease
29 term, the term so specified;

30 (b) if the party against whom enforcement is sought admits in that
31 party's pleading, testimony, or otherwise in court a lease term, the term so
32 admitted; or

33 (c) a reasonable lease term.

34 §4-2A-202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE.

35 Terms with respect to which the confirmatory memoranda of the parties

1 agree or which are otherwise set forth in a writing intended by the parties as
2 a final expression of their agreement with respect to such terms as are
3 included therein may not be contradicted by evidence of any prior agreement or
4 of a contemporaneous oral agreement but may be explained or supplemented:

5 (a) by course of dealing or usage of trade or by course of performance;
6 and

7 (b) by evidence of consistent additional terms unless the court finds
8 the writing to have been intended also as a complete and exclusive statement
9 of the terms of the agreement.

10 §4-2A-203. SEALS INOPERATIVE.

11 The affixing of a seal to a writing evidencing a lease contract or an
12 offer to enter into a lease contract does not render the writing a sealed
13 instrument and the law with respect to sealed instruments does not apply to
14 the lease contract or offer.

15 §4-2A-204. FORMATION IN GENERAL.

16 (1) A lease contract may be made in any manner sufficient to show
17 agreement, including conduct by both parties which recognizes the existence of
18 a lease contract.

19 (2) An agreement sufficient to constitute a lease contract may be found
20 although the moment of its making is undetermined.

21 (3) Although one or more terms are left open, a lease contract does not
22 fail for indefiniteness if the parties have intended to make a lease contract
23 and there is a reasonably certain basis for giving an appropriate remedy.

24 §4-2A-205. FIRM OFFERS.

25 An offer by a merchant to lease goods to or from another person in a
26 signed writing that by its terms gives assurance it will be held open is not
27 revocable, for lack of consideration, during the time stated or, if no time is
28 stated, for a reasonable time, but in no event may the period of
29 irrevocability exceed three (3) months. Any such term of assurance on a form
30 supplied by the offeree must be separately signed by the offeror.

31 §4-2A-206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.

32 (1) Unless otherwise unambiguously indicated by the language or
33 circumstances, an offer to make a lease contract must be construed as inviting
34 acceptance in any manner and by any medium reasonable in the circumstances.

35 (2) If the beginning of a requested performance is a reasonable mode of

1 acceptance, an offeror who is not notified of acceptance within a reasonable
2 time may treat the offer as having lapsed before acceptance.

3 §4-2A-207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

4 (1) If a lease contract involves repeated occasions for performance by
5 either party with knowledge of the nature of the performance and opportunity
6 for objection to it by the other, any course of performance accepted or
7 acquiesced in without objection is relevant to determine the meaning of the
8 lease agreement.

9 (2) The express terms of a lease agreement and any course of
10 performance, as well as any course of dealing and usage of trade, must be
11 construed whenever reasonable as consistent with each other; but if that
12 construction is unreasonable, express terms control course of performance,
13 course of performance controls both course of dealing and usage of trade, and
14 course of dealing controls usage of trade.

15 (3) Subject to the provisions of Section 4-2A-208 on modification and
16 waiver, course of performance is relevant to show a waiver or modification of
17 any term inconsistent with the course of performance.

18 §4-2A-208. MODIFICATION, RESCISSION AND WAIVER.

19 (1) An agreement modifying a lease contract needs no consideration to
20 be binding.

21 (2) A signed lease agreement that excludes modification or rescission
22 except by a signed writing may not be otherwise modified or rescinded, but,
23 except as between merchants, such a requirement on a form supplied by a
24 merchant must be separately signed by the other party.

25 (3) Although an attempt at modification or rescission does not satisfy
26 the requirements of subsection (2), it may operate as a waiver.

27 (4) A party who has made a waiver affecting an executory portion of a
28 lease contract may retract the waiver by reasonable notification received by
29 the other party that strict performance will be required of any term waived,
30 unless the retraction would be unjust in view of a material change of position
31 in reliance on the waiver.

32 §4-2A-209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY
33 CONTRACT.

34 (1) The benefit of a supplier's promises to the lessor under the supply
35 contract and of all warranties, whether express or implied, including those of

1 any third party provided in connection with or as part of the supply contract,
2 extends to the lessee to the extent of the lessee's leasehold interest under a
3 finance lease related to the supply contract, but is subject to the terms of
4 the warranty and of the supply contract and all defenses or claims arising
5 therefrom.

6 (2) The extension of the benefit of a supplier's promises and of
7 warranties to the lessee (Section 4-2A-209(1)) does not: (i) modify the rights
8 and obligations of the parties to the supply contract, whether arising
9 therefrom or otherwise, or (ii) impose any duty or liability under the supply
10 contract on the lessee.

11 (3) Any modification or rescission of the supply contract by the
12 supplier and the lessor is effective between the supplier and the lessee
13 unless, before the modification or rescission, the supplier has received
14 notice that the lessee has entered into a finance lease related to the supply
15 contract. If the modification or rescission is effective between the supplier
16 and the lessee, the lessor is deemed to have assumed, in addition to the
17 obligations of the lessor to the lessee under the lease contract, promises of
18 the supplier to the lessor and warranties that were so modified or rescinded
19 as they existed and were available to the lessee before modification or
20 rescission.

21 (4) In addition to the extension of the benefit of the supplier's
22 promises and of warranties to the lessee under subsection (1), the lessee
23 retains all rights that the lessee may have against the supplier which arise
24 from an agreement between the lessee and the supplier or under other law.

25 §4-2A-210. EXPRESS WARRANTIES.

26 (1) Express warranties by the lessor are created as follows:

27 (a) Any affirmation of fact or promise made by the lessor to the
28 lessee which relates to the goods and becomes part of the basis of the bargain
29 creates an express warranty that the goods will conform to the affirmation or
30 promise.

31 (b) Any description of the goods which is made part of the basis
32 of the bargain creates an express warranty that the goods will conform to the
33 description.

34 (c) Any sample or model that is made part of the basis of the
35 bargain creates an express warranty that the whole of the goods will conform

1 to the sample or model.

2 (2) It is not necessary to the creation of an express warranty that the
3 lessor use formal words, such as warrant or guarantee, or that the lessor
4 have a specific intention to make a warranty, but an affirmation merely of the
5 value of the goods or a statement purporting to be merely the lessor's opinion
6 or commendation of the goods does not create a warranty.

7 §4-2A-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT;
8 LESSEE'S OBLIGATION AGAINST INFRINGEMENT.

9 (1) There is in a lease contract a warranty that for the lease term no
10 person holds a claim to or interest in the goods that arose from an act or
11 omission of the lessor, other than a claim by way of infringement or the like,
12 which will interfere with the lessee's enjoyment of its leasehold interest.

13 (2) Except in a finance lease there is in a lease contract by a lessor
14 who is a merchant regularly dealing in goods of the kind a warranty that the
15 goods are delivered free of the rightful claim of any person by way of
16 infringement or the like.

17 (3) A lessee who furnishes specifications to a lessor or a supplier
18 shall hold the lessor and the supplier harmless against any claim by way of
19 infringement or the like that arises out of compliance with the
20 specifications.

21 §4-2A-212. IMPLIED WARRANTY OF MERCHANTABILITY.

22 (1) Except in a finance lease, a warranty that the goods will be
23 merchantable is implied in a lease contract if the lessor is a merchant with
24 respect to goods of that kind.

25 (2) Goods to be merchantable must be at least such as

26 (a) pass without objection in the trade under the description in
27 the lease agreement;

28 (b) in the case of fungible goods, are of fair average quality
29 within the description;

30 (c) are fit for the ordinary purposes for which goods of that type
31 are used;

32 (d) run, within the variation permitted by the lease agreement, of
33 even kind, quality, and quantity within each unit and among all units
34 involved;

35 (e) are adequately contained, packaged, and labeled as the lease

1 agreement may require; and

2 (f) conform to any promises or affirmations of fact made on the
3 container or label.

4 (3) Other implied warranties may arise from course of dealing or usage
5 of trade.

6 §4-2A-213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

7 Except in a finance lease, if the lessor at the time the lease contract
8 is made has reason to know of any particular purpose for which the goods are
9 required and that the lessee is relying on the lessor's skill or judgment to
10 select or furnish suitable goods, there is in the lease contract an implied
11 warranty that the goods will be fit for that purpose.

12 §4-2A-214. EXCLUSION OR MODIFICATION OF WARRANTIES.

13 (1) Words or conduct relevant to the creation of an express warranty
14 and words or conduct tending to negate or limit a warranty must be construed
15 wherever reasonable as consistent with each other; but, subject to the
16 provisions of Section 4-2A-202 on parol or extrinsic evidence, negation or
17 limitation is inoperative to the extent that the construction is unreasonable.

18 (2) Subject to subsection (3), to exclude or modify the implied
19 warranty of merchantability or any part of it the language must mention
20 merchantability, be by a writing, and be conspicuous. Subject to subsection
21 (3), to exclude or modify any implied warranty of fitness the exclusion must
22 be by a writing and be conspicuous. Language to exclude all implied
23 warranties of fitness is sufficient if it is in writing, is conspicuous and
24 states, for example, There is no warranty that the goods will be fit for a
25 particular purpose.

26 (3) Notwithstanding subsection (2), but subject to subsection (4),

27 (a) unless the circumstances indicate otherwise, all implied
28 warranties are excluded by expressions like as is, or with all faults, or
29 by other language that in common understanding calls the lessee's attention to
30 the exclusion of warranties and makes plain that there is no implied warranty,
31 if in writing and conspicuous;

32 (b) if the lessee before entering into the lease contract has
33 examined the goods or the sample or model as fully as desired or has refused
34 to examine the goods, there is no implied warranty with regard to defects that
35 an examination ought in the circumstances to have revealed; and

1 (c) an implied warranty may also be excluded or modified by course
2 of dealing, course of performance, or usage of trade.

