



House of Representatives

File No. 586

General Assembly

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(Reprint of File No. 447)

Substitute House Bill No. 5653
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
April 27, 2002

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) (*Effective October 1, 2002*) Sections 1 to 90,
2 inclusive, of this act may be cited as "Uniform Commercial Code –
3 Leases".

4 Sec. 2. (NEW) (*Effective October 1, 2002*) (a) In sections 1 to 90,
5 inclusive, of this act:

6 (1) "Authenticate" means:

7 (A) To sign; or

8 (B) To execute or otherwise adopt a symbol, or encrypt or similarly
9 process a record in whole or in part, with the present intent of the
10 authenticating person to identify the person and adopt or accept a
11 record.

12 (2) "Cancellation" means an act by either party which ends a lease

13 contract because of a default by the other party.

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

21 (4) "Computer" means an electronic device that can perform
22 substantial computations, including numerous arithmetic operations
23 or logic operations, without human intervention during the
24 computation or operation.

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

28 (6) "Conspicuous", with reference to a term, means so written,
29 displayed or otherwise presented that a reasonable person against
30 which it is to operate ought to have noticed it. A term in an electronic
31 record intended to evoke a response by an electronic agent is
32 conspicuous if it is presented in a form that would enable a reasonably
33 configured electronic agent to take it into account or react without
34 review of the record by an individual. Conspicuous terms include the
35 following:

36 (A) With respect to a person:

37 (i) A heading in capitals in a size equal to or greater than, or in
38 contrasting type, font or color to, the surrounding text;

39 (ii) Language in the body of a record or display in larger or other
40 contrasting type, font or color or set off from the surrounding text by
41 symbols or other marks that call attention to the language; and

42 (iii) A term prominently referenced in an electronic record or display

43 which is readily accessible and reviewable from the record or display;
44 and

45 (B) With respect to a person or an electronic agent, a term or
46 reference to a term that is so placed in a record or display that the
47 person or electronic agent can not proceed without taking some action
48 with respect to the term or reference.

49 (7) "Consumer" means an individual who leases or contracts to lease
50 goods that, at the time of contracting, are intended by the individual to
51 be used primarily for personal, family or household purposes.
52 Personal, family or household use does not include professional or
53 commercial purposes, including agriculture, business management
54 and investment management, other than management of the
55 individual's personal or family investments.

56 (8) "Consumer lease" means a lease between a merchant lessor and a
57 consumer.

58 (9) "Delivery" means the voluntary transfer of physical possession or
59 control of goods.

60 (10) "Electronic" means relating to technology having electrical,
61 digital, magnetic, wireless, optical or electromagnetic capabilities or
62 similar capabilities.

63 (11) "Electronic agent" means a computer program or electronic or
64 other automated means used to initiate an action or to respond to
65 electronic messages or performances without intervention by an
66 individual at the time of the action or response.

67 (12) "Electronic message" means an electronic record or display
68 stored, generated or transmitted by electronic means for purposes of
69 communication to another person or electronic agent.

70 (13) "Electronic event" means an electronic authentication, message,
71 record or performance.

72 (14) "Finance lease" means a lease with respect to which:

73 (A) The lessor does not select, manufacture or supply the goods;

74 (B) The lessor acquires the goods or the right to possession and use
75 of the goods in connection with the lease or, in the case of goods that
76 have been leased previously by the lessor and are not being leased to a
77 consumer, in connection with another lease; and

78 (C) One of the following occurs:

79 (i) The lessee receives a copy of the agreement by which the lessor
80 acquired, or proposes to acquire, the goods or the right to possession
81 and use of the goods before authenticating the lease agreement;

82 (ii) The lessee's approval of the agreement or of the general
83 contractual terms under which the lessor acquired or proposes to
84 acquire the goods or the right to possession and use of the goods is a
85 condition to the effectiveness of the lease contract;

86 (iii) The lessee, before authenticating the lease agreement, receives
87 an accurate and complete statement designating the promises and
88 warranties, and any disclaimers of warranties, limitations or
89 modifications of remedies, or liquidated damages, including those of a
90 third party, such as the manufacturer of the goods, provided to the
91 lessor by the person supplying the goods in connection with or as part
92 of the contract by which the lessor acquired the goods or the right to
93 possession and use of the goods; or

