



General Assembly

January Session, 2001

**Raised Bill No. 1314**

LCO No. 4317

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT ADDING ARTICLE 2A ON LEASES TO THE UNIFORM  
COMMERCIAL CODE.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) This article shall be known and may be cited as the  
2 Uniform Commercial Code - Leases.

3 Sec. 2. (NEW) This article applies to any transaction, regardless of  
4 form, that creates a lease.

5 Sec. 3. (NEW) (1) In this article unless the context otherwise requires:

6 (a) "Buyer in ordinary course of business" means a person who in  
7 good faith and without knowledge that the sale to him is in violation of  
8 the ownership rights or security interest or leasehold interest of a third  
9 party in the goods, buys in ordinary course from a person in the business  
10 of selling goods of that kind but does not include a pawnbroker.  
11 "Buying" may be for cash or by exchange of other property or on secured  
12 or unsecured credit and includes receiving goods or documents of title  
13 under a pre-existing contract for sale but does not include a transfer in  
14 bulk or as security for or in total or partial satisfaction of a money debt.

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

17 (c) "Commercial unit" means such a unit of goods as by commercial  
18 usage is a single whole for purposes of lease and division of which  
19 materially impairs its character or value on the market or in use. A  
20 commercial unit may be a single article, as a machine, or a set of articles,  
21 as a suite of furniture or a line of machinery, or a quantity, as a gross or  
22 carload, or any other unit treated in use or in the relevant market as a  
23 single whole.

24 (d) "Conforming" goods or performance under a lease contract means  
25 goods or performance that are in accordance with the obligations under  
26 the lease contract.

27 (e) "Consumer lease" means a lease that a lessor regularly engaged in  
28 the business of leasing or selling makes to a lessee who is an individual  
29 and who takes under the lease primarily for a personal, family, or  
30 household purpose.

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

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

33 (i) The lessor does not select, manufacture, or supply the goods;

34 (ii) The lessor acquires the goods or the right to possession and use of  
35 the goods in connection with the lease; and

36 (iii) One of the following occurs: (A) The lessee receives a copy of the  
37 contract by which the lessor acquired the goods or the right to possession  
38 and use of the goods before signing the lease contract;

39 (B) The lessee's approval of the contract by which the lessor acquired  
40 the goods or the right to possession and use of the goods is a condition to  
41 effectiveness of the lease contract;

42 (C) The lessee, before signing the lease contract, receives an accurate

43 and complete statement designating the promises and warranties, and  
44 any disclaimers of warranties, limitations or modifications of remedies,  
45 or liquidated damages, including those of a third party, such as the  
46 manufacturer of the goods, provided to the lessor by the person  
47 supplying the goods in connection with or as part of the contract by  
48 which the lessor acquired the goods or the right to possession and use of  
49 the goods; or

50 (D) If the lease is not a consumer lease, the lessor, before the lessee  
51 signs the lease contract, informs the lessee in writing (a) of the identity of  
52 the person supplying the goods to the lessor, unless the lessee has  
53 selected that person and directed the lessor to acquire the goods or the  
54 right to possession and use of the goods from that person, (b) that the  
55 lessee is entitled under this article to the promises and warranties,  
56 including those of any third party, provided to the lessor by the person  
57 supplying the goods in connection with or as part of the contract by  
58 which the lessor acquired the goods or the right to possession and use of  
59 the goods, and (c) that the lessee may communicate with the person  
60 supplying the goods to the lessor and receive an accurate and complete  
61 statement of those promises and warranties, including any disclaimers  
62 and limitations of them or of remedies.

63 (h) "Goods" means all things that are movable at the time of  
64 identification to the lease contract, or are fixtures, but the term does not  
65 include money, documents, instruments, accounts, chattel paper, general  
66 intangibles, minerals or the like, including oil and gas, before extraction  
67 or goods as defined in subdivision (6) of subsection (c) of section 36a-770  
68 of the general statutes. The term also includes the unborn young of  
69 animals.

70 (i) "Installment lease contract" means a lease contract that authorizes  
71 or requires the delivery of goods in separate lots to be separately  
72 accepted, even though the lease contract contains a clause "each delivery  
73 is a separate lease" or its equivalent.

74 (j) "Lease" means a transfer of the right to possession and use of goods

75 for a term in return for consideration, but a sale, including a sale on  
76 approval or a sale or return, or retention or creation of a security interest  
77 is not a lease. Unless the context clearly indicates otherwise, the term  
78 includes a sublease.

79 (k) "Lease agreement" means the bargain, with respect to the lease, of  
80 the lessor and the lessee in fact as found in their language or by  
81 implication from other circumstances including course of dealing or  
82 usage of trade or course of performance as provided in this article.  
83 Unless the context clearly indicates otherwise, the term includes a  
84 sublease agreement.

85 (l) "Lease contract" means the total legal obligation that results from  
86 the lease agreement as affected by this article and any other applicable  
87 rules of law. Unless the context clearly indicates otherwise, the term  
88 includes a sublease contract.

89 (m) "Leasehold interest" means the interest of the lessor or the lessee  
90 under a lease contract.

91 (n) "Lessee" means a person who acquires the right to possession and  
92 use of goods under a lease. Unless the context clearly indicates  
93 otherwise, the term includes a sublessee.

94 (o) "Lessee in ordinary course of business" means a person who in  
95 good faith and without knowledge that the lease to him is in violation of  
96 the ownership rights or security interest or leasehold interest of a third  
97 party in the goods leases in ordinary course from a person in the  
98 business of selling or leasing goods of that kind but does not include a  
99 pawnbroker. "Leasing" may be for cash or by exchange of other property  
100 or on secured or unsecured credit and includes receiving goods or  
101 documents of title under a pre-existing lease contract but does not  
102 include a transfer in bulk or as security for or in total or partial  
103 satisfaction of a money debt.

104 (p) "Lessor" means a person who transfers the right to possession and

105 use of goods under a lease. Unless the context clearly indicates  
106 otherwise, the term includes a sublessor.

107 (q) "Lessor's residual interest" means the lessor's interest in the goods  
108 after expiration, termination, or cancellation of the lease contract.

109 (r) "Lien" means a charge against or interest in goods to secure  
110 payment of a debt or performance of an obligation, but the term does not  
111 include a security interest.

112 (s) "Lot" means a parcel or a single article that is the subject matter of a  
113 separate lease or delivery, whether or not it is sufficient to perform the  
114 lease contract.

115 (t) "Merchant lessee" means a lessee that is a merchant with respect to  
116 goods of the kind subject to the lease.

117 (u) "Present value" means the amount as of a date certain of one or  
118 more sums payable in the future, discounted to the date certain. The  
119 discount is determined by the interest rate specified by the parties if the  
120 rate was not manifestly unreasonable at the time the transaction was  
121 entered into; otherwise, the discount is determined by a commercially  
122 reasonable rate that takes into account the facts and circumstances of  
123 each case at the time the transaction was entered into.

124 (v) "Purchase" includes taking by sale, lease, mortgage, security  
125 interest, pledge, gift, or any other voluntary transaction creating an  
126 interest in goods.

127 (w) "Sublease" means a lease of goods the right to possession and use  
128 of which was acquired by the lessor as a lessee under an existing lease.

129 (x) "Supplier" means a person from whom a lessor buys or leases  
130 goods to be leased under a finance lease.

131 (y) "Supply contract" means a contract under which a lessor buys or  
132 leases goods to be leased.

133 (z) "Termination" occurs when either party pursuant to a power  
134 created by agreement or law puts an end to the lease contract otherwise  
135 than for default.

136 (2) Other definitions applying to this article and the sections in which  
137 they appear are:

138 "Accessions". Section 40(1) of this act.

139 "Construction mortgage". Section 39(1)(d) of this act.

140 "Encumbrance". Section 39(1)(e) of this act.

141 "Fixtures". Section 39(1)(a) of this act.

142 "Fixture filing". Section 39(1)(b) of this act.

143 "Purchase money lease". Section 39(1)(c) of this act.

144 (3) The following definitions in other articles apply to this article:

145 "Account". Section 42a-9-106 of the general statutes.

146 "Between merchants". Section 42a-9-104(3) of the general statutes.

147 "Buyer". Section 42a-2-103(1)(a) of the general statutes.

148 "Chattel paper". Section 42a-9-105(1)(b) of the general statutes.

149 "Consumer goods". Section 42a-9-109(1) of the general statutes.

150 "Document". Section 42a-9-105(1)(f) of the general statutes.

151 "Entrusting". Section 42a-2-403(3) of the general statutes.

152 "General intangibles". Section 42a-9-106 of the general statutes.

153 "Good faith". Section 42a-2-103(1)(b) of the general statutes.

154 "Instrument". Section 42a-9-105(1)(i) of the general statutes.

- 155 "Merchant". Section 42a-2-104(1) of the general statutes.
- 156 "Mortgage". Section 42a-9-105(1)(j) of the general statutes.
- 157 "Pursuant to commitment". Section 42a-9-105(1)(k) of the general  
158 statutes.
- 159 "Receipt". Section 42a-2-103(1)(c) of the general statutes.
- 160 "Sale". Section 42a-2-106(1) of the general statutes.
- 161 "Sale on approval". Section 42a-2-326 of the general statutes.
- 162 "Sale or return". Section 42a-2-326 of the general statutes.
- 163 "Seller". Section 42a-2-103(1)(d) of the general statutes.
- 164 (4) In addition, article 1 contains general definitions and principles of  
165 construction and interpretation applicable throughout this article.
- 166 Sec. 4. (NEW) (1) A lease, although subject to this article, is also subject  
167 to any applicable:
- 168 (a) Certificate of title statute of this state;
  - 169 (b) Certificate of title statute of another jurisdiction; or
  - 170 (c) Consumer protection statute of this state, or final consumer  
171 protection decision of a court of this state existing on the effective date of  
172 this act.
- 173 (2) In case of conflict between this article, other than section 5,  
174 subsection (3) of section 34 and subsection (3) of section 35 of this act,  
175 and a statute or decision referred to in subsection (1), the statute or  
176 decision controls.
- 177 (3) Failure to comply with an applicable law has only the effect  
178 specified therein.

179       Sec. 5. (NEW) Subject to the provisions of subsection (3) of section 34  
180 and subsection (3) of section 35 of this act, with respect to goods covered  
181 by a certificate of title issued under a statute of this state or of another  
182 jurisdiction, compliance and the effect of compliance or noncompliance  
183 with a certificate of title statute are governed by the law, including the  
184 conflict of laws rules, of the jurisdiction issuing the certificate until the  
185 earlier of (a) surrender of the certificate, or (b) four months after the  
186 goods are removed from that jurisdiction and thereafter until a new  
187 certificate of title is issued by another jurisdiction.

188       Sec. 6. (NEW) (1) If the law chosen by the parties to a consumer lease  
189 is that of a jurisdiction other than a jurisdiction in which the lessee  
190 resides at the time the lease agreement becomes enforceable or within  
191 thirty days thereafter or in which the goods are to be used, the choice is  
192 not enforceable.