3 (4) To exclude or modify a warranty against interference or against
4 infringement (Section 4-2A-211) or any part of it, the language must be
5 specific, be by a writing, and be conspicuous, unless the circumstances,
6 including course of performance, course of dealing, or usage of trade, give
7 the lessee reason to know that the goods are being leased subject to a claim
8 or interest of any person.

9 §4-2A-215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.

10 Warranties, whether express or implied, must be construed as consistent
11 with each other and as cumulative, but if that construction is unreasonable,
12 the intention of the parties determines which warranty is dominant. In
13 ascertaining that intention the following rules apply:

14 (a) Exact or technical specifications displace an inconsistent sample
15 or model or general language of description.

16 (b) A sample from an existing bulk displaces inconsistent general
17 language of description.

18 (c) Express warranties displace inconsistent implied warranties other
19 than an implied warranty of fitness for a particular purpose.

20 §4-2A-216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

21 A warranty to or for the benefit of a lessee under this chapter, whether
22 express or implied, extends to any person who may reasonably be expected to
23 use, consume, or be affected by the goods and who is injured by breach of the
24 warranty. The operation of this section may not be excluded, modified, or
25 limited with respect to injury to the person of an individual to whom the
26 warranty extends, but an exclusion, modification, or limitation of the
27 warranty, including any with respect to rights and remedies, effective against
28 the lessee is also effective against the beneficiary designated under this
29 section.

30 §4-2A-217. IDENTIFICATION. Identification of goods as goods to which a
31 lease contract refers may be made at any time and in any manner explicitly
32 agreed to by the parties. In the absence of explicit agreement,
33 identification occurs:

34 (a) when the lease contract is made if the lease contract is for a lease
35 of goods that are existing and identified;

1 (b) when the goods are shipped, marked, or otherwise designated by the
2 lessor as goods to which the lease contract refers, if the lease contract is
3 for a lease of goods that are not existing and identified; or

4 (c) when the young are conceived, if the lease contract is for a lease
5 of unborn young of animals.

6 §4-2A-218. INSURANCE AND PROCEEDS.

7 (1) A lessee obtains an insurable interest when existing goods are
8 identified to the lease contract even though the goods identified are
9 nonconforming and the lessee has an option to reject them.

10 (2) If a lessee has an insurable interest only by reason of the
11 lessor's identification of the goods, the lessor, until default or insolvency
12 or notification to the lessee that identification is final, may substitute
13 other goods for those identified.

14 (3) If a lessee has an insurable interest under subsections (1) and
15 (2), the lessor retains an insurable interest until an option to buy has been
16 exercised by the lessee and risk of loss has passed to the lessee.

17 (4) Nothing in this section impairs any insurable interest recognized
18 under any other statute or rule of law.

19 (5) The parties by agreement may determine that one or more parties
20 have an obligation to obtain and pay for insurance covering the goods and by
21 agreement may determine the beneficiary of the proceeds of the insurance.

22 §4-2A-219. RISK OF LOSS.

23 (1) Except in the case of a finance lease, risk of loss is retained by
24 the lessor and does not pass to the lessee. In the case of a finance lease,
25 risk of loss passes to the lessee.

26 (2) Subject to the provisions of this chapter on the effect of default
27 on risk of loss (Section 4-2A-220), if risk of loss is to pass to the lessee
28 and the time of passage is not stated, the following rules apply:

29 (a) If the lease contract requires or authorizes the goods to be
30 shipped by carrier

31 (i) and it does not require delivery at a particular
32 destination, the risk of loss passes to the lessee when the goods are duly
33 delivered to the carrier; but

34 (ii) if it does require delivery at a particular destination
35 and the goods are there duly tendered while in the possession of the carrier,

1 the risk of loss passes to the lessee when the goods are there duly so
2 tendered as to enable the lessee to take delivery.

3 (b) If the goods are held by a bailee to be delivered without
4 being moved, the risk of loss passes to the lessee on acknowledgment by the
5 bailee of the lessee's right to possession of the goods.

6 (c) In any case not within subsection (a) or (b), the risk of
7 loss passes to the lessee on the lessee's receipt of the goods if the lessor,
8 or, in the case of a finance lease, the supplier, is a merchant; otherwise the
9 risk passes to the lessee on tender of delivery.

10 §4-2A-220. EFFECT OF DEFAULT ON RISK OF LOSS.

11 (1) Where risk of loss is to pass to the lessee and the time of passage
12 is not stated:

13 (a) If a tender or delivery of goods so fails to conform to the
14 lease contract as to give a right of rejection, the risk of their loss remains
15 with the lessor, or, in the case of a finance lease, the supplier, until cure
16 or acceptance.

17 (b) If the lessee rightfully revokes acceptance, he or she, to
18 the extent of any deficiency in his or her effective insurance coverage, may
19 treat the risk of loss as having remained with the lessor from the beginning.

20 (2) Whether or not risk of loss is to pass to the lessee, if the lessee
21 as to conforming goods already identified to a lease contract repudiates or is
22 otherwise in default under the lease contract, the lessor, or, in the case of
23 a finance lease, the supplier, to the extent of any deficiency in his or her
24 effective insurance coverage may treat the risk of loss as resting on the
25 lessee for a commercially reasonable time.

26 §4-2A-221. CASUALTY TO IDENTIFIED GOODS.

27 If a lease contract requires goods identified when the lease contract is
28 made, and the goods suffer casualty without fault of the lessee, the lessor or
29 the supplier before delivery, or the goods suffer casualty before risk of loss
30 passes to the lessee pursuant to the lease agreement or Section 4-2A-219,
31 then:

32 (a) if the loss is total, the lease contract is avoided; and

33 (b) if the loss is partial or the goods have so deteriorated as to no
34 longer conform to the lease contract, the lessee may nevertheless demand
35 inspection and at his or her option either treat the lease contract as avoided

1 or, except in a finance lease that is not a consumer lease, accept the goods
2 with due allowance from the rent payable for the balance of the lease term for
3 the deterioration or the deficiency in quantity but without further right
4 against the lessor.

5 PART 3. EFFECT OF LEASE CONTRACT

6 §4-2A-301. ENFORCEABILITY OF LEASE CONTRACT.

7 Except as otherwise provided in this chapter, a lease contract is
8 effective and enforceable according to its terms between the parties, against
9 purchasers of the goods and against creditors of the parties.

10 §4-2A-302. TITLE TO AND POSSESSION OF GOODS.

11 Except as otherwise provided in this chapter, each provision of this
12 chapter applies whether the lessor or a third party has title to the goods,
13 and whether the lessor, the lessee, or a third party has possession of the
14 goods, notwithstanding any statute or rule of law that possession or the
15 absence of possession is fraudulent.

16 §4-2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF
17 LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF
18 RIGHTS.

19 (1) As used in this section, creation of a security interest includes
20 the sale of a lease contract that is subject to chapter 9, Secured
21 Transactions, by reason of Section 4-9-102(1)(b).

22 (2) Except as provided in subsections (3) and (4), a provision in a
23 lease agreement which (i) prohibits the voluntary or involuntary transfer,
24 including a transfer by sale, sublease, creation or enforcement of a security
25 interest, or attachment, levy, or other judicial process, of an interest of a
26 party under the lease contract or of the lessor's residual interest in the
27 goods, or (ii) makes such a transfer an event of default, gives rise to the
28 rights and remedies provided in subsection (5), but a transfer that is
29 prohibited or is an event of default under the lease agreement is otherwise
30 effective.

31 (3) A provision in a lease agreement which (i) prohibits the creation
32 or enforcement of a security interest in an interest of a party under the
33 lease contract or in the lessor's residual interest in the goods, or (ii)
34 makes such a transfer an event of default, is not enforceable unless, and then
35 only to the extent that, there is an actual transfer by the lessee of the

1 lessee's right of possession or use of the goods in violation of the provision
2 or an actual delegation of a material performance of either party to the lease
3 contract in violation of the provision. Neither the granting nor the
4 enforcement of a security interest in (i) the lessor's interest under the
5 lease contract or (ii) the lessor's residual interest in the goods is a
6 transfer that materially impairs the prospect of obtaining return performance
7 by, materially changes the duty of, or materially increases the burden or risk
8 imposed on, the lessee within the purview of subsection (5) unless, and then
9 only to the extent that, there is an actual delegation of a material
10 performance of the lessor.

11 (4) A provision in a lease agreement which (i) prohibits a transfer of
12 a right to damages for default with respect to the whole lease contract or of
13 a right to payment arising out of the transferor's due performance of the
14 transferor's entire obligation, or (ii) makes such a transfer an event of
15 default, is not enforceable, and such a transfer is not a transfer that
16 materially impairs the prospect of obtaining return performance by, materially
17 changes the duty of, or materially increases the burden or risk imposed on,
18 the other party to the lease contract within the purview of subsection (5).

19 (5) Subject to subsections (3) and (4):

20 (a) if a transfer is made which is made an event of default under
21 a lease agreement, the party to the lease contract not making the transfer,
22 unless that party waives the default or otherwise agrees, has the rights and
23 remedies described in Section 4-2A-501(2);

24 (b) if paragraph (a) is not applicable and if a transfer is made
25 that (i) is prohibited under a lease agreement or (ii) materially impairs the
26 prospect of obtaining return performance by, materially changes the duty of,
27 or materially increases the burden or risk imposed on, the other party to the
28 lease contract, unless the party not making the transfer agrees at any time to
29 the transfer in the lease contract or otherwise, then, except as limited by
30 contract, (i) the transferor is liable to the party not making the transfer
31 for damages caused by the transfer to the extent that the damages could not
32 reasonably be prevented by the party not making the transfer and (ii) a court
33 having jurisdiction may grant other appropriate relief, including cancellation
34 of the lease contract or an injunction against the transfer.

35 (6) A transfer of the lease or of all my rights under the lease, or

1 a transfer in similar general terms, is a transfer of rights and, unless the
2 language or the circumstances, as in a transfer for security, indicate the
3 contrary, the transfer is a delegation of duties by the transferor to the
4 transferee. Acceptance by the transferee constitutes a promise by the
5 transferee to perform those duties. The promise is enforceable by either the
6 transferor or the other party to the lease contract.