94 (iv) If the lease is not a consumer lease, before the lessee
95 authenticates the lease agreement, the lessor informs the lessee in
96 writing:

97 (I) Of the identity of the person supplying the goods to the lessor,
98 unless the lessee has selected such person and directed the lessor to
99 acquire the goods or the right to possession and use of the goods from
100 such person;

101 (II) That the lessee is entitled under sections 1 to 90, inclusive, of this
102 act to the promises and warranties, including those of any third party,
103 provided to the lessor by the person supplying the goods in connection
104 with or as part of the contract by which the lessor acquired the goods
105 or the right to possession and use of the goods; and

106 (III) That the lessee may communicate with the person supplying
107 the goods to the lessor and receive an accurate and complete statement
108 of such promises and warranties, including any disclaimers and
109 limitations of such promises and warranties, or a statement of
110 remedies.

111 (15) "Good faith" means honesty in fact and the observance of
112 reasonable commercial standards of fair dealing.

113 (16) "Goods" means all things that are movable at the time of
114 identification to a lease contract or that are fixtures. The term includes
115 the unborn young of animals. The term does not include money in
116 which the rent is to be paid, the subject of foreign exchange
117 transactions, documents, letters of credit, instruments, investment
118 property, accounts, chattel paper or general intangibles, payment
119 intangibles or minerals, or the like, including oil and gas, before
120 extraction.

121 (17) "Information processing system" means an electronic system for
122 creating, generating, sending, receiving, storing, displaying or
123 processing information.

124 (18) "Lease" means the transfer of the right to possession and use of
125 goods for a period in return for consideration. The term includes a
126 sublease unless the context clearly indicates otherwise. The term does
127 not include a sale, including a sale on approval or a sale or return, or
128 retention or creation of a security interest.

129 (19) "Lease agreement" means the bargain, with respect to the lease,
130 of the lessor and the lessee in fact as found in their language or
131 inferred from other circumstances, including course of performance,

132 course of dealing, or usage of trade as provided in sections 1 to 90,
133 inclusive, of this act. The term includes a sublease agreement unless
134 the context clearly indicates otherwise.

135 (20) "Lease contract" means the total legal obligation resulting from
136 the lease agreement as affected by sections 1 to 90, inclusive, of this act
137 and other applicable law. The term includes a sublease contract unless
138 the context clearly indicates otherwise.

139 (21) "Leasehold interest" means the interest of the lessor or the lessee
140 under a lease contract.

141 (22) "Lessee" means a person that acquires the right to possession
142 and use of goods under a lease. The term includes a sublessee unless
143 the context clearly indicates otherwise.

144 (23) "Lessee in ordinary course of business" means a person that, in
145 good faith and without knowledge that the person's lease is in
146 violation of ownership rights, a security interest or a leasehold interest
147 of a third party in the goods, leases in the ordinary course from a
148 person in the business of selling or leasing goods of that kind for cash
149 or by exchange of other property or on secured or unsecured credit,
150 including receiving goods or documents of title under a preexisting
151 lease contract, but not including a transfer in bulk, or as security for or
152 in total or partial satisfaction of a money debt. The term does not
153 include a pawnbroker.

154 (24) "Lessor" means a person that transfers the right to possession
155 and use of goods under a lease. The term includes a sublessor unless
156 the context clearly indicates otherwise.

157 (25) "Lessor's residual interest" means the lessor's interest in goods
158 after expiration, termination or cancellation of a lease contract.

159 (26) "Lien" means a charge against or interest in goods to secure
160 payment of a debt or performance of an obligation. The term does not
161 include a security interest.

162 (27) "Lot" means a parcel or single article that is the subject matter of
163 a separate lease or delivery, whether or not it is sufficient to perform
164 the lease contract.

165 (28) "Merchant lessee" means a lessee that is a merchant with respect
166 to goods of the kind subject to the lease.

167 (29) "Present value" means the amount as of a date certain of one or
168 more sums payable in the future, discounted to the date certain. In
169 determining present value, the discount is determined by the interest
170 rate specified by the parties if the rate was not manifestly unreasonable
171 at the time the transaction was entered into. Otherwise, the discount is
172 determined by a commercially reasonable rate that takes into account
173 the facts and circumstances of each case at the time the transaction was
174 entered into.