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

196       Sec. 7. (NEW) Any claim or right arising out of an alleged default or  
197 breach of warranty may be discharged in whole or in part without  
198 consideration by a written waiver or renunciation signed and delivered  
199 by the aggrieved party.

200       Sec. 8. (NEW) (1) If the court as a matter of law finds a lease contract  
201 or any clause of a lease contract to have been unconscionable at the time  
202 it was made the court may refuse to enforce the lease contract, or it may  
203 enforce the remainder of the lease contract without the unconscionable  
204 clause, or it may so limit the application of any unconscionable clause as  
205 to avoid any unconscionable result.

206       (2) With respect to a consumer lease, if the court as a matter of law  
207 finds that a lease contract or any clause of a lease contract has been  
208 induced by unconscionable conduct or that unconscionable conduct has  
209 occurred in the collection of a claim arising from a lease contract, the

210 court may grant appropriate relief.

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

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

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

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

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

226 Sec. 9. (NEW) (1) A term providing that one party or his successor in  
227 interest may accelerate payment or performance or require collateral or  
228 additional collateral "at will" or "when he deems himself insecure" or in  
229 words of similar import must be construed to mean that he has power to  
230 do so only if he in good faith believes that the prospect of payment or  
231 performance is impaired.

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

236 Sec. 10. (NEW) (1) A lease contract is not enforceable by way of action  
237 or defense unless:

238 (a) The total payments to be made under the lease contract, excluding  
239 payments for options to renew or buy, are less than one thousand  
240 dollars; or

241 (b) There is a writing, signed by the party against whom enforcement  
242 is sought or by that party's authorized agent, sufficient to indicate that a  
243 lease contract has been made between the parties and to describe the  
244 goods leased and the lease term.

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

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

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

254 (a) If the goods are to be specially manufactured or obtained for the  
255 lessee and are not suitable for lease or sale to others in the ordinary  
256 course of the lessor's business, and the lessor, before notice of  
257 repudiation is received and under circumstances that reasonably indicate  
258 that the goods are for the lessee, has made either a substantial beginning  
259 of their manufacture or commitments for their procurement;

260 (b) If the party against whom enforcement is sought admits in that  
261 party's pleading, testimony or otherwise in court that a lease contract  
262 was made, but the lease contract is not enforceable under this provision  
263 beyond the quantity of goods admitted; or

264 (c) With respect to goods that have been received and accepted by the  
265 lessee.

266 (5) The lease term under a lease contract referred to in subsection (4)

267 is:

268 (a) If there is a writing signed by the party against whom enforcement  
269 is sought or by that party's authorized agent specifying the lease term,  
270 the term so specified;

271 (b) If the party against whom enforcement is sought admits in that  
272 party's pleading, testimony, or otherwise in court a lease term, the term  
273 so admitted; or

274 (c) A reasonable lease term.

275 Sec. 11. (NEW) Terms parties agree or which are otherwise set forth in  
276 a writing intended by the parties as a final expression of their agreement  
277 with respect to such terms as are included therein may not be  
278 contradicted by evidence of any prior agreement or of a  
279 contemporaneous oral agreement but may be explained or  
280 supplemented:

281 (a) By course of dealing or usage of trade or by course of performance;  
282 and

283 (b) By evidence of consistent additional terms unless the court finds  
284 the writing to have been intended also as a complete and exclusive  
285 statement of the terms of the agreement.

286 Sec. 12. (NEW) The affixing of a seal to a writing evidencing a lease  
287 contract or an offer to enter into a lease contract does not render the  
288 writing a sealed instrument and the law with respect to sealed  
289 instruments does not apply to the lease contract or offer.

290 Sec. 13. (NEW) (1) A lease contract may be made in any manner  
291 sufficient to show agreement, including conduct by both parties which  
292 recognizes the existence of a lease contract.

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

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

299 Sec. 14. (NEW) An offer by a merchant to lease goods to or from  
300 another person in a signed writing that by its terms gives assurance it  
301 will be held open is not revocable, for lack of consideration, during the  
302 time stated or, if no time is stated, for a reasonable time, but in no event  
303 may the period of irrevocability exceed three months. Any such term of  
304 assurance on a form supplied by the offeree must be separately signed  
305 by the offeror.

306 Sec. 15. (NEW) (1) Unless otherwise unambiguously indicated by the  
307 language or circumstances, an offer to make a lease contract must be  
308 construed as inviting acceptance in any manner and by any medium  
309 reasonable in the circumstances.

310 (2) If the beginning of a requested performance is a reasonable mode  
311 of acceptance, an offeror who is not notified of acceptance within a  
312 reasonable time may treat the offer as having lapsed before acceptance.

313 Sec. 16. (NEW) (1) If a lease contract involves repeated occasions for  
314 performance by either party with knowledge of the nature of the  
315 performance and opportunity for objection to it by the other, any course  
316 of performance accepted or acquiesced in without objection is relevant to  
317 determine the meaning of the lease agreement.

318 (2) The express terms of a lease agreement and any course of  
319 performance, as well as any course of dealing and usage of trade, must  
320 be construed whenever reasonable as consistent with each other; but if  
321 that construction is unreasonable, express terms control course of  
322 performance, course of performance controls both course of dealing and  
323 usage of trade, and course of dealing controls usage of trade.

324 (3) Subject to the provisions of section 17 of this act on modification

325 and waiver, course of performance is relevant to show a waiver or  
326 modification of any term inconsistent with the course of performance.

327       Sec. 17. (NEW) (1) An agreement modifying a lease contract needs no  
328 consideration to be binding.

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

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

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

340       Sec. 18. (NEW) (1) The benefit of a supplier's promises to the lessor  
341 under the supply contract and of all warranties, whether express or  
342 implied, including those of any third party provided in connection with  
343 or as part of the supply contract, extends to the lessee to the extent of the  
344 lessee's leasehold interest under a finance lease related to the supply  
345 contract, but is subject to the terms of the warranty and of the supply  
346 contract and all defenses or claims arising therefrom.

347       (2) The extension of the benefit of a supplier's promises and of  
348 warranties to the lessee does not: (i) Modify the rights and obligations of  
349 the parties to the supply contract, whether arising therefrom or  
350 otherwise, or (ii) impose any duty or liability under the supply contract  
351 on the lessee.

352       (3) Any modification or rescission of the supply contract by the  
353 supplier and the lessor is effective between the supplier and the lessee  
354 unless, before the modification or rescission, the supplier has received

355 notice that the lessee has entered into a finance lease related to the  
356 supply contract. If the modification or rescission is effective between the  
357 supplier and the lessee, the lessor is deemed to have assumed, in  
358 addition to the obligations of the lessor to the lessee under the lease  
359 contract, promises of the supplier to the lessor and warranties that were  
360 so modified or rescinded as they existed and were available to the lessee  
361 before modification or rescission.

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

367 Sec. 19. (NEW) (1) Express warranties by the lessor are created as  
368 follows:

369 (a) Any affirmation of fact or promise made by the lessor to the lessee  
370 which relates to the goods and becomes part of the basis of the bargain  
371 creates an express warranty that the goods will conform to the  
372 affirmation or promise.

373 (b) Any description of the goods which is made part of the basis of the  
374 bargain creates an express warranty that the goods will conform to the  
375 description.

376 (c) Any sample or model that is made part of the basis of the bargain  
377 creates an express warranty that the whole of the goods will conform to  
378 the sample or model.

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

385       Sec. 20. (NEW) (1) There is in a lease contract a warranty that for the  
386 lease term no person holds a claim to or interest in the goods that arose  
387 from an act or omission of the lessor, other than a claim by way of  
388 infringement or the like, which will interfere with the lessee's enjoyment  
389 of its leasehold interest.

390       (2) Except in a finance lease, there is in a lease contract by a lessor who  
391 is a merchant regularly dealing in goods of the kind a warranty that the  
392 goods are delivered free of the rightful claim of any person by way of  
393 infringement or the like.

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

398       Sec. 21. (NEW) (1) Except in a finance lease, a warranty that the goods  
399 will be merchantable is implied in a lease contract if the lessor is a  
400 merchant with respect to goods of that kind.

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

402       (a) Pass without objection in the trade under the description in the  
403 lease agreement;

404       (b) In the case of fungible goods, are of fair average quality within the  
405 description;

406       (c) Are fit for the ordinary purposes for which goods of that type are  
407 used;

408       (d) Run, within the variation permitted by the lease agreement, of  
409 even kind, quality, and quantity within each unit and among all units  
410 involved;

411       (e) Are adequately contained, packaged, and labeled as the lease  
412 agreement may require; and

413 (f) Conform to any promises or affirmations of fact made on the  
414 container or label.

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

417 Sec. 22. (NEW) Except in a finance lease, if the lessor at the time the  
418 lease contract is made has reason to know of any particular purpose for  
419 which the goods are required and that the lessee is relying on the lessor's  
420 skill or judgment to select or furnish suitable goods, there is in the lease  
421 contract an implied warranty that the goods will be fit for that purpose.

422 Sec. 23. (NEW) (1) Words or conduct relevant to the creation of an  
423 express warranty and words or conduct tending to negate or limit a  
424 warranty must be construed wherever reasonable as consistent with each  
425 other; but, subject to the provisions of section 11 of this act on parol or  
426 extrinsic evidence, negation or limitation is inoperative to the extent that  
427 the construction is unreasonable.

428 (2) Subject to subsection (3), to exclude or modify the implied  
429 warranty of merchantability or any part of it the language must mention  
430 "merchantability", be by a writing, and be conspicuous. Subject to  
431 subsection (3), to exclude or modify any implied warranty of fitness the  
432 exclusion must be by a writing and be conspicuous. Language to exclude  
433 all implied warranties of fitness is sufficient if it is in writing, is  
434 conspicuous and states, for example, "There is no warranty that the  
435 goods will be fit for a particular purpose."

436 (3) Notwithstanding subsection (2), but subject to subsection (4):

437 (a) Unless the circumstances indicate otherwise, all implied warranties  
438 are excluded by expressions like "as is", or "with all faults", or by other  
439 language that in common understanding calls the lessee's attention to the  
440 exclusion of warranties and makes plain that there is no implied  
441 warranty, if in writing and conspicuous;

442 (b) If the lessee before entering into the lease contract has examined

443 the goods or the sample or model as fully as desired or has refused to  
444 examine the goods, there is no implied warranty with regard to defects  
445 that an examination ought in the circumstances to have revealed; and

446 (c) An implied warranty may also be excluded or modified by course  
447 of dealing, course of performance, or usage of trade.

448 (4) To exclude or modify a warranty against interference or against  
449 infringement or any part of it, the language must be specific, be by a  
450 writing, and be conspicuous, unless the circumstances, including course  
451 of performance, course of dealing, or usage of trade, give the lessee  
452 reason to know that the goods are being leased subject to a claim or  
453 interest of any person.