7 (7) Unless otherwise agreed by the lessor and the lessee, a delegation
8 of performance does not relieve the transferor as against the other party of
9 any duty to perform or of any liability for default.

10 (8) In a consumer lease, to prohibit the transfer of an interest of a
11 party under the lease contract or to make a transfer an event of default, the
12 language must be specific, by a writing, and conspicuous.

13 §4-2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.

14 (1) Subject to Section 4-2A-303, a subsequent lessee from a lessor of
15 goods under an existing lease contract obtains, to the extent of the leasehold
16 interest transferred, the leasehold interest in the goods that the lessor had
17 or had power to transfer, and except as provided in subsection (2) and Section
18 4-2A-527(4), takes subject to the existing lease contract. A lessor with
19 voidable title has power to transfer a good leasehold interest to a good faith
20 subsequent lessee for value, but only to the extent set forth in the preceding
21 sentence. If goods have been delivered under a transaction of purchase, the
22 lessor has that power even though:

23 (a) the lessor's transferor was deceived as to the identity of the
24 lessor;

25 (b) the delivery was in exchange for a check which is later
26 dishonored;

27 (c) it was agreed that the transaction was to be a cash sale; or

28 (d) the delivery was procured through fraud punishable as
29 larcenous under the criminal law.

30 (2) A subsequent lessee in the ordinary course of business from a
31 lessor who is a merchant dealing in goods of that kind to whom the goods were
32 entrusted by the existing lessee before the interest of the subsequent lessee
33 became enforceable against that lessor obtains, to the extent of the leasehold
34 interest transferred, all of that lessor's and the existing lessee's rights to
35 the goods, and takes free of the existing lease contract.

1 (3) A subsequent lessee from the lessor of goods that are subject to an
2 existing lease contract and are covered by a certificate of title issued under
3 a statute of this State or of another jurisdiction takes no greater rights
4 than those provided both by this section and by the certificate of title
5 statute.

6 §4-2A-305. SALE OR SUBLEASE OF GOODS BY LESSEE.

7 (1) Subject to the provisions of Section 4-2A-303, a buyer or sublessee
8 from the lessee of goods under an existing lease contract obtains, to the
9 extent of the interest transferred, the leasehold interest in the goods that
10 the lessee had or had power to transfer, and except as provided in subsection
11 (2) and Section 4-2A-511(4), takes subject to the existing lease contract. A
12 lessee with a voidable leasehold interest has power to transfer a good
13 leasehold interest to a good faith buyer for value or a good faith sublessee
14 for value, but only to the extent set forth in the preceding sentence. When
15 goods have been delivered under a transaction of lease the lessee has that
16 power even though:

17 (a) the lessor was deceived as to the identity of the lessee;

18 (b) the delivery was in exchange for a check which is later
19 dishonored; or

20 (c) the delivery was procured through fraud punishable as
21 larcenous under the criminal law.

22 (2) A buyer in the ordinary course of business or a sublessee in the
23 ordinary course of business from a lessee who is a merchant dealing in goods
24 of that kind to whom the goods were entrusted by the lessor obtains, to the
25 extent of the interest transferred, all of the lessor's and lessee's rights to
26 the goods, and takes free of the existing lease contract.

27 (3) A buyer or sublessee from the lessee of goods that are subject to
28 an existing lease contract and are covered by a certificate of title issued
29 under a statute of this State or of another jurisdiction takes no greater
30 rights than those provided both by this section and by the certificate of
31 title statute.

32 §4-2A-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

33 If a person in the ordinary course of his or her business furnishes
34 services or materials with respect to goods subject to a lease contract, a
35 lien upon those goods in the possession of that person given by statute or

1 rule of law for those materials or services takes priority over any interest
2 of the lessor or lessee under the lease contract or this chapter unless the
3 lien is created by statute and the statute provides otherwise or unless the
4 lien is created by rule of law and the rule of law provides otherwise.

5 §4-2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY
6 INTERESTS IN, AND OTHER CLAIMS TO GOODS.

7 (1) Except as otherwise provided in Section 4-2A-306, a creditor of a
8 lessee takes subject to the lease contract.

9 (2) Except as otherwise provided in subsections (3) and (4) and in
10 Sections 4-2A-306 and 4-2A-308, a creditor of a lessor takes subject to the
11 lease contract unless:

12 (a) the creditor holds a lien that attached to the goods before
13 the lease contract became enforceable;

14 (b) the creditor holds a security interest in the goods and the
15 lessee did not give value and receive delivery of the goods without knowledge
16 of the security interest; or

17 (c) the creditor holds a security interest in the goods which was
18 perfected (Section 4-9-303) before the lease contract became enforceable.

19 (3) A lessee in the ordinary course of business takes the leasehold
20 interest free of a security interest in the goods created by the lessor even
21 though the security interest is perfected (Section 4-9-303) and the lessee
22 knows of its existence.

23 (4) A lessee other than a lessee in the ordinary course of business
24 takes the leasehold interest free of a security interest to the extent that it
25 secures future advances made after the secured party acquires knowledge of the
26 lease or more than forty-five (45) days after the lease contract becomes
27 enforceable, whichever first occurs, unless the future advances are made
28 pursuant to a commitment entered into without knowledge of the lease and
29 before the expiration of the forty-five (45) day period.

30 §4-2A-308. SPECIAL RIGHTS OF CREDITORS.

31 (1) A creditor of a lessor in possession of goods subject to a lease
32 contract may treat the lease contract as void if as against the creditor
33 retention of possession by the lessor is fraudulent under any statute or rule
34 of law, but retention of possession in good faith and current course of trade
35 by the lessor for a commercially reasonable time after the lease contract

1 becomes enforceable is not fraudulent.

2 (2) Nothing in this chapter impairs the rights of creditors of a lessor
3 if the lease contract (a) becomes enforceable, not in current course of trade
4 but in satisfaction of or as security for a pre-existing claim for money,
5 security, or the like, and (b) is made under circumstances which under any
6 statute or rule of law apart from this chapter would constitute the
7 transaction a fraudulent transfer or voidable preference.

8 (3) A creditor of a seller may treat a sale or an identification of
9 goods to a contract for sale as void if as against the creditor retention of
10 possession by the seller is fraudulent under any statute or rule of law, but
11 retention of possession of the goods pursuant to a lease contract entered into
12 by the seller as lessee and the buyer as lessor in connection with the sale or
13 identification of the goods is not fraudulent if the buyer bought for value
14 and in good faith.

15 §4-2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.

16 (1) In this section:

17 (a) goods are _fixtures_ when they become so related to particular
18 real estate that an interest in them arises under real estate law;

19 (b) a _fixture filing_ is the filing, in the office where a
20 mortgage on the real estate would be filed or recorded, of a financing
21 statement covering goods that are or are to become fixtures and conforming to
22 the requirements of Section 4-9-402(5);

23 (c) a lease is a _purchase money lease_ unless the lessee has
24 possession or use of the goods or the right to possession or use of the goods
25 before the lease agreement is enforceable;

26 (d) a mortgage is a _construction mortgage_ to the extent it
27 secures an obligation incurred for the construction of an improvement on land
28 including the acquisition cost of the land, if the recorded writing so
29 indicates; and

30 (e) _encumbrance_ includes real estate mortgages and other liens
31 on real estate and all other rights in real estate that are not ownership
32 interests.

33 (2) Under this chapter a lease may be of goods that are fixtures or may
34 continue in goods that become fixtures, but no lease exists under this chapter
35 of ordinary building materials incorporated into an improvement on land.

1 (3) This chapter does not prevent creation of a lease of fixtures
2 pursuant to real estate law.

3 (4) The perfected interest of a lessor of fixtures has priority over a
4 conflicting interest of an encumbrancer or owner of the real estate if:

5 (a) the lease is a purchase money lease, the conflicting interest
6 of the encumbrancer or owner arises before the goods become fixtures, the
7 interest of the lessor is perfected by a fixture filing before the goods
8 become fixtures or within ten days thereafter, and the lessee has an interest
9 of record in the real estate or is in possession of the real estate; or

10 (b) the interest of the lessor is perfected by a fixture filing
11 before the interest of the encumbrancer or owner is of record, the lessor's
12 interest has priority over any conflicting interest of a predecessor in title
13 of the encumbrancer or owner, and the lessee has an interest of record in the
14 real estate or is in possession of the real estate.

15 (5) The interest of a lessor of fixtures, whether or not perfected, has
16 priority over the conflicting interest of an encumbrancer or owner of the real
17 estate if:

18 (a) the fixtures are readily removable factory or office machines,
19 readily removable equipment that is not primarily used or leased for use in
20 the operation of the real estate, or readily removable replacements of
21 domestic appliances that are goods subject to a consumer lease, and before the
22 goods become fixtures the lease contract is enforceable; or

23 (b) the conflicting interest is a lien on the real estate obtained
24 by legal or equitable proceedings after the lease contract is enforceable; or

25 (c) the encumbrancer or owner has consented in writing to the
26 lease or has disclaimed an interest in the goods as fixtures; or

27 (d) the lessee has a right to remove the goods as against the
28 encumbrancer or owner. If the lessee's right to remove terminates, the
29 priority of the interest of the lessor continues for a reasonable time.

30 (6) Notwithstanding subsection (4)(a) but otherwise subject to
31 subsections (4) and (5), the interest of a lessor of fixtures, including the
32 lessor's residual interest, is subordinate to the conflicting interest of an
33 encumbrancer of the real estate under a construction mortgage recorded before
34 the goods become fixtures if the goods become fixtures before the completion
35 of the construction. To the extent given to refinance a construction

1 mortgage, the conflicting interest of an encumbrancer of the real estate under
2 a mortgage has this priority to the same extent as the encumbrancer of the
3 real estate under the construction mortgage.