175 (30) "Receive" means:

176 (A) With respect to goods, to take delivery; or

177 (B) With respect to a notice:

178 (i) To come to a person's attention; or

179 (ii) To be delivered to and available at a location designated by
180 agreement for the purpose of notice, or, in the absence of an agreed
181 location:

182 (I) To be delivered at the person's residence, or the person's place of
183 business through which the contract was made, or at any other place
184 held out by the person as a place for the receipt of such notices; or

185 (II) In the case of an electronic record, to come into existence in an
186 information processing system in a form capable of being processed by
187 or perceived from a system of that type, if the recipient uses, has
188 designated or holds out that system as a place for the receipt of the
189 notices.

190 (31) "Record" means information that is inscribed on a tangible
191 medium or that is stored in an electronic or other medium and is
192 retrievable in perceivable form.

193 (32) "Send" means, with any costs provided for and properly
194 addressed or directed as reasonable under the circumstances or as
195 otherwise agreed, to (A) deposit in the mail or with a commercially
196 reasonable carrier, (B) deliver for transmission to or creation in another
197 location or system, or (C) take the steps necessary to initiate
198 transmission to or creation in another location or system. In addition,
199 with respect to an electronic message, the term means to initiate
200 operations that in the ordinary course will cause the record to come
201 into existence in an information processing system in a form capable of
202 being processed by or perceived from a system of that type by the
203 recipient, if the recipient uses, has designated or holds out that system
204 or address as a place for the receipt of communications of the kind.
205 Receipt within the time in which it would have arrived if properly sent
206 has the effect of a proper sending.

207 (33) "Sublease" means a lease of goods whose right to possession
208 and use is acquired by the lessor as a lessee under an existing lease.

209 (34) "Supplier" means a person from which a lessor buys or leases
210 goods to be leased under a finance lease.

211 (35) "Supply contract" means a contract under which a lessor buys
212 or leases goods to be leased.

213 (36) "Termination" means the ending of a contract or a part thereof
214 by an act by a party under a power created by agreement or law, or by
215 operation of the terms of the agreement for a reason other than for a
216 default by the other party.

217 (b) The following definitions in other articles of title 42a of the
218 general statutes apply to sections 1 to 90, inclusive, of this act:

219 "Account". Section 42a-9-102(a)(2) of the general statutes, as

- 220 amended.
- 221 "Between merchants". Section 42a-2-104(3) of the general statutes.
- 222 "Buyer". Section 42a-2-103(1)(a) of the general statutes.
- 223 "Chattel paper". Section 42a-9-102(a)(11) of the general statutes, as
224 amended.
- 225 "Consumer goods". Section 42a-9-102(a)(23) of the general statutes,
226 as amended.
- 227 "Document". Section 42a-9-102(a)(30) of the general statutes, as
228 amended.
- 229 "Entrusting". Section 42a-2-403(3) of the general statutes.
- 230 "General intangible". Section 42a-9-102(a)(42) of the general statutes,
231 as amended.
- 232 "Instrument". Section 42a-9-102(a)(47) of the general statutes, as
233 amended.
- 234 "Merchant". Section 42a-2-104(1) of the general statutes.
- 235 "Mortgage". Section 42a-9-102(a)(55) of the general statutes, as
236 amended.
- 237 "Pursuant to commitment". Section 42a-9-102(a)(68) of the general
238 statutes, as amended.
- 239 "Sale". Section 42a-2-106(1) of the general statutes.
- 240 "Sale on approval". Section 42a-2-326(1)(a) of the general statutes, as
241 amended.
- 242 "Sale or return". Section 42a-2-326(1)(b) of the general statutes, as
243 amended.
- 244 "Seller". Section 42a-2-103(1)(d) of the general statutes.

245 (c) In addition, article 1 of title 42a of the general statutes contains
246 general definitions and principles of construction that apply
247 throughout sections 1 to 90, inclusive, of this act.

248 Sec. 3. (NEW) (*Effective October 1, 2002*) Sections 1 to 90, inclusive, of
249 this act apply to any transaction regardless of form which creates a
250 lease.