454 Sec. 24. (NEW) Warranties, whether express or implied, must be  
455 construed as consistent with each other and as cumulative, but if that  
456 construction is unreasonable, the intention of the parties determines  
457 which warranty is dominant. In ascertaining that intention the following  
458 rules apply:

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

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

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

465 Sec. 25. (NEW) A warranty to or for the benefit of a lessee under this  
466 article, whether express or implied, extends to any person who may  
467 reasonably be expected to use, consume, or be affected by the goods and  
468 who is injured by breach of the warranty. The operation of this section  
469 may not be excluded, modified, or limited with respect to injury to the  
470 person of an individual to whom the warranty extends, but an exclusion,  
471 modification, or limitation of the warranty, including any with respect to  
472 rights and remedies, effective against the lessee is also effective against

473 the beneficiary designated under this section.

474 Sec. 26. (NEW) Identification of goods as goods to which a lease  
475 contract refers may be made at any time and in any manner explicitly  
476 agreed to by the parties. In the absence of explicit agreement,  
477 identification occurs:

478 (a) When the lease contract is made if the lease contract is for a lease of  
479 goods that are existing and identified;

480 (b) When the goods are shipped, marked, or otherwise designated by  
481 the lessor as goods to which the lease contract refers, if the lease contract  
482 is for a lease of goods that are not existing and identified; or

483 (c) When the young are conceived, if the lease contract is for a lease of  
484 unborn young of animals.

485 Sec. 27. (NEW) (1) A lessee obtains an insurable interest when existing  
486 goods are identified to the lease contract even though the goods  
487 identified are nonconforming and the lessee has an option to reject them.

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

492 (3) Notwithstanding a lessee's insurable interest under subsections (1)  
493 and (2), the lessor retains an insurable interest until an option to buy has  
494 been exercised by the lessee and risk of loss has passed to the lessee.

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

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

501       Sec. 28. (NEW) (1) Except in the case of a finance lease, risk of loss is  
502 retained by the lessor and does not pass to the lessee. In the case of a  
503 finance lease, risk of loss passes to the lessee.

504       (2) Subject to the provisions of this article on the effect of default on  
505 risk of loss, if risk of loss is to pass to the lessee and the time of passage is  
506 not stated, the following rules apply:

507       (a) If the lease contract requires or authorizes the goods to be shipped  
508 by carrier (i) and it does not require delivery at a particular destination,  
509 the risk of loss passes to the lessee when the goods are duly delivered to  
510 the carrier; but (ii) if it does require delivery at a particular destination  
511 and the goods are there duly tendered while in the possession of the  
512 carrier, the risk of loss passes to the lessee when the goods are there duly  
513 so tendered as to enable the lessee to take delivery.

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

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

521       Sec. 29. (NEW) (1) Where risk of loss is to pass to the lessee and the  
522 time of passage is not stated:

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

527       (b) If the lessee rightfully revokes acceptance, he, to the extent of any  
528 deficiency in his effective insurance coverage, may treat the risk of loss as  
529 having remained with the lessor from the beginning.

530 (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to  
531 conforming goods already identified to a lease contract repudiates or is  
532 otherwise in default under the lease contract, the lessor, or, in the case of  
533 a finance lease, the supplier, to the extent of any deficiency in his  
534 effective insurance coverage may treat the risk of loss as resting on the  
535 lessee for a commercially reasonable time.

536 Sec. 30. (NEW) If a lease contract requires goods identified when the  
537 lease contract is made, and the goods suffer casualty without fault of the  
538 lessee, the lessor or the supplier before delivery, or the goods suffer  
539 casualty before risk of loss passes to the lessee pursuant to the lease  
540 agreement or section 28 of this act, then:

541 (a) If the loss is total, the lease contract is avoided; and

542 (b) If the loss is partial or the goods have so deteriorated as to no  
543 longer conform to the lease contract, the lessee may nevertheless demand  
544 inspection and at his option either treat the lease contract as avoided or,  
545 except in a finance lease that is not a consumer lease, accept the goods  
546 with due allowance from the rent payable for the balance of the lease  
547 term for the deterioration or the deficiency in quantity but without  
548 further right against the lessor.

549 Sec. 31. (NEW) Except as otherwise provided in this article, a lease  
550 contract is effective and enforceable according to its terms between the  
551 parties, against purchasers of the goods and against creditors of the  
552 parties.

553 Sec. 32. (NEW) Except as otherwise provided in this article, each  
554 provision of this article applies whether the lessor or a third party has  
555 title to the goods, and whether the lessor, the lessee, or a third party has  
556 possession of the goods, notwithstanding any statute or rule of law that  
557 possession or the absence of possession is fraudulent.

558 Sec. 33. (NEW) (1) As used in this section, "creation of a security  
559 interest" includes the sale of a lease contract that is subject to article 9 on

560 secured transactions, by reason of subdivision (b) of subsection (1) of  
561 section 42a-9-102 of the general statutes.

562 (2) Except as provided in subsections (3) and (4), a provision in a lease  
563 agreement which (i) prohibits the voluntary or involuntary transfer,  
564 including a transfer by sale, sublease, creation or enforcement of a  
565 security interest, or attachment, levy, or other judicial process, of an  
566 interest of a party under the lease contract or of the lessor's residual  
567 interest in the goods, or (ii) makes such a transfer an event of default,  
568 gives rise to the rights and remedies provided in subsection (5), but a  
569 transfer that is prohibited or is an event of default under the lease  
570 agreement is otherwise effective.

571 (3) A provision in a lease agreement which (i) prohibits the creation or  
572 enforcement of a security interest in an interest of a party under the lease  
573 contract or in the lessor's residual interest in the goods, or (ii) makes such  
574 a transfer an event of default, is not enforceable unless, and then only to  
575 the extent that, there is an actual transfer by the lessee of the lessee's right  
576 of possession or use of the goods in violation of the provision or an  
577 actual delegation of a material performance of either party to the lease  
578 contract in violation of the provision. Neither the granting nor the  
579 enforcement of a security interest in (i) the lessor's interest under the  
580 lease contract or (ii) the lessor's residual interest in the goods is a transfer  
581 that materially impairs the prospect of obtaining return performance by,  
582 materially changes the duty of, or materially increases the burden or risk  
583 imposed on, the lessee within the purview of subsection (5) unless, and  
584 then only to the extent that, there is an actual delegation of a material  
585 performance of the lessor.

586 (4) A provision in a lease agreement which (i) prohibits a transfer of a  
587 right to damages for default with respect to the whole lease contract or of  
588 a right to payment arising out of the transferor's due performance of the  
589 transferor's entire obligation, or (ii) makes such a transfer an event of  
590 default, is not enforceable, and such a transfer is not a transfer that  
591 materially impairs the prospect of obtaining return performance by,

592 materially changes the duty of, or materially increases the burden or risk  
593 imposed on, the other party to the lease contract within the purview of  
594 subsection (5).

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

596 (a) If a transfer is made which is made an event of default under a  
597 lease agreement, the party to the lease contract not making the transfer,  
598 unless that party waives the default or otherwise agrees, has the rights  
599 and remedies described in subsection (2) of section 49 of this act;

600 (b) If paragraph (a) is not applicable and if a transfer is made that (i) is  
601 prohibited under a lease agreement or (ii) materially impairs the  
602 prospect of obtaining return performance by, materially changes the  
603 duty of, or materially increases the burden or risk imposed on, the other  
604 party to the lease contract, unless the party not making the transfer  
605 agrees at any time to the transfer in the lease contract or otherwise, then,  
606 except as limited by contract, (i) the transferor is liable to the party not  
607 making the transfer for damages caused by the transfer to the extent that  
608 the damages could not reasonably be prevented by the party not making  
609 the transfer and (ii) a court having jurisdiction may grant other  
610 appropriate relief, including cancellation of the lease contract or an  
611 injunction against the transfer.

612 (6) A transfer of "the lease" or of "all my rights under the lease", or a  
613 transfer in similar general terms, is a transfer of rights, and, unless the  
614 language or the circumstances, as in a transfer for security, indicate the  
615 contrary, the transfer is a delegation of duties by the transferor to the  
616 transferee. Acceptance by the transferee constitutes a promise by the  
617 transferee to perform those duties. The promise is enforceable by either  
618 the transferor or the other party to the lease contract.

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

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

625 Sec. 34. (NEW) (1) Subject to section 33 of this act, a subsequent lessee  
626 from a lessor of goods under an existing lease contract obtains, to the  
627 extent of the leasehold interest transferred, the leasehold interest in the  
628 goods that the lessor had or had power to transfer, and except as  
629 provided in subsection (2) of this section and subsection (4) of section 75  
630 of this act, takes subject to the existing lease contract. A lessor with  
631 voidable title has power to transfer a good leasehold interest to a good  
632 faith subsequent lessee for value, but only to the extent set forth in the  
633 preceding sentence. If goods have been delivered under a transaction of  
634 purchase, the lessor has that power even though:

635 (a) The lessor's transferor was deceived as to the identity of the lessor;

636 (b) The delivery was in exchange for a check which is later  
637 dishonored;

638 (c) It was agreed that the transaction was to be a "cash sale"; or

639 (d) The delivery was procured through fraud punishable as larcenous  
640 under the criminal law.

641 (2) A subsequent lessee in the ordinary course of business from a  
642 lessor who is a merchant dealing in goods of that kind to whom the  
643 goods were entrusted by the existing lessee of that lessor before the  
644 interest of the subsequent lessee became enforceable against that lessor  
645 obtains, to the extent of the leasehold interest transferred, all of that  
646 lessor's and the existing lessee's rights to the goods, and takes free of the  
647 existing lease contract.

648 (3) A subsequent lessee from the lessor of goods that are subject to an  
649 existing lease contract and are covered by a certificate of title issued  
650 under a statute of this state or of another jurisdiction takes no greater  
651 rights than those provided both by this section and by the certificate of

652 title statute.

653 Sec. 35. (NEW) (1) Subject to the provisions of section 33 of this act, a  
654 buyer or sublessee from the lessee of goods under an existing lease  
655 contract obtains, to the extent of the interest transferred, the leasehold  
656 interest in the goods that the lessee had or had power to transfer, and  
657 except as provided in subsection (2) of this section and subsection (4) of  
658 section 59 of this act, takes subject to the existing lease contract. A lessee  
659 with a voidable leasehold interest has power to transfer a good leasehold  
660 interest to a good faith buyer for value or a good faith sublessee for  
661 value, but only to the extent set forth in the preceding sentence. When  
662 goods have been delivered under a transaction of lease the lessee has  
663 that power even though:

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

665 (b) The delivery was in exchange for a check which is later  
666 dishonored; or

667 (c) The delivery was procured through fraud punishable as larcenous  
668 under the criminal law.

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

674 (3) A buyer or sublessee from the lessee of goods that are subject to an  
675 existing lease contract and are covered by a certificate of title issued  
676 under a statute of this state or of another jurisdiction takes no greater  
677 rights than those provided both by this section and by the certificate of  
678 title statute.

679 Sec. 36. (NEW) If a person in the ordinary course of his business  
680 furnishes services or materials with respect to goods subject to a lease  
681 contract, a lien upon those goods in the possession of that person given

682 by statute or rule of law for those materials or services takes priority over  
683 any interest of the lessor or lessee under the lease contract or this article  
684 unless the lien is created by statute and the statute provides otherwise or  
685 unless the lien is created by rule of law and the rule of law provides  
686 otherwise.