4 (7) In cases not within the preceding subsections, priority between the
5 interest of a lessor of fixtures, including the lessor's residual interest,
6 and the conflicting interest of an encumbrancer or owner of the real estate
7 who is not the lessee is determined by the priority rules governing
8 conflicting interests in real estate.

9 (8) If the interest of a lessor of fixtures, including the lessor's
10 residual interest, has priority over all conflicting interests of all owners
11 and encumbrancers of the real estate, the lessor or the lessee may (i) on
12 default, expiration, termination, or cancellation of the lease agreement but
13 subject to the lease agreement and this chapter, or (ii) if necessary to
14 enforce other rights and remedies of the lessor or lessee under this chapter,
15 remove the goods from the real estate, free and clear of all conflicting
16 interests of all owners and encumbrancers of the real estate, but the lessor
17 or lessee must reimburse any encumbrancer or owner of the real estate who is
18 not the lessee and who has not otherwise agreed for the cost of repair of any
19 physical injury, but not for any diminution in value of the real estate caused
20 by the absence of the goods removed or by any necessity of replacing them. A
21 person entitled to reimbursement may refuse permission to remove until the
22 party seeking removal gives adequate security for the performance of this
23 obligation.

24 (9) Even though the lease agreement does not create a security
25 interest, the interest of a lessor of fixtures, including the lessor's
26 residual interest, is perfected by filing a financing statement as a fixture
27 filing for leased goods that are or are to become fixtures, including the
28 lessor's residual interest, in accordance with the relevant provisions of the
29 chapter on Secured Transactions (chapter 9).

30 §4-2A-310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS.

31 (1) Goods are accessions when they are installed in or affixed to
32 other goods.

33 (2) The interest of a lessor or a lessee under a lease contract entered
34 into before the goods became accessions is superior to all interests in the
35 whole except as stated in subsection (4).

1 (3) The interest of a lessor or a lessee under a lease contract entered
2 into at the time or after the goods became accessions is superior to all
3 subsequently acquired interests in the whole except as stated in subsection
4 (4) but is subordinate to interests in the whole existing at the time the
5 lease contract was made unless the holders of such interests in the whole have
6 in writing consented to the lease or disclaimed an interest in the goods as
7 part of the whole.

8 (4) The interest of a lessor or a lessee under a lease contract
9 described in subsection (2) or (3) is subordinate to the interest of
10 (a) a buyer in the ordinary course of business or a lessee in the
11 ordinary course of business of any interest in the whole acquired after the
12 goods became accessions; or

13 (b) a creditor with a security interest in the whole perfected
14 before the lease contract was made to the extent that the creditor makes
15 subsequent advances without knowledge of the lease contract.

16 (5) When under subsections (2) or (3) and (4) a lessor or a lessee of
17 accessions holds an interest that is superior to all interests in the whole,
18 the lessor or the lessee may (a) on default, expiration, termination, or
19 cancellation of the lease contract by the other party but subject to the
20 provisions of the lease contract and this chapter, or (b) if necessary to
21 enforce his or her other rights and remedies under this chapter, remove the
22 goods from the whole, free and clear of all interests in the whole, but he or
23 she must reimburse any holder of an interest in the whole who is not the
24 lessee and who has not otherwise agreed for the cost of repair of any physical
25 injury but not for any diminution in value of the whole caused by the absence
26 of the goods removed or by any necessity for replacing them. A person
27 entitled to reimbursement may refuse permission to remove until the party
28 seeking removal gives adequate security for the performance of this
29 obligation.

30 §4-2A-311. PRIORITY SUBJECT TO SUBORDINATION.

31 Nothing in this chapter prevents subordination by agreement by any
32 person entitled to priority.

33 PART 4. PERFORMANCE OF LEASE CONTRACT:

34 REPUDIATED, SUBSTITUTED AND EXCUSED

35 §4-2A-401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.

1 (1) A lease contract imposes an obligation on each party that the
2 other's expectation of receiving due performance will not be impaired.

3 (2) If reasonable grounds for insecurity arise with respect to the
4 performance of either party, the insecure party may demand in writing adequate
5 assurance of due performance. Until the insecure party receives that
6 assurance, if commercially reasonable the insecure party may suspend any
7 performance for which he or she has not already received the agreed return.

8 (3) A repudiation of the lease contract occurs if assurance of due
9 performance adequate under the circumstances of the particular case is not
10 provided to the insecure party within a reasonable time, not to exceed thirty
11 (30) days after receipt of a demand by the other party.

12 (4) Between merchants, the reasonableness of grounds for insecurity and
13 the adequacy of any assurance offered must be determined according to
14 commercial standards.

15 (5) Acceptance of any nonconforming delivery or payment does not
16 prejudice the aggrieved party's right to demand adequate assurance of future
17 performance.

18 §4-2A-402. ANTICIPATORY REPUDIATION.

19 If either party repudiates a lease contract with respect to a
20 performance not yet due under the lease contract, the loss of which
21 performance will substantially impair the value of the lease contract to the
22 other, the aggrieved party may:

23 (a) for a commercially reasonable time, await retraction of
24 repudiation and performance by the repudiating party;

25 (b) make demand pursuant to Section 4-2A-401 and await assurance
26 of future performance adequate under the circumstances of the particular case;
27 or

28 (c) resort to any right or remedy upon default under the lease
29 contract or this chapter, even though the aggrieved party has notified the
30 repudiating party that the aggrieved party would await the repudiating party's
31 performance and assurance and has urged retraction. In addition, whether or
32 not the aggrieved party is pursuing one of the foregoing remedies, the
33 aggrieved party may suspend performance or, if the aggrieved party is the
34 lessor, proceed in accordance with the provisions of this chapter on the
35 lessor's right to identify goods to the lease contract notwithstanding default

1 or to salvage unfinished goods (Section 4-2A-524).

2 §4-2A-403. RETRACTION OF ANTICIPATORY REPUDIATION.

3 (1) Until the repudiating party's next performance is due, the
4 repudiating party can retract the repudiation unless, since the repudiation,
5 the aggrieved party has cancelled the lease contract or materially changed the
6 aggrieved party's position or otherwise indicated that the aggrieved party
7 considers the repudiation final.

8 (2) Retraction may be by any method that clearly indicates to the
9 aggrieved party that the repudiating party intends to perform under the lease
10 contract and includes any assurance demanded under Section 4-2A-401.

11 (3) Retraction reinstates a repudiating party's rights under a lease
12 contract with due excuse and allowance to the aggrieved party for any delay
13 occasioned by the repudiation.

14 §4-2A-404. SUBSTITUTED PERFORMANCE.

15 (1) If without fault of the lessee, the lessor and the supplier, the
16 agreed berthing, loading, or unloading facilities fail or the agreed type of
17 carrier becomes unavailable or the agreed manner of delivery otherwise becomes
18 commercially impracticable, but a commercially reasonable substitute is
19 available, the substitute performance must be tendered and accepted.

20 (2) If the agreed means or manner of payment fails because of domestic
21 or foreign governmental regulation:

22 (a) the lessor may withhold or stop delivery or cause the supplier
23 to withhold or stop delivery unless the lessee provides a means or manner of
24 payment that is commercially a substantial equivalent; and

25 (b) if delivery has already been taken, payment by the means or in
26 the manner provided by the regulation discharges the lessee's obligation
27 unless the regulation is discriminatory, oppressive, or predatory.

28 §4-2A-405. EXCUSED PERFORMANCE.

29 Subject to Section 4-2A-404 on substituted performance, the following
30 rules apply:

31 (a) Delay in delivery or nondelivery in whole or in part by a lessor or
32 a supplier who complies with paragraphs (b) and (c) is not a default under the
33 lease contract if performance as agreed has been made impracticable by the
34 occurrence of a contingency the nonoccurrence of which was a basic assumption
35 on which the lease contract was made or by compliance in good faith with any

1 applicable foreign or domestic governmental regulation or order, whether or
2 not the regulation or order later proves to be invalid.

3 (b) If the causes mentioned in paragraph (a) affect only part of the
4 lessor's or the supplier's capacity to perform, he or she shall allocate
5 production and deliveries among his or her customers but at his or her option
6 may include regular customers not then under contract for sale or lease as
7 well as his or her own requirements for further manufacture. He or she may so
8 allocate in any manner that is fair and reasonable.

9 (c) The lessor seasonably shall notify the lessee and in the case of a
10 finance lease the supplier seasonably shall notify the lessor and the lessee,
11 if known, that there will be delay or nondelivery and, if allocation is
12 required under paragraph (b), of the estimated quota thus made available for
13 the lessee.

14 §4-2A-406. PROCEDURE ON EXCUSED PERFORMANCE.

15 (1) If the lessee receives notification of a material or indefinite
16 delay or an allocation justified under Section 4-2A-405, the lessee may by
17 written notification to the lessor as to any goods involved, and with respect
18 to all of the goods if under an installment lease contract the value of the
19 whole lease contract is substantially impaired (Section 4-2A-510):

20 (a) terminate the lease contract (Section 4-2A-505(2)); or

21 (b) except in a finance lease that is not a consumer lease, modify
22 the lease contract by accepting the available quota in substitution, with due
23 allowance from the rent payable for the balance of the lease term for the
24 deficiency but without further right against the lessor.

25 (2) If, after receipt of a notification from the lessor under Section
26 4-2A-405, the lessee fails so to modify the lease agreement within a
27 reasonable time not exceeding thirty (30) days, the lease contract lapses with
28 respect to any deliveries affected.

29 §4-2A-407. IRREVOCABLE PROMISES: FINANCE LEASES.

30 (1) In the case of a finance lease that is not a consumer lease the
31 lessee's promises under the lease contract become irrevocable and independent
32 upon the lessee's acceptance of the goods.