251 Sec. 4. (NEW) (*Effective October 1, 2002*) (a) A transaction subject to
252 sections 1 to 90, inclusive, of this act is also subject to:

253 (1) Any certificate of title statute covering automobiles, trailers,
254 mobile homes, boats, farm tractors or the like, including chapters 247,
255 282 and 283 of the general statutes and sections 21-67a and 49-5 of the
256 general statutes, except as to the rights of a lessee in the ordinary
257 course of business under subsection (d) of section 31 of this act and
258 subsection (d) of section 32 of this act whose rights arise before a
259 certificate of title covering the goods is effective in the name of any
260 other purchaser;

261 (2) Any applicable certificate of title statute of another jurisdiction;

262 (3) Any applicable law which establishes a different rule for
263 consumer leases; and

264 (4) Any other law of this state to which the transaction is subject,
265 such as laws dealing with:

266 (A) The sale or lease of agricultural products;

267 (B) The consignment or transfer by artists of works of art or fine
268 prints;

269 (C) Distribution agreements, franchises and other relationships
270 through which goods are leased;

271 (D) Liability for products which cause injury to person or property;

- 272 (E) The making and disclaimer of warranties;
- 273 (F) Dealers in particular products, such as automobiles, motorized
274 wheelchairs, agricultural equipment and hearing aids; and
- 275 (G) Noncommercial motor vehicles leases subject to chapter 742a of
276 the general statutes.
- 277 (b) If a law of this state applies to a transaction subject to sections 1
278 to 90, inclusive, of this act, the following rules apply:
- 279 (1) A requirement that a term, waiver, notice or disclaimer be in a
280 writing is satisfied by a record.
- 281 (2) A requirement that a writing or a term be signed is satisfied by
282 an authentication.
- 283 (c) Except for the rights of a lessee in the ordinary course of business
284 under subdivision (1) of subsection (a) of this section, in the event of a
285 conflict between sections 1 to 90, inclusive, of this act, other than
286 section 5, 28 or 29 of this act, and a law referred to in subsection (a) of
287 this section, the law referred to in subsection (a) of this section governs.
- 288 (d) Failure to comply with the laws referred to in subsection (a) of
289 this section has only the effect specified therein.
- 290 Sec. 5. (NEW) (*Effective October 1, 2002*) (a) This section applies to
291 goods covered by a certificate of title, even if there is no other
292 relationship between the jurisdiction under whose certificate of title
293 law the goods are covered and the goods or the lessee or lessor.
- 294 (b) Goods become covered by a certificate of title when a valid
295 application for the certificate of title and the application fee are
296 delivered to the appropriate authority. Goods cease to be covered by a
297 certificate of title at the earlier of the time the certificate of title ceases
298 to be effective under the law of the issuing jurisdiction or the time the
299 goods become covered subsequently by a certificate of title issued by
300 another jurisdiction.

301 (c) Subject to subsection (d) of section 31 of this act and subsection
302 (d) of section 32 of this act, with respect to goods covered by a
303 certificate of title under a statute of this state or of another jurisdiction,
304 compliance and the effect of compliance or noncompliance with the
305 certificate of title statute are governed by the local law of the
306 jurisdiction whose certificate covers the goods from the time the goods
307 become covered by the certificate until the goods cease to be covered
308 by the certificate.

309 Sec. 6. (NEW) (*Effective October 1, 2002*) (a) A choice-of-law term in a
310 consumer lease contract is not enforceable if the law chosen is that of a
311 jurisdiction other than one in which the lessee resides at the time the
312 lease agreement becomes enforceable or within thirty days thereafter
313 or in which the goods are to be used.

314 (b) The parties may choose an exclusive judicial forum. However, in
315 a consumer lease, the law of the forum is governed by subsection (d) of
316 section 51-345 of the general statutes and any choice of forum in a term
317 of a consumer lease must comply with said section. A choice of forum
318 in a term of an agreement is not exclusive unless the agreement
319 expressly so provides.

320 Sec. 7. (NEW) (*Effective October 1, 2002*) (a) If a court as a matter of
321 law finds that a lease contract or any term thereof to have been
322 unconscionable at the time it was made, the court may refuse to
323 enforce the contract, enforce the remainder of the contract without the
324 unconscionable term or so limit the application of an unconscionable
325 term as to avoid an unconscionable result.

326 (b) With respect to a consumer lease, if the court finds as a matter of
327 law that a lease contract or a term of the contract was induced by
328 unconscionable conduct or that unconscionable conduct has occurred
329 in the collection of a claim arising from the lease contract, the court
330 may grant appropriate relief.