687 Sec. 37. (NEW) (1) Except as otherwise provided in section 36 of this  
688 act, a creditor of a lessee takes subject to the lease contract.

689 (2) Except as otherwise provided in subsections (3) and (4) of this  
690 section and in sections 36 and 38 of this act, a creditor of a lessor takes  
691 subject to the lease contract unless:

692 (a) The creditor holds a lien that attached to the goods before the lease  
693 contract became enforceable; or

694 (b) The creditor holds a security interest in the goods and the lessee  
695 did not give value and receive delivery of the goods without knowledge  
696 of the security interest; or

697 (c) The creditor holds a security interest in the goods which was  
698 perfected before the lease contract became enforceable.

699 (3) A lessee in the ordinary course of business takes the leasehold  
700 interest free of a security interest in the goods created by the lessor even  
701 though the security interest is perfected and the lessee knows of its  
702 existence.

703 (4) A lessee other than a lessee in the ordinary course of business takes  
704 the leasehold interest free of a security interest to the extent that it  
705 secures future advances made after the secured party acquires  
706 knowledge of the lease or more than forty-five days after the lease  
707 contract becomes enforceable, whichever first occurs, unless the future  
708 advances are made pursuant to a commitment entered into without  
709 knowledge of the lease and before the expiration of the forty-five day  
710 period.

711       Sec. 38. (NEW) (1) A creditor of a lessor in possession of goods subject  
712 to a lease contract may treat the lease contract as void if as against the  
713 creditor retention of possession by the lessor is fraudulent under any  
714 statute or rule of law, but retention of possession in good faith and  
715 current course of trade by the lessor for a commercially reasonable time  
716 after the lease contract becomes enforceable is not fraudulent.

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

723       (3) A creditor of a seller may treat a sale or an identification of goods  
724 to a contract for sale as void if as against the creditor retention of  
725 possession by the seller is fraudulent under any statute or rule of law,  
726 but retention of possession of the goods pursuant to a lease contract  
727 entered into by the seller as lessee and the buyer as lessor in connection  
728 with the sale or identification of the goods is not fraudulent if the buyer  
729 bought for value and in good faith.

730       Sec. 39. (NEW) (1) In this section:

731       (a) Goods are "fixtures" when they become so related to particular real  
732 estate that an interest in them arises under real estate law;

733       (b) A "fixture filing" is the filing, in the office where a mortgage on the  
734 real estate would be filed or recorded, of a financing statement covering  
735 goods that are or are to become fixtures and conforming to the  
736 requirements of subsection (5) of section 42a-9-402 of the general  
737 statutes;

738       (c) A lease is a "purchase money lease" unless the lessee has  
739 possession or use of the goods or the right to possession or use of the  
740 goods before the lease agreement is enforceable;

741 (d) A mortgage is a "construction mortgage" to the extent it secures an  
742 obligation incurred for the construction of an improvement on land  
743 including the acquisition cost of the land, if the recorded writing so  
744 indicates; and

745 (e) "Encumbrance" includes real estate mortgages and other liens on  
746 real estate and all other rights in real estate that are not ownership  
747 interests.

748 (2) Under this article a lease may be of goods that are fixtures or may  
749 continue in goods that become fixtures, but no lease exists under this  
750 article of ordinary building materials incorporated into an improvement  
751 on land.

752 (3) This article does not prevent creation of a lease of fixtures pursuant  
753 to real estate law.

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

756 (a) The lease is a purchase money lease, the conflicting interest of the  
757 encumbrancer or owner arises before the goods become fixtures, the  
758 interest of the lessor is perfected by a fixture filing before the goods  
759 become fixtures or within ten days thereafter, and the lessee has an  
760 interest of record in the real estate or is in possession of the real estate; or

761 (b) The interest of the lessor is perfected by a fixture filing before the  
762 interest of the encumbrancer or owner is of record, the lessor's interest  
763 has priority over any conflicting interest of a predecessor in title of the  
764 encumbrancer or owner, and the lessee has an interest of record in the  
765 real estate or is in possession of the real estate.

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

769 (a) The fixtures are readily removable factory or office machines,

770 readily removable equipment that is not primarily used or leased for use  
771 in the operation of the real estate, or readily removable replacements of  
772 domestic appliances that are goods subject to a consumer lease, and  
773 before the goods become fixtures the lease contract is enforceable; or

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

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

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

781 (6) Notwithstanding subsection (4)(a) but otherwise subject to  
782 subsections (4) and (5), the interest of a lessor of fixtures, including the  
783 lessor's residual interest, is subordinate to the conflicting interest of an  
784 encumbrancer of the real estate under a construction mortgage recorded  
785 before the goods become fixtures if the goods become fixtures before the  
786 completion of the construction. To the extent given to refinance a  
787 construction mortgage, the conflicting interest of an encumbrancer of the  
788 real estate under a mortgage has this priority to the same extent as the  
789 encumbrancer of the real estate under the construction mortgage.

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

795 (8) If the interest of a lessor of fixtures, including the lessor's residual  
796 interest, has priority over all conflicting interests of all owners and  
797 encumbrancers of the real estate, the lessor or the lessee may (i) on  
798 default, expiration, termination, or cancellation of the lease agreement  
799 but subject to the lease agreement and this article, or (ii) if necessary to

800 enforce other rights and remedies of the lessor or lessee under this  
801 article, remove the goods from the real estate, free and clear of all  
802 conflicting interests of all owners and encumbrancers of the real estate,  
803 but the lessor or lessee must reimburse any encumbrancer or owner of  
804 the real estate who is not the lessee and who has not otherwise agreed  
805 for the cost of repair of any physical injury, but not for any diminution in  
806 value of the real estate caused by the absence of the goods removed or by  
807 any necessity of replacing them. A person entitled to reimbursement  
808 may refuse permission to remove until the party seeking removal gives  
809 adequate security for the performance of this obligation.

810 (9) Even though the lease agreement does not create a security  
811 interest, the interest of a lessor of fixtures, including the lessor's residual  
812 interest, is perfected by filing a financing statement as a fixture filing for  
813 leased goods that are or are to become fixtures in accordance with the  
814 relevant provisions of article 9 on secured transactions.

815 Sec. 40. (NEW) (1) Goods are "accessions" when they are installed in  
816 or affixed to other goods.

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

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

827 (4) The interest of a lessor or a lessee under a lease contract described  
828 in subsection (2) or (3) is subordinate to the interest of (a) a buyer in the  
829 ordinary course of business or a lessee in the ordinary course of business  
830 of any interest in the whole acquired after the goods became accessions;

831 or (b) a creditor with a security interest in the whole perfected before the  
832 lease contract was made to the extent that the creditor makes subsequent  
833 advances without knowledge of the lease contract.

834 (5) When under subsections (2) or (3) and (4) a lessor or a lessee of  
835 accessions holds an interest that is superior to all interests in the whole,  
836 the lessor or the lessee may (a) on default, expiration, termination, or  
837 cancellation of the lease contract by the other party but subject to the  
838 provisions of the lease contract and this article, or (b) if necessary to  
839 enforce his other rights and remedies under this article, remove the  
840 goods from the whole, free and clear of all interests in the whole, but he  
841 must reimburse any holder of an interest in the whole who is not the  
842 lessee and who has not otherwise agreed for the cost of repair of any  
843 physical injury but not for any diminution in value of the whole caused  
844 by the absence of the goods removed or by any necessity for replacing  
845 them. A person entitled to reimbursement may refuse permission to  
846 remove until the party seeking removal gives adequate security for the  
847 performance of this obligation.

848 Sec. 41. (NEW) Nothing in this article prevents subordination by  
849 agreement by any person entitled to priority.

850 Sec. 42. (NEW) (1) A lease contract imposes an obligation on each  
851 party that the other's expectation of receiving due performance will not  
852 be impaired.

853 (2) If reasonable grounds for insecurity arise with respect to the  
854 performance of either party, the insecure party may demand in writing  
855 adequate assurance of due performance. Until the insecure party  
856 receives that assurance, if commercially reasonable the insecure party  
857 may suspend any performance for which he has not already received the  
858 agreed return.

859 (3) A repudiation of the lease contract occurs if assurance of due  
860 performance adequate under the circumstances of the particular case is  
861 not provided to the insecure party within a reasonable time, not to

862 exceed thirty days after receipt of a demand by the other party.

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

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

869 Sec. 43. (NEW) If either party repudiates a lease contract with respect  
870 to a performance not yet due under the lease contract, the loss of which  
871 performance will substantially impair the value of the lease contract to  
872 the other, the aggrieved party may:

873 (a) For a commercially reasonable time, await retraction of  
874 repudiation and performance by the repudiating party;

875 (b) Make demand pursuant to section 42 of this act and await  
876 assurance of future performance adequate under the circumstances of  
877 the particular case; or

878 (c) Resort to any right or remedy upon default under the lease  
879 contract or this article, even though the aggrieved party has notified the  
880 repudiating party that the aggrieved party would await the repudiating  
881 party's performance and assurance and has urged retraction. In addition,  
882 whether or not the aggrieved party is pursuing one of the foregoing  
883 remedies, the aggrieved party may suspend performance or, if the  
884 aggrieved party is the lessor, proceed in accordance with the provisions  
885 of this article on the lessor's right to identify goods to the lease contract  
886 notwithstanding default or to salvage unfinished goods.

887 Sec. 44. (NEW) (1) Until the repudiating party's next performance is  
888 due, the repudiating party can retract the repudiation unless, since the  
889 repudiation, the aggrieved party has cancelled the lease contract or  
890 materially changed the aggrieved party's position or otherwise indicated  
891 that the aggrieved party considers the repudiation final.

892 (2) Retraction may be by any method that clearly indicates to the  
893 aggrieved party that the repudiating party intends to perform under the  
894 lease contract and includes any assurance demanded under section 42 of  
895 this act.

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

899 Sec. 45. (NEW) (1) If without fault of the lessee, the lessor and the  
900 supplier, the agreed berthing, loading, or unloading facilities fail or the  
901 agreed type of carrier becomes unavailable or the agreed manner of  
902 delivery otherwise becomes commercially impracticable, but a  
903 commercially reasonable substitute is available, the substitute  
904 performance must be tendered and accepted.

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

907 (a) The lessor may withhold or stop delivery or cause the supplier to  
908 withhold or stop delivery unless the lessee provides a means or manner  
909 of payment that is commercially a substantial equivalent; and

910 (b) If delivery has already been taken, payment by the means or in the  
911 manner provided by the regulation discharges the lessee's obligation  
912 unless the regulation is discriminatory, oppressive, or predatory.

913 Sec. 46. (NEW) Subject to section 45 of this act on substituted  
914 performance, the following rules apply:

915 (a) Delay in delivery or nondelivery in whole or in part by a lessor or  
916 a supplier who complies with paragraphs (b) and (c) is not a default  
917 under the lease contract if performance as agreed has been made  
918 impracticable by the occurrence of a contingency the nonoccurrence of  
919 which was a basic assumption on which the lease contract was made or  
920 by compliance in good faith with any applicable foreign or domestic  
921 governmental regulation or order, whether or not the regulation or order

922 later proves to be invalid.