33 (2) A promise that has become irrevocable and independent under
34 subsection (1):

35 (a) is effective and enforceable between the parties, and by or

1 (1) Except as otherwise provided in this chapter, the lease agreement
2 may include rights and remedies for default in addition to or in substitution
3 for those provided in this chapter and may limit or alter the measure of
4 damages recoverable under this chapter.

5 (2) Resort to a remedy provided under this chapter or in the lease
6 agreement is optional unless the remedy is expressly agreed to be exclusive.
7 If circumstances cause an exclusive or limited remedy to fail of its essential
8 purpose, or provision for an exclusive remedy is unconscionable, remedy may be
9 had as provided in this chapter.

10 (3) Consequential damages may be liquidated under Section 4-2A-504, or
11 may otherwise be limited, altered, or excluded unless the limitation,
12 alteration, or exclusion is unconscionable. Limitation, alteration, or
13 exclusion of consequential damages for injury to the person in the case of
14 consumer goods is prima facie unconscionable but limitation, alteration, or
15 exclusion of damages where the loss is commercial is not prima facie
16 unconscionable.

17 (4) Rights and remedies on default by the lessor or the lessee with
18 respect to any obligation or promise collateral or ancillary to the lease
19 contract are not impaired by this chapter.

20 §4-2A-504. LIQUIDATION OF DAMAGES.

21 (1) Damages payable by either party for default, or any other act or
22 omission, including indemnity for loss or diminution of anticipated tax
23 benefits or loss or damage to lessor's residual interest, may be liquidated in
24 the lease agreement but only at an amount or by a formula that is reasonable
25 in light of the then anticipated harm caused by the default or other act or
26 omission.

27 (2) If the lease agreement provides for liquidation of damages, and
28 such provision does not comply with subsection (1), or such provision is an
29 exclusive or limited remedy that circumstances cause to fail of its essential
30 purpose, remedy may be had as provided in this chapter.

31 (3) If the lessor justifiably withholds or stops delivery of goods
32 because of the lessee's default or insolvency (Section 4-2A-525 or 4-2A-526),
33 the lessee is entitled to restitution of any amount by which the sum of his or
34 her payments exceeds:

35 (a) the amount to which the lessor is entitled by virtue of terms

1 liquidating the lessor's damages in accordance with subsection (1); or

2 (b) in the absence of those terms, 20 percent of the then present
3 value of the total rent the lessee was obligated to pay for the balance of the
4 lease term, or, in the case of a consumer lease, the lesser of such amount or
5 five hundred dollars (\$500).

6 (4) A lessee's right to restitution under subsection (3) is subject to
7 offset to the extent the lessor establishes:

8 (a) a right to recover damages under the provisions of this
9 chapter other than subsection (1); and

10 (b) the amount or value of any benefits received by the lessee
11 directly or indirectly by reason of the lease contract.

12 §4-2A-505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION,
13 TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

14 (1) On cancellation of the lease contract, all obligations that are
15 still executory on both sides are discharged, but any right based on prior
16 default or performance survives, and the cancelling party also retains any
17 remedy for default of the whole lease contract or any unperformed balance.

18 (2) On termination of the lease contract, all obligations that are
19 still executory on both sides are discharged but any right based on prior
20 default or performance survives.

21 (3) Unless the contrary intention clearly appears, expressions of
22 _cancellation, _rescission, _ or the like of the lease contract may not be
23 construed as a renunciation or discharge of any claim in damages for an
24 antecedent default.

25 (4) Rights and remedies for material misrepresentation or fraud include
26 all rights and remedies available under this chapter for default.

27 (5) Neither rescission nor a claim for rescission of the lease contract
28 nor rejection or return of the goods may bar or be deemed inconsistent with a
29 claim for damages or other right or remedy.

30 §4-2A-506. STATUTE OF LIMITATIONS.

31 (1) An action for default under a lease contract, including breach of
32 warranty or indemnity, must be commenced within four (4) years after the cause
33 of action accrued. By the original lease contract the parties may reduce the
34 period of limitation to not less than one year.

35 (2) A cause of action for default accrues when the act or omission on

1 which the default or breach of warranty is based is or should have been
2 discovered by the aggrieved party, or when the default occurs, whichever is
3 later. A cause of action for indemnity accrues when the act or omission on
4 which the claim for indemnity is based is or should have been discovered by
5 the indemnified party, whichever is later.

6 (3) If an action commenced within the time limited by subsection (1) is
7 so terminated as to leave available a remedy by another action for the same
8 default or breach of warranty or indemnity, the other action may be commenced
9 after the expiration of the time limited and within six (6) months after the
10 termination of the first action unless the termination resulted from voluntary
11 discontinuance or from dismissal for failure or neglect to prosecute.

12 (4) This section does not alter the law on tolling of the statute of
13 limitations nor does it apply to causes of action that have accrued before
14 this chapter becomes effective.

15 §4-2A-507. PROOF OF MARKET, INTENT, TIME AND PLACE.

16 (1) Damages based on market rent (Section 4-2A-519 or 4-2A-528) are
17 determined according to the rent for the use of the goods concerned for a
18 lease term identical to the remaining lease term of the original lease
19 agreement and prevailing at the times specified in Sections 4-2A-519 and 4-2A-
20 528.

21 (2) If evidence of rent for the use of the goods concerned for a lease
22 term identical to the remaining lease term of the original lease agreement and
23 prevailing at the times or places described in this chapter is not readily
24 available, the rent prevailing within any reasonable time before or after the
25 time described or at any other place or for a different lease term which in
26 commercial judgment or under usage of trade would serve as a reasonable
27 substitute for the one described may be used, making any proper allowance for
28 the difference, including the cost of transporting the goods to or from the
29 other place.

30 (3) Evidence of a relevant rent prevailing at a time or place or for a
31 lease term other than the one described in this chapter offered by one party
32 is not admissible unless and until he or she has given the other party notice
33 the court finds sufficient to prevent unfair surprise.

34 (4) If the prevailing rent or value of any goods regularly leased in
35 any established market is in issue, reports in official publications or trade

1 journals or in newspapers or periodicals of general circulation published as
 2 the reports of that market are admissible in evidence. The circumstances of
 3 the preparation of the report may be shown to affect its weight but not its
 4 admissibility.

5 B. DEFAULT BY LESSOR

6 §4-2A-508. LESSEE'S REMEDIES.

7 (1) If a lessor fails to deliver the goods in conformity to the lease
 8 contract (Section 4-2A-509) or repudiates the lease contract (Section 4-
 9 2A-402), or a lessee rightfully rejects the goods (Section 4-2A-509) or
 10 justifiably revokes acceptance of the goods (Section 4-2A-517), then with
 11 respect to any goods involved, and with respect to all of the goods if under
 12 an installment lease contract the value of the whole lease contract is
 13 substantially impaired (Section 4-2A-510), the lessor is in default under the
 14 lease contract and the lessee may:

15 (a) cancel the lease contract (Section 4-2A-505(1));

16 (b) recover so much of the rent and security as has been paid and
 17 is just under the circumstances;

18 (c) cover and recover damages as to all goods affected whether or
 19 not they have been identified to the lease contract (Sections 4-2A-518 and 4-
 20 2A-520), or recover damages for nondelivery (Sections 4-2A-519 and 4-2A-520);

21 (d) exercise any other rights or pursue any other remedies
 22 provided in the lease contract.

23 (2) If a lessor fails to deliver the goods in conformity to the lease
 24 contract or repudiates the lease contract, the lessee may also:

25 (a) if the goods have been identified, recover them (Section 4-
 26 2A-522); or

27 (b) in a proper case, obtain specific performance or replevy the
 28 goods (Section 4-2A-521).

29 (3) If a lessor is otherwise in default under a lease contract, the
 30 lessee may exercise the rights and pursue the remedies provided in the lease
 31 contract, which may include a right to cancel the lease, and in Section 4-
 32 2A-519(3).

33 (4) If a lessor has breached a warranty, whether express or implied,
 34 the lessee may recover damages (Section 4-2A-519(4)).

35 (5) On rightful rejection or justifiable revocation of acceptance, a

1 lessee has a security interest in goods in the lessee's possession or control
2 for any rent and security that has been paid and any expenses reasonably
3 incurred in their inspection, receipt, transportation, and care and custody
4 and may hold those goods and dispose of them in good faith and in a
5 commercially reasonable manner, subject to Section 4-2A-527(5).

6 (6) Subject to the provisions of Section 4-2A-407, a lessee, on
7 notifying the lessor of the lessee's intention to do so, may deduct all or any
8 part of the damages resulting from any default under the lease contract from
9 any part of the rent still due under the same lease contract.

10 §4-2A-509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION.

11 (1) Subject to the provisions of Section 4-2A-510 on default in
12 installment lease contracts, if the goods or the tender or delivery fail in
13 any respect to conform to the lease contract, the lessee may reject or accept
14 the goods or accept any commercial unit or units and reject the rest of the
15 goods.

16 (2) Rejection of goods is ineffective unless it is within a reasonable
17 time after tender or delivery of the goods and the lessee seasonably notifies
18 the lessor.

19 §4-2A-510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT.

20 (1) Under an installment lease contract a lessee may reject any
21 delivery that is nonconforming if the nonconformity substantially impairs the
22 value of that delivery and cannot be cured or the nonconformity is a defect in
23 the required documents; but if the nonconformity does not fall within
24 subsection (2) and the lessor or the supplier gives adequate assurance of its
25 cure, the lessee must accept that delivery.

26 (2) Whenever nonconformity or default with respect to one or more
27 deliveries substantially impairs the value of the installment lease contract
28 as a whole there is a default with respect to the whole. But, the aggrieved
29 party reinstates the installment lease contract as a whole if the aggrieved
30 party accepts a nonconforming delivery without seasonably notifying of
31 cancellation or brings an action with respect only to past deliveries or
32 demands performance as to future deliveries.