331 (c) If it is claimed or appears to the court that a lease contract or any
332 term thereof, or any conduct that induced a lease contract or any term

333 thereof or that occurred in the collection of a claim arising from the
334 lease contract, may be unconscionable, the parties must be afforded a
335 reasonable opportunity to present evidence as to the commercial
336 setting, purpose and effect of the lease contract, term or conduct to aid
337 the court in making the determination.

338 (d) In an action in which a lessee claims unconscionability with
339 respect to a consumer lease, the following rules apply:

340 (1) If the court finds unconscionability under subsection (a) or (b) of
341 this section, the court shall award reasonable attorney's fees to the
342 lessee.

343 (2) In determining attorney's fees, the amount of the recovery on
344 behalf of the claimant under subsection (a) or (b) of this section is not
345 controlling.

346 Sec. 8. (NEW) (*Effective October 1, 2002*) (a) A term in a lease
347 agreement providing that one party or the party's successor in interest
348 may accelerate payment or performance or require collateral or
349 additional collateral "at will" or when the party "deems itself insecure",
350 or words of similar import, shall be construed to mean that the party
351 shall have power to do so only if the party in good faith believes that
352 the prospect of payment or performance is impaired.

353 (b) In a consumer lease, the burden of establishing good faith under
354 subsection (a) of this section is on the party that exercised the power. In
355 all other leases, the burden of establishing lack of good faith is on the
356 party against which the power has been exercised.

357 Sec. 9. (NEW) (*Effective October 1, 2002*) (a) Unless a section in
358 sections 1 to 90, inclusive, of this act otherwise provides, the effect of
359 any provision of sections 1 to 90, inclusive, of this act may be varied by
360 agreement.

361 (b) The presence of mandatory language, such as "must" or "shall",
362 or the absence of enabling language, such as "unless otherwise agreed",

363 does not by itself preclude the parties from varying by agreement a
364 provision of sections 1 to 90, inclusive, of this act.

365 (c) Whenever sections 1 to 90, inclusive, of this act allocate a risk or
366 impose a burden as between the parties, they may agree to shift the
367 allocation and apportion the risk or burden.

368 Sec. 10. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
369 provided in this section, a lease contract is not enforceable by way of
370 action or defense unless:

371 (1) The total payments to be made under the lease contract,
372 excluding payments for options to renew or buy, are less than one
373 thousand dollars; or

374 (2) There is a record, authenticated by the party against which
375 enforcement is sought or by such party's authorized agent as the
376 record of such person, which is sufficient to indicate that a lease
377 contract has been made between the parties and to describe the goods
378 leased and the duration of the lease.

379 (b) A record is not insufficient merely because it omits a term,
380 including a quantity term, or incorrectly states a term agreed upon,
381 but, if the record contains a quantity term, the contract is not
382 enforceable beyond the quantity of goods shown in the record.

383 (c) Any description of the leased goods or of the duration of the
384 lease is sufficient and satisfies subdivision (2) of subsection (a) of this
385 section, whether or not it is specific, if it reasonably identifies what is
386 described.

387 (d) An otherwise valid lease contract that does not satisfy the
388 requirements of subsection (a) of this section is nevertheless
389 enforceable:

390 (1) If the goods are to be specially manufactured or obtained for the
391 lessee and are not suitable for lease or sale by the lessor to others in the
392 ordinary course of business, and the lessor, before notice of repudiation

393 is received and under circumstances that reasonably indicate that the
394 goods are for the lessee, has made either a substantial beginning of
395 their manufacture or commitments for their procurement;

396 (2) If the party against which enforcement is sought admits in the
397 party's pleading, testimony in court or otherwise under oath that a
398 lease contract was made, but the lease contract is not enforceable under
399 this subdivision beyond the quantity of goods admitted; or

400 (3) With respect to goods that have been received and accepted by
401 the lessee.

402 (e) The duration of a lease under a lease contract referred to in
403 subsection (d) of this section is:

404 (1) If there is a record authenticated by the party against which
405 enforcement is sought or by such party's authorized agent specifying
406 the duration of the lease, the period so specified;

407 (2) If the party against which enforcement is sought admits in such
408 party's pleading or testimony, or otherwise in court, the duration of the
409 lease, the period so admitted; or

410 (3) A reasonable duration.