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

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

934 Sec. 47. (NEW) (1) If the lessee receives notification of a material or  
935 indefinite delay or an allocation justified under section 46 of this act, the  
936 lessee may by written notification to the lessor as to any goods involved,  
937 and with respect to all of the goods if under an installment lease contract  
938 the value of the whole lease contract is substantially impaired:

939 (a) Terminate the lease contract; or

940 (b) Except in a finance lease that is not a consumer lease, modify the  
941 lease contract by accepting the available quota in substitution, with due  
942 allowance from the rent payable for the balance of the lease term for the  
943 deficiency but without further right against the lessor.

944 (2) If, after receipt of a notification from the lessor under section 46 of  
945 this act, the lessee fails so to modify the lease agreement within a  
946 reasonable time not exceeding thirty days, the lease contract lapses with  
947 respect to any deliveries affected.

948 Sec. 48. (NEW) (1) In the case of a finance lease that is not a consumer  
949 lease the lessee's promises under the lease contract become irrevocable  
950 and independent upon the lessee's acceptance of the goods.

951 (2) A promise that has become irrevocable and independent under  
952 subsection (1):

953 (a) Is effective and enforceable between the parties, and by or against  
954 third parties including assignees of the parties; and

955 (b) Is not subject to cancellation, termination, modification,  
956 repudiation, excuse, or substitution without the consent of the party to  
957 whom the promise runs.

958 (3) This section does not affect the validity under any other law of a  
959 covenant in any lease contract making the lessee's promises irrevocable  
960 and independent upon the lessee's acceptance of the goods.

961 Sec. 49. (NEW) (1) Whether the lessor or the lessee is in default under  
962 a lease contract is determined by the lease agreement and this article.

963 (2) If the lessor or the lessee is in default under the lease contract, the  
964 party seeking enforcement has rights and remedies as provided in this  
965 article and, except as limited by this article, as provided in the lease  
966 agreement.

967 (3) If the lessor or the lessee is in default under the lease contract, the  
968 party seeking enforcement may reduce the party's claim to judgment, or  
969 otherwise enforce the lease contract by self-help or any available judicial  
970 procedure or nonjudicial procedure, including administrative  
971 proceeding, arbitration, or the like, in accordance with this article.

972 (4) Except as otherwise provided in subsection (1) of section 42a-1-106  
973 of the general statutes or this article or the lease agreement, the rights  
974 and remedies referred to in subsections (2) and (3) are cumulative.

975 (5) If the lease agreement covers both real property and goods, the  
976 party seeking enforcement may proceed under this part as to the goods,  
977 or under other applicable law as to both the real property and the goods  
978 in accordance with that party's rights and remedies in respect of the real  
979 property, in which case this part does not apply.

980       Sec. 50. (NEW) Except as otherwise provided in this article or the lease  
981 agreement, the lessor or lessee in default under the lease contract is not  
982 entitled to notice of default or notice of enforcement from the other party  
983 to the lease agreement.

984       Sec. 51. (NEW) (1) Except as otherwise provided in this article, the  
985 lease agreement may include rights and remedies for default in addition  
986 to or in substitution for those provided in this article and may limit or  
987 alter the measure of damages recoverable under this article.

988       (2) Resort to a remedy provided under this article or in the lease  
989 agreement is optional unless the remedy is expressly agreed to be  
990 exclusive. If circumstances cause an exclusive or limited remedy to fail of  
991 its essential purpose, or provision for an exclusive remedy is  
992 unconscionable, remedy may be had as provided in this article.

993       (3) Consequential damages may be liquidated under section 52 of this  
994 act, or may otherwise be limited, altered, or excluded unless the  
995 limitation, alteration, or exclusion is unconscionable. Limitation,  
996 alteration, or exclusion of consequential damages for injury to the person  
997 in the case of consumer goods is prima facie unconscionable but  
998 limitation, alteration, or exclusion of damages where the loss is  
999 commercial is not prima facie unconscionable.

1000       (4) Rights and remedies on default by the lessor or the lessee with  
1001 respect to any obligation or promise collateral or ancillary to the lease  
1002 contract are not impaired by this article.

1003       Sec. 52. (NEW) (1) Damages payable by either party for default, or any  
1004 other act or omission, including indemnity for loss or diminution of  
1005 anticipated tax benefits or loss or damage to lessor's residual interest,  
1006 may be liquidated in the lease agreement but only at an amount or by a  
1007 formula that is reasonable in light of the then anticipated harm caused by  
1008 the default or other act or omission.

1009       (2) If the lease agreement provides for liquidation of damages, and

1010 such provision does not comply with subsection (1), or such provision is  
1011 an exclusive or limited remedy that circumstances cause to fail of its  
1012 essential purpose, remedy may be had as provided in this article.

1013 (3) If the lessor justifiably withholds or stops delivery of goods  
1014 because of the lessee's default or insolvency, the lessee is entitled to  
1015 restitution of any amount by which the sum of his payments exceeds:

1016 (a) The amount to which the lessor is entitled by virtue of terms  
1017 liquidating the lessor's damages in accordance with subsection (1); or

1018 (b) In the absence of those terms, twenty per cent of the then present  
1019 value of the total rent the lessee was obligated to pay for the balance of  
1020 the lease term, or, in the case of a consumer lease, the lesser of such  
1021 amount or five hundred dollars.

1022 (4) A lessee's right to restitution under subsection (3) is subject to  
1023 offset to the extent the lessor establishes:

1024 (a) A right to recover damages under the provisions of this article  
1025 other than subsection (1); and

1026 (b) The amount or value of any benefits received by the lessee directly  
1027 or indirectly by reason of the lease contract.

1028 Sec. 53. (NEW) (1) On cancellation of the lease contract, all obligations  
1029 that are still executory on both sides are discharged, but any right based  
1030 on prior default or performance survives, and the cancelling party also  
1031 retains any remedy for default of the whole lease contract or any  
1032 unperformed balance.

1033 (2) On termination of the lease contract, all obligations that are still  
1034 executory on both sides are discharged but any right based on prior  
1035 default or performance survives.

1036 (3) Unless the contrary intention clearly appears, expressions of  
1037 "cancellation", "rescission", or the like of the lease contract may not be

1038 construed as a renunciation or discharge of any claim in damages for an  
1039 antecedent default.

1040 (4) Rights and remedies for material misrepresentation or fraud  
1041 include all rights and remedies available under this article for default.

1042 (5) Neither rescission nor a claim for rescission of the lease contract  
1043 nor rejection or return of the goods may bar or be deemed inconsistent  
1044 with a claim for damages or other right or remedy.

1045 Sec. 54. (NEW) (1) An action for default under a lease contract,  
1046 including breach of warranty or indemnity, must be commenced within  
1047 four years after the cause of action accrued. By the original lease contract  
1048 the parties may reduce the period of limitation to not less than one year.

1049 (2) A cause of action for default accrues when the act or omission on  
1050 which the default or breach of warranty is based is or should have been  
1051 discovered by the aggrieved party, or when the default occurs,  
1052 whichever is later. A cause of action for indemnity accrues when the act  
1053 or omission on which the claim for indemnity is based is or should have  
1054 been discovered by the indemnified party, whichever is later.

1055 (3) If an action commenced within the time limited by subsection (1) is  
1056 so terminated as to leave available a remedy by another action for the  
1057 same default or breach of warranty or indemnity, the other action may  
1058 be commenced after the expiration of the time limited and within six  
1059 months after the termination of the first action unless the termination  
1060 resulted from voluntary discontinuance or from dismissal for failure or  
1061 neglect to prosecute.

1062 (4) This section does not alter the law on tolling of the statute of  
1063 limitations nor does it apply to causes of action that have accrued before  
1064 the effective date of this act.

1065 Sec. 55. (NEW) (1) Damages based on market rent are determined  
1066 according to the rent for the use of the goods concerned for a lease term  
1067 identical to the remaining lease term of the original lease agreement and

1068 prevailing at the times specified in sections 67 and 76 of this act.

1069 (2) If evidence of rent for the use of the goods concerned for a lease  
1070 term identical to the remaining lease term of the original lease agreement  
1071 and prevailing at the times or places described in this article is not  
1072 readily available, the rent prevailing within any reasonable time before  
1073 or after the time described or at any other place or for a different lease  
1074 term which in commercial judgment or under usage of trade would  
1075 serve as a reasonable substitute for the one described may be used,  
1076 making any proper allowance for the difference, including the cost of  
1077 transporting the goods to or from the other place.

1078 (3) Evidence of a relevant rent prevailing at a time or place or for a  
1079 lease term other than the one described in this article offered by one  
1080 party is not admissible unless and until he has given the other party  
1081 notice the court finds sufficient to prevent unfair surprise.

1082 (4) If the prevailing rent or value of any goods regularly leased in any  
1083 established market is in issue, reports in official publications or trade  
1084 journals or in newspapers or periodicals of general circulation published  
1085 as the reports of that market are admissible in evidence. The  
1086 circumstances of the preparation of the report may be shown to affect its  
1087 weight but not its admissibility.

1088 Sec. 56. (NEW) (1) If a lessor fails to deliver the goods in conformity to  
1089 the lease contract or repudiates the lease contract, or a lessee rightfully  
1090 rejects the goods or justifiably revokes acceptance of the goods, then with  
1091 respect to any goods involved, and with respect to all of the goods if  
1092 under an installment lease contract the value of the whole lease contract  
1093 is substantially impaired, the lessor is in default under the lease contract  
1094 and the lessee may:

1095 (a) Cancel the lease contract;

1096 (b) Recover so much of the rent and security as has been paid and is  
1097 just under the circumstances;

1098 (c) Cover and recover damages as to all goods affected whether or not  
1099 they have been identified to the lease contract, or recover damages for  
1100 nondelivery;

1101 (d) Exercise any other rights or pursue any other remedies provided  
1102 in the lease contract.

1103 (2) If a lessor fails to deliver the goods in conformity to the lease  
1104 contract or repudiates the lease contract, the lessee may also:

1105 (a) If the goods have been identified, recover them; or

1106 (b) In a proper case, obtain specific performance or replevy the goods.

1107 (3) If a lessor is otherwise in default under a lease contract, the lessee  
1108 may exercise the rights and pursue the remedies provided in the lease  
1109 contract, which may include a right to cancel the lease, and in subsection  
1110 (3) of section 67 of this act.

1111 (4) If a lessor has breached a warranty, whether express or implied,  
1112 the lessee may recover damages.

1113 (5) On rightful rejection or justifiable revocation of acceptance, a lessee  
1114 has a security interest in goods in the lessee's possession or control for  
1115 any rent and security that has been paid and any expenses reasonably  
1116 incurred in their inspection, receipt, transportation, and care and custody  
1117 and may hold those goods and dispose of them in good faith and in a  
1118 commercially reasonable manner, subject to subsection (5) of section 75  
1119 of this act.

1120 (6) Subject to the provisions of section 48 of this act, a lessee, on  
1121 notifying the lessor of the lessee's intention to do so, may deduct all or  
1122 any part of the damages resulting from any default under the lease  
1123 contract from any part of the rent still due under the same lease contract.