33 §4-2A-511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

34 (1) Subject to any security interest of a lessee (Section 4-2A-508(5)),
35 if a lessor or a supplier has no agent or place of business at the market of

1 rejection, a merchant lessee, after rejection of goods in his or her
2 possession or control, shall follow any reasonable instructions received from
3 the lessor or the supplier with respect to the goods. In the absence of those
4 instructions, a merchant lessee shall make reasonable efforts to sell, lease,
5 or otherwise dispose of the goods for the lessor's account if they threaten to
6 decline in value speedily. Instructions are not reasonable if on demand
7 indemnity for expenses is not forthcoming.

8 (2) If a merchant lessee (subsection (1)) or any other lessee (Section
9 4-2A-512) disposes of goods, he or she is entitled to reimbursement either
10 from the lessor or the supplier or out of the proceeds for reasonable expenses
11 of caring for and disposing of the goods and, if the expenses include no
12 disposition commission, to such commission as is usual in the trade, or if
13 there is none, to a reasonable sum not exceeding 10 percent of the gross
14 proceeds.

15 (3) In complying with this section or Section 4-2A-512, the lessee is
16 held only to good faith. Good faith conduct hereunder is neither acceptance
17 or conversion nor the basis of an action for damages.

18 (4) A purchaser who purchases in good faith from a lessee pursuant to
19 this section or Section 4-2A-512 takes the goods free of any rights of the
20 lessor and the supplier even though the lessee fails to comply with one or
21 more of the requirements of this chapter.

22 §4-2A-512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

23 (1) Except as otherwise provided with respect to goods that threaten to
24 decline in value speedily (Section 4-2A-511) and subject to any security
25 interest of a lessee (Section 4-2A-508(5)):

26 (a) the lessee, after rejection of goods in the lessee's
27 possession, shall hold them with reasonable care at the lessor's or the
28 supplier's disposition for a reasonable time after the lessee's seasonable
29 notification of rejection;

30 (b) if the lessor or the supplier gives no instructions within a
31 reasonable time after notification of rejection, the lessee may store the
32 rejected goods for the lessor's or the supplier's account or ship them to the
33 lessor or the supplier or dispose of them for the lessor's or the supplier's
34 account with reimbursement in the manner provided in Section 4-2A-511; but

35 (c) the lessee has no further obligations with regard to goods

1 rightfully rejected.

2 (2) Action by the lessee pursuant to subsection (1) is not acceptance
3 or conversion.

4 §4-2A-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.

5 (1) If any tender or delivery by the lessor or the supplier is rejected
6 because nonconforming and the time for performance has not yet expired, the
7 lessor or the supplier may seasonably notify the lessee of the lessor's or the
8 supplier's intention to cure and may then make a conforming delivery within
9 the time provided in the lease contract.

10 (2) If the lessee rejects a nonconforming tender that the lessor or the
11 supplier had reasonable grounds to believe would be acceptable with or without
12 money allowance, the lessor or the supplier may have a further reasonable time
13 to substitute a conforming tender if he or she seasonably notifies the lessee.

14 §4-2A-514. WAIVER OF LESSEE'S OBJECTIONS.

15 (1) In rejecting goods, a lessee's failure to state a particular defect
16 that is ascertainable by reasonable inspection precludes the lessee from
17 relying on the defect to justify rejection or to establish default:

18 (a) if, stated seasonably, the lessor or the supplier could have
19 cured it (Section 4-2A-513); or

20 (b) between merchants if the lessor or the supplier after
21 rejection has made a request in writing for a full and final written statement
22 of all defects on which the lessee proposes to rely.

23 (2) A lessee's failure to reserve rights when paying rent or other
24 consideration against documents precludes recovery of the payment for defects
25 apparent on the face of the documents.

26 §4-2A-515. ACCEPTANCE OF GOODS.

27 (1) Acceptance of goods occurs after the lessee has had a reasonable
28 opportunity to inspect the goods and

29 (a) the lessee signifies or acts with respect to the goods in a
30 manner that signifies to the lessor or the supplier that the goods are
31 conforming or that the lessee will take or retain them in spite of their
32 nonconformity; or

33 (b) the lessee fails to make an effective rejection of the goods
34 (Section 4-2A-509(2)).

35 (2) Acceptance of a part of any commercial unit is acceptance of that

1 entire unit.

2 §4-2A-516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF
3 ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON
4 ANSWERABLE OVER.

5 (1) A lessee must pay rent for any goods accepted in accordance with
6 the lease contract, with due allowance for goods rightfully rejected or not
7 delivered.

8 (2) A lessee's acceptance of goods precludes rejection of the goods
9 accepted. In the case of a finance lease, if made with knowledge of a
10 nonconformity, acceptance cannot be revoked because of it. In any other case,
11 if made with knowledge of a nonconformity, acceptance cannot be revoked
12 because of it unless the acceptance was on the reasonable assumption that the
13 nonconformity would be seasonably cured. Acceptance does not of itself impair
14 any other remedy provided by this chapter or the lease agreement for
15 nonconformity.

16 (3) If a tender has been accepted:

17 (a) within a reasonable time after the lessee discovers or should
18 have discovered any default, the lessee shall notify the lessor and the
19 supplier, if any, or be barred from any remedy against the party not notified;

20 (b) except in the case of a consumer lease, within a reasonable
21 time after the lessee receives notice of litigation for infringement or the
22 like (Section 4-2A-211) the lessee shall notify the lessor or be barred from
23 any remedy over for liability established by the litigation; and

24 (c) the burden is on the lessee to establish any default.

25 (4) If a lessee is sued for breach of a warranty or other obligation
26 for which a lessor or a supplier is answerable over the following apply:

27 (a) The lessee may give the lessor or the supplier, or both,
28 written notice of the litigation. If the notice states that the person
29 notified may come in and defend and that if the person notified does not do so
30 that person will be bound in any action against that person by the lessee by
31 any determination of fact common to the two litigations, then unless the
32 person notified after seasonable receipt of the notice does come in and defend
33 that person is so bound.

34 (b) The lessor or the supplier may demand in writing that the
35 lessee turn over control of the litigation including settlement if the claim

1 is one for infringement or the like (Section 4-2A-211) or else be barred from
2 any remedy over. If the demand states that the lessor or the supplier agrees
3 to bear all expense and to satisfy any adverse judgment, then unless the
4 lessee after reasonable receipt of the demand does turn over control the
5 lessee is so barred.

6 (5) Subsections (3) and (4) apply to any obligation of a lessee to hold
7 the lessor or the supplier harmless against infringement or the like (Section
8 4-2A-211).

9 §4-2A-517. REVOCATION OF ACCEPTANCE OF GOODS.

10 (1) A lessee may revoke acceptance of a lot or commercial unit whose
11 nonconformity substantially impairs its value to the lessee if the lessee has
12 accepted it:

13 (a) except in the case of a finance lease, on the reasonable
14 assumption that its nonconformity would be cured and it has not been
15 seasonably cured; or

16 (b) without discovery of the nonconformity if the lessee's
17 acceptance was reasonably induced either by the lessor's assurances or, except
18 in the case of a finance lease, by the difficulty of discovery before
19 acceptance.

20 (2) Except in the case of a finance lease that is not a consumer lease,
21 a lessee may revoke acceptance of a lot or commercial unit if the lessor
22 defaults under the lease contract and the default substantially impairs the
23 value of that lot or commercial unit to the lessee.

24 (3) If the lease agreement so provides, the lessee may revoke
25 acceptance of a lot or commercial unit because of other defaults by the
26 lessor.

27 (4) Revocation of acceptance must occur within a reasonable time after
28 the lessee discovers or should have discovered the ground for it and before
29 any substantial change in condition of the goods which is not caused by the
30 nonconformity. Revocation is not effective until the lessee notifies the
31 lessor.

32 (5) A lessee who so revokes has the same rights and duties with regard
33 to the goods involved as if the lessee had rejected them.

34 §4-2A-518. COVER; SUBSTITUTE GOODS.

35 (1) After a default by a lessor under the lease contract of the type

1 described in Section 4-2A-508(1), or, if agreed, after other default by the
2 lessor, the lessee may cover by making any purchase or lease of or contract to
3 purchase or lease goods in substitution for those due from the lessor.

4 (2) Except as otherwise provided with respect to damages liquidated in
5 the lease agreement (Section 4-2A-504) or otherwise determined pursuant to
6 agreement of the parties (Sections 4-1-102(3) and 4-2A-503), if a lessee's
7 cover is by a lease agreement substantially similar to the original lease
8 agreement and the new lease agreement is made in good faith and in a
9 commercially reasonable manner, the lessee may recover from the lessor as
10 damages (i) the present value, as of the date of the commencement of the term
11 of the new lease agreement, of the rent under the new lease agreement
12 applicable to that period of the new lease term which is comparable to the
13 then remaining term of the original lease agreement minus the present value as
14 of the same date of the total rent for the then remaining lease term of the
15 original lease agreement, and (ii) any incidental or consequential damages,
16 less expenses saved in consequence of the lessor's default.

17 (3) If a lessee's cover is by lease agreement that for any reason does
18 not qualify for treatment under subsection (2), or is by purchase or
19 otherwise, the lessee may recover from the lessor as if the lessee had elected
20 not to cover and Section 4-2A-519 governs.

21 §4-2A-519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION, DEFAULT, AND
22 BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.

23 (1) Except as otherwise provided with respect to damages liquidated in
24 the lease agreement (Section 4-2A-504) or otherwise determined pursuant to
25 agreement of the parties (Sections 4-1-102(3) and 4-2A-503), if a lessee
26 elects not to cover or a lessee elects to cover and the cover is by lease
27 agreement that for any reason does not qualify for treatment under Section 4-
28 2A-518(2), or is by purchase or otherwise, the measure of damages for non-
29 delivery or repudiation by the lessor or for rejection or revocation of
30 acceptance by the lessee is the present value, as of the date of the default,
31 of the then market rent minus the present value as of the same date of the
32 original rent, computed for the remaining lease term of the original lease
33 agreement, together with incidental and consequential damages, less expenses
34 saved in consequence of the lessor's default.