411 (f) An enforceable lease contract under this section is not
412 unenforceable merely because it is not capable of being performed
413 within one year or any other applicable period after its making.

414 (g) The affixing of a seal to a record evidencing a lease contract or
415 offer does not make the record a sealed instrument. The law with
416 respect to sealed instruments does not apply to the lease contract or
417 offer.

418 Sec. 11. (NEW) (*Effective October 1, 2002*) (a) Terms on which the
419 confirmatory records of the parties agree, or which are otherwise set
420 forth in a record intended by the parties as a final expression of their
421 agreement with respect to the included terms, may not be contradicted

422 by evidence of any previous agreement or of a contemporaneous oral
423 agreement. However, terms in such a record may be supplemented by
424 evidence of:

425 (1) Consistent additional terms, unless the court finds that the
426 record was intended as a complete and exclusive statement of the
427 terms of the agreement; and

428 (2) Course of performance, course of dealing or usage of trade.

429 (b) Terms in a record may be explained by evidence of course of
430 performance, course of dealing or usage of trade without a preliminary
431 determination by the court that the language used is ambiguous.
432 Terms in a record may also be explained from other sources as
433 determined by the court under applicable law.

434 Sec. 12. (NEW) (*Effective October 1, 2002*) (a) A lease contract may be
435 made in any manner sufficient to show agreement, including by offer
436 and acceptance, conduct of both parties which recognizes the existence
437 of a lease contract or the interaction of electronic agents.

438 (b) If the parties so intend, an agreement sufficient to constitute a
439 lease contract may be found even if the time of its making is
440 undetermined, one or more terms are left open or to be agreed upon,
441 the records of the parties do not otherwise establish a lease contract or
442 one party reserves the right to modify terms.

443 (c) Even if one or more terms are left open or to be agreed upon, a
444 lease contract does not fail for indefiniteness if the parties intended to
445 make a lease contract and there is a reasonably certain basis for giving
446 an appropriate remedy.

447 Sec. 13. (NEW) (*Effective October 1, 2002*) An offer by a merchant to
448 enter into a lease contract made in an authenticated record that by its
449 terms gives assurance that the offer will be held open is not revocable
450 for lack of consideration during the time stated. If a time is not stated,
451 the offer is irrevocable for a reasonable time not exceeding ninety days.

452 A term of assurance in a record supplied by the offeree is ineffective
453 unless the term is conspicuous.

454 Sec. 14. (NEW) (*Effective October 1, 2002*) (a) Unless otherwise
455 unambiguously indicated by the language or circumstances, an offer to
456 make a lease contract must be construed as inviting acceptance in any
457 manner and by any medium reasonable under the circumstances.

458 (b) If the beginning of a requested performance is a reasonable
459 mode of acceptance, an offeror that is not notified of acceptance within
460 a reasonable time may treat the offer as having lapsed before
461 acceptance.

462 Sec. 15. (NEW) (*Effective October 1, 2002*) Except as otherwise
463 provided in sections 16 to 19, inclusive, of this act, the following rules
464 apply:

465 (1) A lease contract may be formed by the interaction of electronic
466 agents. If the interaction resulting from the electronic agents' engaging
467 in operations is sufficient to show an agreement under section 12 or 14
468 of this act, a lease contract is formed unless the operations resulted
469 from fraud, electronic mistake or the like.

470 (2) A lease contract may be formed by the interaction of an electronic
471 agent and an individual, acting on the individual's own behalf or for
472 another person. A lease contract is formed if the individual takes
473 actions that the individual is free to refuse to take or makes a statement
474 that the individual has reason to know will:

475 (A) Cause the electronic agent to complete the transaction or
476 performance; or

477 (B) Indicate acceptance of an offer, regardless of other expressions or
478 actions by the individual to which the electronic agent cannot react.

479 (3) In an interaction between individuals, if an offer evokes an
480 electronic message in response, a lease contract is formed:

481 (A) If the offer is accepted under section 14 of this act, when the
482 acceptance is received; or

483 (B) If the offer is accepted by an electronic performance, when the
484 performance is received, unless the originating message required
485 acceptance in a different manner.

486 Sec. 16. (NEW) (*Effective October 1, 2002*) (a) A record or
487 authentication may not be denied legal effect or enforceability solely
488 because it is in electronic form.