1124 Sec. 57. (NEW) (1) Subject to the provisions of section 58 of this act on  
1125 default in installment lease contracts, if the goods or the tender or

1126 delivery fail in any respect to conform to the lease contract, the lessee  
1127 may reject or accept the goods or accept any commercial unit or units  
1128 and reject the rest of the goods.

1129 (2) Rejection of goods is ineffective unless it is within a reasonable  
1130 time after tender or delivery of the goods and the lessee seasonably  
1131 notifies the lessor.

1132 Sec. 58. (NEW) (1) Under an installment lease contract a lessee may  
1133 reject any delivery that is nonconforming if the nonconformity  
1134 substantially impairs the value of that delivery and cannot be cured or  
1135 the nonconformity is a defect in the required documents; but if the  
1136 nonconformity does not fall within subsection (2) and the lessor or the  
1137 supplier gives adequate assurance of its cure, the lessee must accept that  
1138 delivery.

1139 (2) Whenever nonconformity or default with respect to one or more  
1140 deliveries substantially impairs the value of the installment lease contract  
1141 as a whole there is a default with respect to the whole. But, the aggrieved  
1142 party reinstates the installment lease contract as a whole if the aggrieved  
1143 party accepts a nonconforming delivery without seasonably notifying of  
1144 cancellation or brings an action with respect only to past deliveries or  
1145 demands performance as to future deliveries.

1146 Sec. 59. (NEW) (1) Subject to any security interest of a lessee, if a lessor  
1147 or a supplier has no agent or place of business at the market of rejection,  
1148 a merchant lessee, after rejection of goods in his possession or control,  
1149 shall follow any reasonable instructions received from the lessor or the  
1150 supplier with respect to the goods. In the absence of those instructions, a  
1151 merchant lessee shall make reasonable efforts to sell, lease, or otherwise  
1152 dispose of the goods for the lessor's account if they threaten to decline in  
1153 value speedily. Instructions are not reasonable if on demand indemnity  
1154 for expenses is not forthcoming.

1155 (2) If a merchant lessee or any other lessee disposes of goods, he is  
1156 entitled to reimbursement either from the lessor or the supplier or out of

1157 the proceeds for reasonable expenses of caring for and disposing of the  
1158 goods and, if the expenses include no disposition commission, to such  
1159 commission as is usual in the trade, or if there is none, to a reasonable  
1160 sum not exceeding ten per cent of the gross proceeds.

1161 (3) In complying with this section or section 60 of this act, the lessee is  
1162 held only to good faith. Good faith conduct hereunder is neither  
1163 acceptance or conversion nor the basis of an action for damages.

1164 (4) A purchaser who purchases in good faith from a lessee pursuant to  
1165 this section or section 60 of this act takes the goods free of any rights of  
1166 the lessor and the supplier even though the lessee fails to comply with  
1167 one or more of the requirements of this article.

1168 Sec. 60 (NEW) (1) Except as otherwise provided with respect to goods  
1169 that threaten to decline in value speedily and subject to any security  
1170 interest of a lessee:

1171 (a) The lessee, after rejection of goods in the lessee's possession, shall  
1172 hold them with reasonable care at the lessor's or the supplier's  
1173 disposition for a reasonable time after the lessee's seasonable notification  
1174 of rejection;

1175 (b) If the lessor or the supplier gives no instructions within a  
1176 reasonable time after notification of rejection, the lessee may store the  
1177 rejected goods for the lessor's or the supplier's account or ship them to  
1178 the lessor or the supplier or dispose of them for the lessor's or the  
1179 supplier's account with reimbursement in the manner provided in  
1180 section 59 of this act; but

1181 (c) The lessee has no further obligations with regard to goods  
1182 rightfully rejected.

1183 (2) Action by the lessee pursuant to subsection (1) is not acceptance or  
1184 conversion.

1185 Sec. 61. (NEW) (1) If any tender or delivery by the lessor or the

1186 supplier is rejected because nonconforming and the time for  
1187 performance has not yet expired, the lessor or the supplier may  
1188 seasonably notify the lessee of the lessor's or the supplier's intention to  
1189 cure and may then make a conforming delivery within the time  
1190 provided in the lease contract.

1191 (2) If the lessee rejects a nonconforming tender that the lessor or the  
1192 supplier had reasonable grounds to believe would be acceptable with or  
1193 without money allowance, the lessor or the supplier may have a further  
1194 reasonable time to substitute a conforming tender if he seasonably  
1195 notifies the lessee.

1196 Sec. 62. (NEW) (1) In rejecting goods, a lessee's failure to state a  
1197 particular defect that is ascertainable by reasonable inspection precludes  
1198 the lessee from relying on the defect to justify rejection or to establish  
1199 default:

1200 (a) If, stated seasonably, the lessor or the supplier could have cured it;  
1201 or

1202 (b) Between merchants if the lessor or the supplier after rejection has  
1203 made a request in writing for a full and final written statement of all  
1204 defects on which the lessee proposes to rely.

1205 (2) A lessee's failure to reserve rights when paying rent or other  
1206 consideration against documents precludes recovery of the payment for  
1207 defects apparent on the face of the documents.

1208 Sec. 63. (NEW) (1) Acceptance of goods occurs after the lessee has had  
1209 a reasonable opportunity to inspect the goods and

1210 (a) The lessee signifies or acts with respect to the goods in a manner  
1211 that signifies to the lessor or the supplier that the goods are conforming  
1212 or that the lessee will take or retain them in spite of their nonconformity;  
1213 or

1214 (b) The lessee fails to make an effective rejection of the goods.

1215 (2) Acceptance of a part of any commercial unit is acceptance of that  
1216 entire unit.

1217 Sec. 64. (NEW) (1) A lessee must pay rent for any goods accepted in  
1218 accordance with the lease contract, with due allowance for goods  
1219 rightfully rejected or not delivered.

1220 (2) A lessee's acceptance of goods precludes rejection of the goods  
1221 accepted. In the case of a finance lease, if made with knowledge of a  
1222 nonconformity, acceptance cannot be revoked because of it. In any other  
1223 case, if made with knowledge of a nonconformity, acceptance cannot be  
1224 revoked because of it unless the acceptance was on the reasonable  
1225 assumption that the nonconformity would be seasonably cured.  
1226 Acceptance does not of itself impair any other remedy provided by this  
1227 article or the lease agreement for nonconformity.

1228 (3) If a tender has been accepted:

1229 (a) Within a reasonable time after the lessee discovers or should have  
1230 discovered any default, the lessee shall notify the lessor and the supplier,  
1231 if any, or be barred from any remedy against the party not notified;

1232 (b) Except in the case of a consumer lease, within a reasonable time  
1233 after the lessee receives notice of litigation for infringement or the like the  
1234 lessee shall notify the lessor or be barred from any remedy over for  
1235 liability established by the litigation; and

1236 (c) The burden is on the lessee to establish any default.

1237 (4) If a lessee is sued for breach of a warranty or other obligation for  
1238 which a lessor or a supplier is answerable over the following apply:

1239 (a) The lessee may give the lessor or the supplier, or both, written  
1240 notice of the litigation. If the notice states that the person notified may  
1241 come in and defend and that if the person notified does not do so that  
1242 person will be bound in any action against that person by the lessee by  
1243 any determination of fact common to the two litigations, then unless the

1244 person notified after reasonable receipt of the notice does come in and  
1245 defend that person is so bound.

1246 (b) The lessor or the supplier may demand in writing that the lessee  
1247 turn over control of the litigation including settlement if the claim is one  
1248 for infringement or the like or else be barred from any remedy over. If  
1249 the demand states that the lessor or the supplier agrees to bear all  
1250 expense and to satisfy any adverse judgment, then unless the lessee after  
1251 reasonable receipt of the demand does turn over control the lessee is so  
1252 barred.

1253 (5) Subsections (3) and (4) apply to any obligation of a lessee to hold  
1254 the lessor or the supplier harmless against infringement or the like.

1255 Sec. 65. (NEW) (1) A lessee may revoke acceptance of a lot or  
1256 commercial unit whose nonconformity substantially impairs its value to  
1257 the lessee if the lessee has accepted it:

1258 (a) Except in the case of a finance lease, on the reasonable assumption  
1259 that its nonconformity would be cured and it has not been seasonably  
1260 cured; or

1261 (b) Without discovery of the nonconformity if the lessee's acceptance  
1262 was reasonably induced either by the lessor's assurances or, except in the  
1263 case of a finance lease, by the difficulty of discovery before acceptance.

1264 (2) Except in the case of a finance lease that is not a consumer lease, a  
1265 lessee may revoke acceptance of a lot or commercial unit if the lessor  
1266 defaults under the lease contract and the default substantially impairs  
1267 the value of that lot or commercial unit to the lessee.

1268 (3) If the lease agreement so provides, the lessee may revoke  
1269 acceptance of a lot or commercial unit because of other defaults by the  
1270 lessor.

1271 (4) Revocation of acceptance must occur within a reasonable time after  
1272 the lessee discovers or should have discovered the ground for it and

1273 before any substantial change in condition of the goods which is not  
1274 caused by the nonconformity. Revocation is not effective until the lessee  
1275 notifies the lessor.

1276 (5) A lessee who so revokes has the same rights and duties with  
1277 regard to the goods involved as if the lessee had rejected them.

1278 Sec. 66. (NEW) (1) After a default by a lessor under the lease contract  
1279 of the type described in subsection (1) of section 56 of this act, or, if  
1280 agreed, after other default by the lessor, the lessee may cover by making  
1281 any purchase or lease of or contract to purchase or lease goods in  
1282 substitution for those due from the lessor.

1283 (2) Except as otherwise provided with respect to damages liquidated  
1284 in the lease agreement or otherwise determined pursuant to agreement  
1285 of the parties, if a lessee's cover is by a lease agreement substantially  
1286 similar to the original lease agreement and the new lease agreement is  
1287 made in good faith and in a commercially reasonable manner, the lessee  
1288 may recover from the lessor as damages (i) the present value, as of the  
1289 date of the commencement of the term of the new lease agreement, of the  
1290 rent under the new lease agreement applicable to that period of the new  
1291 lease term which is comparable to the then remaining term of the  
1292 original lease agreement minus the present value as of the same date of  
1293 the total rent for the then remaining lease term of the original lease  
1294 agreement, and (ii) any incidental or consequential damages, less  
1295 expenses saved in consequence of the lessor's default.

1296 (3) If a lessee's cover is by lease agreement that for any reason does  
1297 not qualify for treatment under subsection (2), or is by purchase or  
1298 otherwise, the lessee may recover from the lessor as if the lessee had  
1299 elected not to cover and section 67 of this act governs.

1300 Sec. 67. (NEW) (1) Except as otherwise provided with respect to  
1301 damages liquidated in the lease agreement or otherwise determined  
1302 pursuant to agreement of the parties, if a lessee elects not to cover or a  
1303 lessee elects to cover and the cover is by lease agreement that for any

1304 reason does not qualify for treatment under subsection (2) of section 66  
1305 of this act, or is by purchase or otherwise, the measure of damages for  
1306 nondelivery or repudiation by the lessor or for rejection or revocation of  
1307 acceptance by the lessee is the present value, as of the date of the default,  
1308 of the then market rent minus the present value as of the same date of  
1309 the original rent, computed for the remaining lease term of the original  
1310 lease agreement, together with incidental and consequential damages,  
1311 less expenses saved in consequence of the lessor's default.