35 (2) Market rent is to be determined as of the place for tender or, in

1 cases of rejection after arrival or revocation of acceptance, as of the place
2 of arrival.

3 (3) Except as otherwise agreed, if the lessee has accepted goods and
4 given notification (Section 4-2A-516(3)), the measure of damages for non-
5 conforming tender or delivery or other default by a lessor is the loss
6 resulting in the ordinary course of events from the lessor's default as
7 determined in any manner that is reasonable together with incidental and
8 consequential damages, less expenses saved in consequence of the lessor's
9 default.

10 (4) Except as otherwise agreed, the measure of damages for breach of
11 warranty is the present value at the time and place of acceptance of the
12 difference between the value of the use of the goods accepted and the value if
13 they had been as warranted for the lease term, unless special circumstances
14 show proximate damages of a different amount, together with incidental and
15 consequential damages, less expenses saved in consequence of the lessor's
16 default or breach of warranty.

17 §4-2A-520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

18 (1) Incidental damages resulting from a lessor's default include
19 expenses reasonably incurred in inspection, receipt, transportation, and care
20 and custody of goods rightfully rejected or goods the acceptance of which is
21 justifiably revoked, any commercially reasonable charges, expenses or
22 commissions in connection with effecting cover, and any other reasonable
23 expense incident to the default.

24 (2) Consequential damages resulting from a lessor's default include:

25 (a) any loss resulting from general or particular requirements and
26 needs of which the lessor at the time of contracting had reason to know and
27 which could not reasonably be prevented by cover or otherwise; and

28 (b) injury to person or property proximately resulting from any
29 breach of warranty.

30 §4-2A-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

31 (1) Specific performance may be decreed if the goods are unique or in
32 other proper circumstances.

33 (2) A decree for specific performance may include any terms and
34 conditions as to payment of the rent, damages, or other relief that the court
35 deems just.

1 loss resulting in the ordinary course of events from the lessee's default as
2 determined in any reasonable manner, together with incidental damages, less
3 expenses saved in consequence of the lessee's default.

4 (3) If a lessee is otherwise in default under a lease contract, the
5 lessor may exercise the rights and pursue the remedies provided in the lease
6 contract, which may include a right to cancel the lease. In addition, unless
7 otherwise provided in the lease contract:

8 (a) if the default substantially impairs the value of the lease
9 contract to the lessor, the lessor may exercise the rights and pursue the
10 remedies provided in subsections (1) or (2); or

11 (b) if the default does not substantially impair the value of the
12 lease contract to the lessor, the lessor may recover as provided in subsection
13 (2).

14 §4-2A-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.

15 (1) After default by the lessee under the lease contract of the type
16 described in Section 4-2A-523(1) or Section 4-2A-523(3) (a) or, if agreed,
17 after other default by the lessee, the lessor may:

18 (a) identify to the lease contract conforming goods not already
19 identified if at the time the lessor learned of the default they were in the
20 lessor's or the supplier's possession or control; and

21 (b) dispose of goods (Section 4-2A-527(1)) that demonstrably have
22 been intended for the particular lease contract even though those goods are
23 unfinished.

24 (2) If the goods are unfinished, in the exercise of reasonable
25 commercial judgment for the purposes of avoiding loss and of effective
26 realization, an aggrieved lessor or the supplier may either complete
27 manufacture and wholly identify the goods to the lease contract or cease
28 manufacture and lease, sell, or otherwise dispose of the goods for scrap or
29 salvage value or proceed in any other reasonable manner.

30 §4-2A-525. LESSOR'S RIGHT TO POSSESSION OF GOODS.

31 (1) If a lessor discovers the lessee to be insolvent, the lessor may
32 refuse to deliver the goods.

33 (2) After a default by the lessee under the lease contract of the type
34 described in Section 4-2A-523(1) or 4-2A-523(3) (a) or, if agreed, after other
35 default by the lessee, the lessor has the right to take possession of the

1 goods. If the lease contract so provides, the lessor may require the lessee
2 to assemble the goods and make them available to the lessor at a place to be
3 designated by the lessor which is reasonably convenient to both parties.
4 Without removal, the lessor may render unusable any goods employed in trade or
5 business, and may dispose of goods on the lessee's premises (Section 4-
6 2A-527).

7 (3) The lessor may proceed under subsection (2) without judicial
8 process if it can be done without breach of the peace or the lessor may
9 proceed by action.

10 §4-2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

11 (1) A lessor may stop delivery of goods in the possession of a carrier
12 or other bailee if the lessor discovers the lessee to be insolvent and may
13 stop delivery of carload, truckload, planeload, or larger shipments of express
14 or freight if the lessee repudiates or fails to make a payment due before
15 delivery, whether for rent, security or otherwise under the lease contract, or
16 for any other reason the lessor has a right to withhold or take possession of
17 the goods.

18 (2) In pursuing its remedies under subsection (1), the lessor may stop
19 delivery until

20 (a) receipt of the goods by the lessee;

21 (b) acknowledgment to the lessee by any bailee of the goods,
22 except a carrier, that the bailee holds the goods for the lessee; or

23 (c) such an acknowledgment to the lessee by a carrier via
24 reshipment or as warehouseman.

25 (3)(a) To stop delivery, a lessor shall so notify as to enable the
26 bailee by reasonable diligence to prevent delivery of the goods.

27 (b) After notification, the bailee shall hold and deliver the
28 goods according to the directions of the lessor, but the lessor is liable to
29 the bailee for any ensuing charges or damages.

30 (c) A carrier who has issued a nonnegotiable bill of lading is
31 not obliged to obey a notification to stop received from a person other than
32 the consignor.

33 §4-2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.

34 (1) After a default by a lessee under the lease contract of the type
35 described in Section 4-2A-523(1) or 4-2A-523(3)(a) or after the lessor refuses

1 to deliver or takes possession of goods (Section 4-2A-525 or 4-2A-526), or, if
2 agreed, after other default by a lessee, the lessor may dispose of the goods
3 concerned or the undelivered balance thereof by lease, sale, or otherwise.

4 (2) Except as otherwise provided with respect to damages liquidated in
5 the lease agreement (Section 4-2A-504) or otherwise determined pursuant to
6 agreement of the parties (Sections 4-1-102(3) and 4-2A-503), if the
7 disposition is by lease agreement substantially similar to the original lease
8 agreement and the new lease agreement is made in good faith and in a
9 commercially reasonable manner, the lessor may recover from the lessee as
10 damages (i) accrued and unpaid rent as of the date of the commencement of the
11 term of the new lease agreement, (ii) the present value, as of the same date,
12 of the total rent for the then remaining lease term of the original lease
13 agreement minus the present value, as of the same date, of the rent under the
14 new lease agreement applicable to that period of the new lease term which is
15 comparable to the then remaining term of the original lease agreement, and
16 (iii) any incidental damages allowed under Section 4-2A-530, less expenses
17 saved in consequence of the lessee's default.

18 (3) If the lessor's disposition is by lease agreement that for any
19 reason does not qualify for treatment under subsection (2), or is by sale or
20 otherwise, the lessor may recover from the lessee as if the lessor had elected
21 not to dispose of the goods and Section 4-2A-528 governs.

22 (4) A subsequent buyer or lessee who buys or leases from the lessor in
23 good faith for value as a result of a disposition under this section takes the
24 goods free of the original lease contract and any rights of the original
25 lessee even though the lessor fails to comply with one or more of the
26 requirements of this chapter.

27 (5) The lessor is not accountable to the lessee for any profit made on
28 any disposition. A lessee who has rightfully rejected or justifiably revoked
29 acceptance shall account to the lessor for any excess over the amount of the
30 lessee's security interest (Section 4-2A-508(5)).

31 §4-2A-528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE, FAILURE TO PAY,
32 REPUDIATION, OR OTHER DEFAULT.

33 (1) Except as otherwise provided with respect to damages liquidated in
34 the lease agreement (Section 4-2A-504) or otherwise determined pursuant to
35 agreement of the parties (Sections 4-1-102(3) and 4-2A-503), if a lessor

1 elects to retain the goods or a lessor elects to dispose of the goods and the
2 disposition is by lease agreement that for any reason does not qualify for
3 treatment under Section 4-2A-527(2), or is by sale or otherwise, the lessor
4 may recover from the lessee as damages for a default of the type described in
5 Section 4-2A-523(1) or 4-2A-523(3)(a), or, if agreed, for other default of the
6 lessee, (i) accrued and unpaid rent as of the date of default if the lessee
7 has never taken possession of the goods, or, if the lessee has taken
8 possession of the goods, as of the date the lessor repossesses the goods or an
9 earlier date on which the lessee makes a tender of the goods to the lessor,
10 (ii) the present value as of the date determined under clause (i) of the total
11 rent for the then remaining lease term of the original lease agreement minus
12 the present value as of the same date of the market rent at the place computed
13 for the same lease term, and (iii) any incidental damages allowed under
14 Section 4-2A-530, less expenses saved in consequence of the lessee's default.

15 (2) If the measure of damages provided in subsection (1) is inadequate
16 to put a lessor in as good a position as performance would have, the measure
17 of damages is the present value of the profit, including reasonable overhead,
18 the lessor would have made from full performance by the lessee, together with
19 any incidental damages allowed under Section 4-2A-530, due allowance for costs
20 reasonably incurred and due credit for payments or proceeds of disposition.

21 §4-2A-529. LESSOR'S ACTION FOR THE RENT.