489 (b) Sections 1 to 90, inclusive, of this act do not require that a record
490 or authentication be generated, stored, sent, received or otherwise
491 processed by electronic means or in electronic form.

492 (c) In any transaction, a person may establish reasonable
493 requirements regarding the type of authentication or record acceptable
494 to such person.

495 Sec. 17. (NEW) (*Effective October 1, 2002*) An electronic record is
496 attributed to a person if it was the act of the person or such person's
497 electronic agent, or if the person is otherwise bound by it under the
498 law of agency. The party relying on attribution of an electronic record
499 to another person has the burden of establishing attribution.

500 Sec. 18. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
501 provided in subsection (b) of this section, an electronic record is
502 effective when received, even if no other person is aware of its receipt.

503 (b) If an offer in an electronic message evokes an electronic message
504 in response, a lease contract, if any, is formed as determined in section
505 15 of this act.

506 (c) Receipt of an electronic acknowledgment establishes that the
507 message was received but does not establish by itself that the content
508 sent corresponds to the content received.

509 Sec. 19. (NEW) (*Effective October 1, 2002*) (a) A person that uses an

510 electronic agent for authentication, agreement or performance is bound
511 by the operations of the electronic agent even if no person was aware
512 of or reviewed the electronic agent's actions or the results of the
513 operations.

514 (b) Whether a lease contract is formed by the interaction of
515 electronic agents or the interaction of an electronic agent and a person
516 is determined by section 15 of this act.

517 Sec. 20. (NEW) (*Effective October 1, 2002*) (a) If a lease contract
518 involves repeated occasions for performance by either party with
519 knowledge of the nature of the performance and opportunity for
520 objection to it by the other, any course of performance accepted or
521 acquiesced in without objection is relevant to determine the meaning
522 of the agreement.

523 (b) The express terms of an agreement and any course of
524 performance, course of dealing and usage of trade must be construed
525 whenever reasonable as consistent with each other. However, if the
526 construction is unreasonable:

527 (1) Express terms prevail over course of performance, course of
528 dealing and usage of trade;

529 (2) Course of performance prevails over course of dealing and usage
530 of trade; and

531 (3) Course of dealing prevails over usage of trade.

532 (c) Subject to section 21 of this act, course of performance is relevant
533 to show a waiver or modification of a term inconsistent with the course
534 of performance.

535 Sec. 21. (NEW) (*Effective October 1, 2002*) (a) An agreement made in
536 good faith modifying a lease contract needs no consideration to be
537 binding.

538 (b) An authenticated record containing a term that prohibits

539 modification or rescission except by an authenticated record may not
540 be otherwise modified or rescinded. Such a term in a form or record
541 supplied by a merchant to a nonmerchant must be separately
542 authenticated. A party whose language or conduct is inconsistent with
543 the term is precluded from asserting the term if the assertion is unjust
544 in view of a material change of position in reliance on the language or
545 conduct.

546 (c) A condition in a lease contract may be waived by the party for
547 whose benefit it was included. Language or conduct is relevant to
548 show a waiver. A party that has made a waiver affecting an executory
549 portion of a lease contract may retract the waiver by reasonable notice
550 received by the other party that strict performance will be required of
551 any term waived, unless the retraction would be unjust in view of a
552 material change of position in reliance on the waiver.

553 Sec. 22. (NEW) (*Effective October 1, 2002*) (a) The benefit of the
554 supplier's promises to the lessor under a supply contract and of all
555 warranties, whether express or implied, including those of any third
556 party provided in connection with or as part of the supply contract,
557 extends to the lessee to the extent of the lessee's leasehold interest
558 under a finance lease related to the supply contract, but is subject to
559 the terms of the warranty and supply contract and all defenses or
560 claims arising therefrom.

561 (b) The extension of the benefit of a supplier's promises and of
562 warranties to the lessee does not modify the rights and obligations of
563 the parties to the supply contract, whether arising therefrom or
564 otherwise, or impose any duty or liability under the supply contract on
565 the lessee.

566 (c) A modification or rescission of a supply contract by the supplier
567 and the lessor is effective between the supplier and the lessee unless,
568 before the modification or rescission, the supplier has received notice
569 that the lessee has entered into a finance lease related to the supply
570 contract. If the modification or rescission is effective between the

571 supplier and the lessee, the lessor assumes, in addition to the
572 obligations of the lessor to the lessee under the lease contract, the
573 promises of the supplier to the lessor and warranties that were so
574 modified or rescinded as they existed and were available to the lessee
575 before modification or rescission.