1312 (2) Market rent is to be determined as of the place for tender or, in  
1313 cases of rejection after arrival or revocation of acceptance, as of the place  
1314 of arrival.

1315 (3) Except as otherwise agreed, if the lessee has accepted goods and  
1316 given notification, the measure of damages for nonconforming tender or  
1317 delivery or other default by a lessor is the loss resulting in the ordinary  
1318 course of events from the lessor's default as determined in any manner  
1319 that is reasonable together with incidental and consequential damages,  
1320 less expenses saved in consequence of the lessor's default.

1321 (4) Except as otherwise agreed, the measure of damages for breach of  
1322 warranty is the present value at the time and place of acceptance of the  
1323 difference between the value of the use of the goods accepted and the  
1324 value if they had been as warranted for the lease term, unless special  
1325 circumstances show proximate damages of a different amount, together  
1326 with incidental and consequential damages, less expenses saved in  
1327 warranty.

1328 Sec. 68. (NEW) (1) Incidental damages resulting from a lessor's default  
1329 include expenses reasonably incurred in inspection, receipt,  
1330 transportation, and care and custody of goods rightfully rejected or  
1331 goods the acceptance of which is justifiably revoked, any commercially  
1332 reasonable charges, expenses or commissions in connection with  
1333 effecting cover, and any other reasonable expense incident to the default.

1334 (2) Consequential damages resulting from a lessor's default include:

1335 (a) Any loss resulting from general or particular requirements and  
1336 needs of which the lessor at the time of contracting had reason to know  
1337 and which could not reasonably be prevented by cover or otherwise; and

1338 (b) Injury to person or property proximately resulting from any  
1339 breach of warranty.

1340 Sec. 69. (NEW) (1) Specific performance may be decreed if the goods  
1341 are unique or in other proper circumstances.

1342 (2) A decree for specific performance may include any terms and  
1343 conditions as to payment of the rent, damages, or other relief that the  
1344 court deems just.

1345 (3) A lessee has a right of replevin, detinue, sequestration, claim and  
1346 delivery, or the like for goods identified to the lease contract if after  
1347 reasonable effort the lessee is unable to effect cover for those goods or the  
1348 circumstances reasonably indicate that the effort will be unavailing.

1349 Sec. 70. (NEW) (1) Subject to subsection (2) and even though the goods  
1350 have not been shipped, a lessee who has paid a part or all of the rent and  
1351 security for goods identified to a lease contract on making and keeping  
1352 good a tender of any unpaid portion of the rent and security due under  
1353 the lease contract may recover the goods identified from the lessor if the  
1354 lessor becomes insolvent within ten days after receipt of the first  
1355 installment of rent and security.

1356 (2) A lessee acquires the right to recover goods identified to a lease  
1357 contract only if they conform to the lease contract.

1358 Sec. 71. (NEW) (1) If a lessee wrongfully rejects or revokes acceptance  
1359 of goods or fails to make a payment when due or repudiates with respect  
1360 to a part or the whole, then, with respect to any goods involved, and  
1361 with respect to all of the goods if under an installment lease contract the  
1362 value of the whole lease contract is substantially impaired, the lessee is in  
1363 default under the lease contract and the lessor may:

- 1364 (a) Cancel the lease contract;
- 1365 (b) Proceed respecting goods not identified to the lease contract;
- 1366 (c) Withhold delivery of the goods and take possession of goods  
1367 previously delivered;
- 1368 (d) Stop delivery of the goods by any bailee;
- 1369 (e) Dispose of the goods and recover damages, or retain the goods and  
1370 recover damages, or in a proper case recover rent;
- 1371 (f) Exercise any other rights or pursue any other remedies provided in  
1372 the lease contract.

1373 (2) If a lessor does not fully exercise a right or obtain a remedy to  
1374 which the lessor is entitled under subsection (1), the lessor may recover  
1375 the loss resulting in the ordinary course of events from the lessee's  
1376 default as determined in any reasonable manner, together with  
1377 incidental damages, less expenses saved in consequence of the lessee's  
1378 default.

1379 (3) If a lessee is otherwise in default under a lease contract, the lessor  
1380 may exercise the rights and pursue the remedies provided in the lease  
1381 contract, which may include a right to cancel the lease. In addition,  
1382 unless otherwise provided in the lease contract:

1383 (a) If the default substantially impairs the value of the lease contract to  
1384 the lessor, the lessor may exercise the rights and pursue the remedies  
1385 provided in subsection (1) or (2); or

1386 (b) If the default does not substantially impair the value of the lease  
1387 contract to the lessor, the lessor may recover as provided in subsection  
1388 (2).

1389 Sec. 72. (NEW) (1) After default by the lessee under the lease contract  
1390 of the type described in subsection (1) or (3)(a) of section 71 of this act or,  
1391 if agreed, after other default by the lessee, the lessor may:

1392 (a) Identify to the lease contract conforming goods not already  
1393 identified if at the time the lessor learned of the default they were in the  
1394 lessor's or the supplier's possession or control; and

1395 (b) Dispose of goods that demonstrably have been intended for the  
1396 particular lease contract even though those goods are unfinished.

1397 (2) If the goods are unfinished, in the exercise of reasonable  
1398 commercial judgment for the purposes of avoiding loss and of effective  
1399 realization, an aggrieved lessor or the supplier may either complete  
1400 manufacture and wholly identify the goods to the lease contract or cease  
1401 manufacture and lease, sell, or otherwise dispose of the goods for scrap  
1402 or salvage value or proceed in any other reasonable manner.

1403 Sec. 73. (NEW) (1) If a lessor discovers the lessee to be insolvent, the  
1404 lessor may refuse to deliver the goods.

1405 (2) After a default by the lessee under the lease contract of the type  
1406 described in subsection (1) or (3)(a) of section 71 of this act or, if agreed,  
1407 after other default by the lessee, the lessor has the right to take  
1408 possession of the goods. If the lease contract so provides, the lessor may  
1409 require the lessee to assemble the goods and make them available to the  
1410 lessor at a place to be designated by the lessor which is reasonably  
1411 convenient to both parties. Without removal, the lessor may render  
1412 unusable any goods employed in trade or business, and may dispose of  
1413 goods on the lessee's premises.

1414 (3) The lessor may proceed under subsection (2) without judicial  
1415 process if that it can be done without breach of the peace or the lessor  
1416 may proceed by action.

1417 Sec. 74. (NEW) (1) A lessor may stop delivery of goods in the  
1418 possession of a carrier or other bailee if the lessor discovers the lessee to  
1419 be insolvent and may stop delivery of carload, truckload, planeload, or  
1420 larger shipments of express or freight if the lessee repudiates or fails to  
1421 make a payment due before delivery, whether for rent, security or

1422 otherwise under the lease contract, or for any other reason the lessor has  
1423 a right to withhold or take possession of the goods.

1424 (2) In pursuing its remedies under subsection (1), the lessor may stop  
1425 delivery until:

1426 (a) Receipt of the goods by the lessee;

1427 (b) Acknowledgment to the lessee by any bailee of the goods, except a  
1428 carrier, that the bailee holds the goods for the lessee; or

1429 (c) Such an acknowledgment to the lessee by a carrier via reshipment  
1430 or as warehouseman.

1431 (3) (a) To stop delivery, a lessor shall so notify as to enable the bailee  
1432 by reasonable diligence to prevent delivery of the goods.

1433 (b) After notification, the bailee shall hold and deliver the goods  
1434 according to the directions of the lessor, but the lessor is liable to the  
1435 bailee for any ensuing charges or damages.

1436 (c) A carrier who has issued a nonnegotiable bill of lading is not  
1437 obliged to obey a notification to stop received from a person other than  
1438 the consignor.

1439 Sec. 75. (NEW) (1) After a default by a lessee under the lease contract  
1440 of the type described in subsection (1) or (3)(a) of section 71 of this act or  
1441 after the lessor refuses to deliver or takes possession of goods, or, if  
1442 agreed, after other default by a lessee, the lessor may dispose of the  
1443 goods concerned or the undelivered balance thereof by lease, sale, or  
1444 otherwise.

1445 (2) Except as otherwise provided with respect to damages liquidated  
1446 in the lease agreement or otherwise determined pursuant to agreement  
1447 of the parties, if the disposition is by lease agreement substantially  
1448 similar to the original lease agreement and the new lease agreement is  
1449 made in good faith and in a commercially reasonable manner, the lessor

1450 may recover from the lessee as damages (i) accrued and unpaid rent as of  
1451 the date of the commencement of the term of the new lease agreement,  
1452 (ii) the present value, as of the same date, of the total rent for the then  
1453 remaining lease term of the original lease agreement minus the present  
1454 value, as of the same date, of the rent under the new lease agreement  
1455 applicable to that period of the new lease term which is comparable to  
1456 the then remaining term of the original lease agreement, and (iii) any  
1457 incidental damages allowed under section 78 of this act, less expenses  
1458 saved in consequence of the lessee's default.

1459 (3) If the lessor's disposition is by lease agreement that for any reason  
1460 does not qualify for treatment under subsection (2), or is by sale or  
1461 otherwise, the lessor may recover from the lessee as if the lessor had  
1462 elected not to dispose of the goods and section 76 of this act governs.

1463 (4) A subsequent buyer or lessee who buys or leases from the lessor in  
1464 good faith for value as a result of a disposition under this section takes  
1465 the goods free of the original lease contract and any rights of the original  
1466 lessee even though the lessor fails to comply with one or more of the  
1467 requirements of this article.

1468 (5) The lessor is not accountable to the lessee for any profit made on  
1469 any disposition. A lessee who has rightfully rejected or justifiably  
1470 revoked acceptance shall account to the lessor for any excess over the  
1471 amount of the lessee's security interest.

1472 Sec. 76. (NEW) (1) Except as otherwise provided with respect to  
1473 damages liquidated in the lease agreement or otherwise determined  
1474 pursuant to agreement of the parties, if a lessor elects to retain the goods  
1475 or a lessor elects to dispose of the goods and the disposition is by lease  
1476 agreement that for any reason does not qualify for treatment under  
1477 subsection (2) of section 75 of this act, or is by sale or otherwise, the  
1478 lessor may recover from the lessee as damages for a default of the type  
1479 described in subsection (1) or (3)(a) of section 71 of this act, or, if agreed,  
1480 for other default of the lessee, (i) accrued and unpaid rent as of the date  
1481 of default if the lessee has never taken possession of the goods, or, if the

1482 lessee has taken possession of the goods, as of the date the lessor  
1483 repossesses the goods or an earlier date on which the lessee makes a  
1484 tender of the goods to the lessor, (ii) the present value as of the date  
1485 determined under clause (i) of the total rent for the then remaining lease  
1486 term of the original lease agreement minus the present value as of the  
1487 same date of the market rent at the place where the goods are located  
1488 computed for the same lease term, and (iii) any incidental damages  
1489 allowed under section 78 of this act, less expenses saved in consequence  
1490 of the lessee's default.