22 (1) After default by the lessee under the lease contract of the type
23 described in Section 4-2A-523(1) or 4-2A-523(3)(a) or, if agreed, after other
24 default by the lessee, if the lessor complies with subsection (2), the lessor
25 may recover from the lessee as damages:

26 (a) for goods accepted by the lessee and not repossessed by or
27 tendered to the lessor, and for conforming goods lost or damaged within a
28 commercially reasonable time after risk of loss passes to the lessee (Section
29 4-2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in
30 favor of the lessor, (ii) the present value as of the same date of the rent
31 for the then remaining lease term of the lease agreement, and (iii) any
32 incidental damages allowed under Section 4-2A-530, less expenses saved in
33 consequence of the lessee's default; and

34 (b) for goods identified to the lease contract if the lessor is
35 unable after reasonable effort to dispose of them at a reasonable price or the

1 circumstances reasonably indicate that effort will be unavailing, (i) accrued
2 and unpaid rent as of the date of entry of judgment in favor of the lessor,
3 (ii) the present value as of the same date of the rent for the then remaining
4 lease term of the lease agreement, and (iii) any incidental damages allowed
5 under Section 4-2A-530, less expenses saved in consequence of the lessee's
6 default.

7 (2) Except as provided in subsection (3), the lessor shall hold for the
8 lessee for the remaining lease term of the lease agreement any goods that have
9 been identified to the lease contract and are in the lessor's control.

10 (3) The lessor may dispose of the goods at any time before collection
11 of the judgment for damages obtained pursuant to subsection (1). If the
12 disposition is before the end of the remaining lease term of the lease
13 agreement, the lessor's recovery against the lessee for damages is governed by
14 Section 4-2A-527 or Section 4-2A-528, and the lessor will cause an appropriate
15 credit to be provided against a judgment for damages to the extent that the
16 amount of the judgment exceeds the recovery available pursuant to Section 4-
17 2A-527 or 4-2A-528.

18 (4) Payment of the judgment for damages obtained pursuant to subsection
19 (1) entitles the lessee to the use and possession of the goods not then
20 disposed of for the remaining lease term of and in accordance with the lease
21 agreement.

22 (5) After default by the lessee under the lease contract of the type
23 described in Section 4-2A-523(1) or Section 4-2A-523(3) (a) or, if agreed,
24 after other default by the lessee, a lessor who is held not entitled to rent
25 under this section must nevertheless be awarded damages for non-acceptance
26 under Section 4-2A-527 or Section 4-2A-528.

27 §4-2A-530. LESSOR'S INCIDENTAL DAMAGES.

28 Incidental damages to an aggrieved lessor include any commercially
29 reasonable charges, expenses, or commissions incurred in stopping delivery, in
30 the transportation, care and custody of goods after the lessee's default, in
31 connection with return or disposition of the goods, or otherwise resulting
32 from the default.

33 §4-2A-531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.

34 (1) If a third party so deals with goods that have been identified to a
35 lease contract as to cause actionable injury to a party to the lease contract

1 (a) the lessor has a right of action against the third party, and (b) the
2 lessee also has a right of action against the third party if the lessee:

3 (i) has a security interest in the goods;
4 (ii) has an insurable interest in the goods; or
5 (iii) bears the risk of loss under the lease contract or has since
6 the injury assumed that risk as against the lessor and the goods have been
7 converted or destroyed.

8 (2) If at the time of the injury the party plaintiff did not bear the
9 risk of loss as against the other party to the lease contract and there is no
10 arrangement between them for disposition of the recovery, his or her suit or
11 settlement, subject to his or her own interest, is as a fiduciary for the
12 other party to the lease contract.

13 (3) Either party with the consent of the other may sue for the benefit
14 of whom it may concern.

15 §4-2A-532. LESSOR'S RIGHTS TO RESIDUAL INTEREST.

16 In addition to any other recovery permitted by this chapter or other
17 law, the lessor may recover from the lessee an amount that will fully
18 compensate the lessor for any loss of or damage to the lessor's residual
19 interest in the goods caused by the default of the lessee."
20

21 SECTION 2. Arkansas Code Annotated §4-1-105 is hereby amended to read
22 as follows:

23 "§4-1-105. TERRITORIAL APPLICATION OF THE SUBTITLE; PARTIES' POWER TO
24 CHOOSE APPLICABLE LAW.

25 (1) Except as provided hereafter in this section, when a transaction
26 bears a reasonable relation to this state and also to another state or nation
27 the parties may agree that the law either of this state or of such other state
28 or nation shall govern their rights and duties. Failing such agreement this
29 subtitle applies to transactions bearing an appropriate relation to this
30 state.

31 (2) Where one of the following provisions of this subtitle specifies
32 the applicable law, that provision governs and a contrary agreement is
33 effective only to the extent permitted by the law (including the conflict of
34 laws rules) so specified:

35 Rights of creditors against sold goods. Section 4-2-402.

1 Applicability of the chapter on leases. Sections 4-2A-105 and 4-
2 2A-106.

3 Applicability of the chapter on bank deposits and collections.
4 Section 4-4-102.

5 Applicability of the chapter on investment securities. Section 4-
6 8-106.

7 Perfection provisions of the chapter on secured transactions.
8 Section 4-9-103.

9 "

10 SECTION 3. Arkansas Code Annotated §4-1-201(37) is hereby amended to read
11 as follows:

12 "(37) Security interest means an interest in personal property or
13 fixtures which secures payment or performance of an obligation. The retention
14 or reservation of title by a seller of goods notwithstanding shipment or
15 delivery to the buyer (Section 4-2-401) is limited in effect to a reservation
16 of a security interest. The term also includes any interest of a buyer of
17 accounts or chattel paper which is subject to chapter 9. The special property
18 interest of a buyer of goods on identification of those goods to a contract
19 for sale under Section 4-2-401 is not a security interest, but a buyer may
20 also acquire a security interest by complying with chapter 9 of this title.
21 Unless a consignment is intended as security, reservation of title thereunder
22 is not a security interest, but a consignment in any event is subject to the
23 provisions on consignment sales (Section 4-2-326).

24 Whether a transaction creates a lease or security interest is
25 determined by the facts of each case; however, a transaction creates a
26 security interest if the consideration the lessee is to pay the lessor for the
27 right to possession and use of the goods is an obligation for the term of the
28 lease not subject to termination by the lessee, and

29 (a) the original term of the lease is equal to or greater than the
30 remaining economic life of the goods,

31 (b) the lessee is bound to renew the lease for the remaining
32 economic life of the goods or is bound to become the owner of the goods,

33 (c) the lessee has an option to renew the lease for the remaining
34 economic life of the goods for no additional consideration upon compliance
35 with the lease agreement, or

1 (d) the lessee has an option to become the owner of the goods for
2 no additional consideration or nominal additional consideration upon
3 compliance with the lease agreement.

4 A transaction does not create a security interest merely because it
5 provides that

6 (a) the present value of the consideration the lessee is
7 obligated to pay the lessor for the right to possession and use of the goods
8 is substantially equal to or is greater than the fair market value of the
9 goods at the time the lease is entered into,

10 (b) the lessee assumes risk of loss of the goods, or agrees
11 to pay taxes, insurance, filing, recording, or registration fees, or service
12 or maintenance costs with respect to the goods,

13 (c) the lessee has an option to renew the lease or to become
14 the owner of the goods,

15 (d) the lessee has an option to renew the lease for a fixed
16 rent that is equal to or greater than the reasonably predictable fair market
17 rent for the use of the goods for the term of the renewal at the time the
18 option is to be performed, or

19 (e) the lessee has an option to become the owner of the
20 goods for a fixed price that is equal to or greater than the reasonably
21 predictable fair market value of the goods at the time the option is to be
22 performed.

23 For purposes of this subsection (37):

24 (a) Additional consideration is not nominal if (i) when the
25 option to renew the lease is granted to the lessee the rent is stated to be
26 the fair market rent for the use of the goods for the term of the renewal
27 determined at the time the option is to be performed, or (ii) when the option
28 to become the owner of the goods is granted to the lessee the price is stated
29 to be the fair market value of the goods determined at the time the option is
30 to be performed. Additional consideration is nominal if it is less than the
31 lessee's reasonably predictable cost of performing under the lease agreement
32 if the option is not exercised;

33 (b) Reasonably predictable and remaining economic life
34 of the goods are to be determined with reference to the facts and
35 circumstances at the time the transaction is entered into; and

1 (c) Present value means the amount as of a date certain
2 of one or more sums payable in the future, discounted to the date certain.
3 The discount is determined by the interest rate specified by the parties if
4 the rate is not manifestly unreasonable at the time the transaction is entered
5 into; otherwise, the discount is determined by a commercially reasonable rate
6 that takes into account the facts and circumstances of each case at the time
7 the transaction was entered into."

8

9 SECTION 4. Arkansas Code Annotated §4-9-113 is hereby amended to read
10 as follows:

11 "§4-9-113. SECURITY INTERESTS ARISING UNDER CHAPTER ON SALES OR UNDER
12 CHAPTER ON LEASES. A security interest arising solely under the chapter on
13 sales (chapter 2 of this title) or the chapter on leases (chapter 2A) is
14 subject to the provisions of this chapter except that to the extent that and
15 so long as the debtor does not have or does not lawfully obtain possession of
16 the goods

17 (a) no security agreement is necessary to make the security interest
18 enforceable; and

19 (b) no filing is required to perfect the security interest; and

20 (c) the rights of the secured party on default by the debtor are
21 governed (i) by the chapter on sales (chapter 2 of this title) in the case of
22 a security interest arising solely under such chapter or (ii) by the chapter
23 on leases (chapter 2A) in the case of a security interest arising solely under
24 such chapter."

25

26 SECTION 5. Transactions within the scope of this act and validly
27 entered into before the effective date of this act, and the rights, duties,
28 and interests flowing from them, remain valid thereafter and may be
29 terminated, completed, consummated, or enforced as required or permitted by
30 any statute or other law amended or repealed by this act as though such repeal
31 or amendment had not occurred.

32

33 SECTION 6. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

1

2 SECTION 7. If any provision of this act or the application thereof to
3 any person or circumstance is held invalid, such invalidity shall not affect
4 other provisions or applications of the act which can be given effect without
5 the invalid provision or application, and to this end the provisions of this
6 act are declared to be severable.

7

8 SECTION 8. All laws and parts of laws in conflict with this act are
9 hereby repealed.

10

11

12

APPROVED: 03/10/93

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