1491 (2) If the measure of damages provided in subsection (1) is inadequate  
1492 to put a lessor in as good a position as performance would have, the  
1493 measure of damages is the present value of the profit, including  
1494 reasonable overhead, the lessor would have made from full performance  
1495 by the lessee, together with any incidental damages allowed under  
1496 section 78 of this act, due allowance for costs reasonably incurred and  
1497 due credit for payments or proceeds of disposition.

1498 Sec. 77. (NEW) (1) After default by the lessee under the lease contract  
1499 of the type described in subsection (1) or (3)(a) of section 71 of this act or,  
1500 if agreed, after other default by the lessee, if the lessor complies with  
1501 subsection (2), the lessor may recover from the lessee as damages:

1502 (a) For goods accepted by the lessee and not repossessed by or  
1503 tendered to the lessor, and for conforming goods lost or damaged within  
1504 a commercially reasonable time after risk of loss passes to the lessee, (i)  
1505 accrued and unpaid rent as of the date of entry of judgment in favor of  
1506 the lessor, (ii) the present value as of the same date of the rent for the  
1507 then remaining lease term of the lease agreement, and (iii) any incidental  
1508 damages allowed under section 78 of this act, less expenses saved in  
1509 consequence of the lessee's default; and

1510 (b) For goods identified to the lease contract if the lessor is unable  
1511 after reasonable effort to dispose of them at a reasonable price or the  
1512 circumstances reasonably indicate that effort will be unavailing, (i)  
1513 accrued and unpaid rent as of the date of entry of judgment in favor of

1514 the lessor, (ii) the present value as of the same date of the rent for the  
1515 then remaining lease term of the lease agreement, and (iii) any incidental  
1516 damages allowed under section 78 of this act, less expenses saved in  
1517 consequence of the lessee's default.

1518 (2) Except as provided in subsection (3), the lessor shall hold for the  
1519 lessee for the remaining lease term of the lease agreement any goods that  
1520 have been identified to the lease contract and are in the lessor's control.

1521 (3) The lessor may dispose of the goods at any time before collection  
1522 of the judgment for damages obtained pursuant to subsection (1). If the  
1523 disposition is before the end of the remaining lease term of the lease  
1524 agreement, the lessor's recovery against the lessee for damages is  
1525 governed by section 75 or 76 of this act, and the lessor will cause an  
1526 appropriate credit to be provided against a judgment for damages to the  
1527 extent that the amount of the judgment exceeds the recovery available  
1528 pursuant to section 75 or 76 of this act.

1529 (4) Payment of the judgment for damages obtained pursuant to  
1530 subsection (1) entitles the lessee to the use and possession of the goods  
1531 not then disposed of for the remaining lease term of and in accordance  
1532 with the lease agreement.

1533 (5) After default by the lessee under the lease contract of the type  
1534 described in subsection (1) or (3)(a) of section 71 of this act or, if agreed,  
1535 after other default by the lessee, a lessor who is held not entitled to rent  
1536 under this section must nevertheless be awarded damages for  
1537 nonacceptance under section 75 or 76 of this act.

1538 Sec. 78. (NEW) Incidental damages to an aggrieved lessor include any  
1539 commercially reasonable charges, expenses, or commissions incurred in  
1540 stopping delivery, in the transportation, care and custody of goods after  
1541 the lessee's default, in connection with return or disposition of the goods,  
1542 or otherwise resulting from the default.

1543 Sec. 79. (NEW) (1) If a third party so deals with goods that have been

1544 identified to a lease contract as to cause actionable injury to a party to the  
1545 lease contract (a) the lessor has a right of action against the third party,  
1546 and (b) the lessee also has a right of action against the third party if the  
1547 lessee:

1548 (i) Has a security interest in the goods;

1549 (ii) Has an insurable interest in the goods; or

1550 (iii) Bears the risk of loss under the lease contract or has since the  
1551 injury assumed that risk as against the lessor and the goods have been  
1552 converted or destroyed.

1553 (2) If at the time of the injury the party plaintiff did not bear the risk of  
1554 loss as against the other party to the lease contract and there is no  
1555 arrangement between them for disposition of the recovery, his suit or  
1556 settlement, subject to his own interest, is as a fiduciary for the other party  
1557 to the lease contract.

1558 (3) Either party with the consent of the other may sue for the benefit of  
1559 whom it may concern.

1560 Sec. 80. (NEW) In addition to any other recovery permitted by this  
1561 article or other law, the lessor may recover from the lessee an amount  
1562 that will fully compensate the lessor for any loss of or damage to the  
1563 lessor's residual interest in the goods caused by the default of the lessee.

1564 Sec. 81. Section 42a-1-105 of the general statutes is repealed and the  
1565 following is substituted in lieu thereof:

1566 (1) Except as provided hereafter in this section, when a transaction  
1567 bears a reasonable relation to this state and also to another state or  
1568 nation the parties may agree that the law either of this state or of such  
1569 other state or nation shall govern their rights and duties. Failing such  
1570 agreement this title applies to transactions bearing an appropriate  
1571 relation to this state.

1572 (2) Where one of the following provisions of this title specifies the  
1573 applicable law, that provision governs and a contrary agreement is  
1574 effective only to the extent permitted by the law, including the conflict  
1575 of laws rules, so specified:

1576 Rights of creditors against sold goods. Section 42a-2-402.

1577 Applicability of the article on leases. Sections 5 and 6 of this act.

1578 Applicability of the article on bank deposits and collections. Section  
1579 42a-4-102.

1580 Governing law in the article on funds transfers. Section 42a-4a-507.

1581 Letters of credit. Section 42a-5-116.

1582 Applicability of the article on investment securities. Section 42a-8-  
1583 110.

1584 Perfection provisions of the article on secured transactions. Section  
1585 42a-9-103a.

1586 Sec. 82. Subdivision (37) of section 42a-1-201 of the general statutes  
1587 is repealed and the following is substituted in lieu thereof:

1588 (37) (A) "Security interest" means an interest in personal property or  
1589 fixtures which secures payment or performance of an obligation. The  
1590 retention or reservation of title by a seller of goods notwithstanding  
1591 shipment or delivery to the buyer is limited in effect to a reservation of  
1592 a "security interest". The term also includes any interest of a buyer of  
1593 accounts or chattel paper which is subject to article 9. The special  
1594 property interest of a buyer of goods on identification of [such] those  
1595 goods to a contract for sale under section 42a-2-401 is not a "security  
1596 interest", but a buyer may also acquire a "security interest" by  
1597 complying with article 9. Unless a [lease or] consignment is intended  
1598 as security, reservation of title thereunder is not a "security interest",  
1599 but a consignment [is] in any event is subject to the provisions of

1600 section 42a-2-326 concerning consignment sales. [Whether a lease is  
1601 intended as security is to be determined by the facts of each case;  
1602 however, (a) the inclusion of an option to purchase does not of itself  
1603 make the lease one intended for security, and (b) an agreement that  
1604 upon compliance with the terms of the lease the lessee shall become or  
1605 has the option to become the owner of the property for no additional  
1606 consideration or for a nominal consideration does make the lease one  
1607 intended for security.]

1608 (B) Whether a transaction creates a lease or security interest is  
1609 determined by the facts of each case; however, a transaction creates a  
1610 security interest if the consideration the lessee is to pay the lessor for the  
1611 right to possession and use of the goods is an obligation for the term of  
1612 the lease not subject to termination by the lessee, and (i) the original term  
1613 of the lease is equal to or greater than the remaining economic life of the  
1614 goods, (ii) the lessee is bound to renew the lease for the remaining  
1615 economic life of the goods or is bound to become the owner of the goods,  
1616 (iii) the lessee has an option to renew the lease for the remaining  
1617 economic life of the goods for no additional consideration or nominal  
1618 additional consideration upon compliance with the lease agreement, or  
1619 (iv) the lessee has an option to become the owner of the goods for no  
1620 additional consideration or nominal additional consideration upon  
1621 compliance with the lease agreement.

1622 (C) A transaction does not create a security interest merely because it  
1623 provides that (i) the present value of the consideration the lessee is  
1624 obligated to pay the lessor for the right to possession and use of the  
1625 goods is substantially equal to or is greater than the fair market value of  
1626 the goods at the time the lease is entered into, (ii) the lessee assumes risk  
1627 of loss of the goods, or agrees to pay taxes, insurance, filing, recording or  
1628 registration fees, or service or maintenance costs with respect to the  
1629 goods, (iii) the lessee has an option to renew the lease or to become the  
1630 owner of the goods, (iv) the lessee has an option to renew the lease for a  
1631 fixed rent that is equal to or greater than the reasonably predictable fair  
1632 market rent for the use of the goods for the term of the renewal at the

1633 time the option is to be performed, or (v) the lessee has an option to  
1634 become the owner of the goods for a fixed price that is equal to or greater  
1635 than the reasonably predictable fair market value of the goods at the time  
1636 the option is to be performed.

1637 (D) For purposes of this subdivision: (i) Additional consideration is  
1638 not nominal if (a) when the option to renew the lease is granted to the  
1639 lessee the rent is stated to be the fair market rent for the use of the goods  
1640 for the term of the renewal determined at the time the option is to be  
1641 performed, or (b) when the option to become the owner of the goods is  
1642 granted to the lessee the price is stated to be the fair market value of the  
1643 goods determined at the time the option is to be performed. Additional  
1644 consideration is nominal if it is less than the lessee's reasonably  
1645 predictable cost of performing under the lease agreement if the option is  
1646 not exercised; (ii) "reasonably predictable" and "remaining economic life  
1647 of the goods" are to be determined with reference to the facts and  
1648 circumstances at the time the transaction is entered into; and (iii) "present  
1649 value" means the amount as of a date certain of one or more sums  
1650 payable in the future, discounted to the date certain. The discount is  
1651 determined by the interest rate specified by the parties if the rate is not  
1652 manifestly unreasonable at the time the transaction is entered into;  
1653 otherwise, the discount is determined by a commercially reasonable rate  
1654 that takes into account the facts and circumstances of each case at the  
1655 time the transaction was entered into.

1656 (E) For purposes of this [section] subdivision, "security interest"  
1657 does not include a rent-to-own agreement, as defined in section 42-240.

1658 Sec. 83. Section 42a-9-113 of the general statutes is repealed and the  
1659 following is substituted in lieu thereof:

1660 A security interest arising solely under article 2 or sections 1 to 80,  
1661 inclusive, of this act, is subject to the provisions of this article except  
1662 that to the extent that and so long as the debtor does not have or does  
1663 not lawfully obtain possession of the goods (a) no security agreement  
1664 is necessary to make the security interest enforceable; and (b) no filing

1665 is required to perfect the security interest; and (c) the rights of the  
1666 secured party on default by the debtor are governed (i) by article 2 in  
1667 the case of a security interest arising solely under said article, or (ii) by  
1668 sections 1 to 80, inclusive, of this act in the case of a security interest  
1669 arising solely under said sections.

**Statement of Purpose:**

To add article 2A concerning leases to the Uniform Commercial Code.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*