576 (d) In addition to the extension of the benefit of the supplier's
577 promises and of warranties to the lessee under subsection (a) of this
578 section, the lessee retains all rights that the lessee may have against the
579 supplier which arise from a contract between the lessee and the
580 supplier or under other law.

581 Sec. 23. (NEW) (*Effective October 1, 2002*) Identification of existing
582 goods as goods to which a lease contract refers may be made at any
583 time and in any manner expressly agreed to by the parties. In the
584 absence of express agreement, identification occurs:

585 (1) If the contract is for the lease of already existing and designated
586 goods, when the lease contract is made;

587 (2) If the contract is for the lease of future goods other than those
588 described in subdivision (3) of this section, when the goods are
589 shipped, marked or otherwise designated by the lessor as goods to
590 which the lease contract refers, if the lease contract is for a lease of
591 goods that are not existing and identified; or

592 (3) If the lease contract is for a lease of unborn young of animals,
593 when the young are conceived.

594 Sec. 24. (NEW) (*Effective October 1, 2002*) (a) A lessee obtains an
595 insurable interest in existing goods identified to the lease contract even
596 if the goods are nonconforming and the lessee has an option to return
597 or reject them.

598 (b) If a lessee has an insurable interest only by reason of the lessor's
599 identification of the goods, the lessor may substitute other goods for
600 those identified until the lessee's default or insolvency or notice to the

601 lessee that the identification is final.

602 (c) The lessor retains an insurable interest until an option to buy has
603 been exercised by the lessee and risk of loss has passed to the lessee.

604 (d) This section does not affect any insurable interest recognized
605 under any other law.

606 (e) The parties, by agreement, may determine that one or more
607 parties have an obligation to obtain and pay for insurance covering the
608 goods and determine the beneficiary of the proceeds of the insurance.

609 Sec. 25. (NEW) (*Effective October 1, 2002*) (a) Except in the case of a
610 finance lease, risk of loss is retained by the lessor and does not pass to
611 the lessee. In the case of a finance lease, risk of loss passes to the lessee.

612 (b) If under the lease contract risk of loss will pass to the lessee but
613 the agreement does not specify when the risk passes, except as
614 otherwise provided in subsection (c) of this section, risk of loss passes
615 to the lessee, regardless of the conformity of the goods to the lease
616 contract, as follows:

617 (1) Subject to this subsection, the risk of loss passes to a lessee upon
618 receipt of the goods. If the lessee does not intend to take possession,
619 risk of loss passes to the lessee when the lessee receives control of the
620 goods.

621 (2) If the lease contract requires or authorizes a lessor to ship goods
622 by carrier, the following rules apply:

623 (A) If the lease contract does not require delivery at a particular
624 destination, the risk of loss passes to the lessee when the goods are
625 duly delivered to the carrier.

626 (B) If the lease contract requires delivery at a particular destination
627 and the goods arrive there in the possession of the carrier, the risk of
628 loss passes to the lessee when the goods are so tendered as to enable
629 the lessee to take delivery.

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

633 (c) A default under the lease contract by either party affects the risk
634 of loss only in the following cases:

635 (1) If the lessee rightfully rejects the goods or justifiably revokes
636 acceptance of the goods, the lessor has the risk of loss from the time
637 that the rejection or revocation is effective.

638 (2) If the lessor has tendered nonconforming goods so that the lessee
639 would have the right to reject the goods or revoke acceptance of the
640 goods, the goods are damaged or lost before the lessee effectively
641 rejects or revokes acceptance, and the risk of loss would have
642 otherwise passed to the lessee under subsection (b) or (c) of this
643 section, the lessor has the risk of loss to the extent the nonconformity
644 of the goods caused the damage or loss.

645 (3) If conforming goods are identified to the lease contract when the
646 lessee repudiates or is otherwise in breach and the risk of loss has not
647 otherwise passed to the lessee, the lessee has the risk of loss for such
648 goods for a commercially reasonable time after the breach or
649 repudiation.

650 Sec. 26. (NEW) (*Effective October 1, 2002*) If the lease contract requires
651 for its performance goods identified when the lease contract is made
652 and the goods suffer casualty without the fault of the lessee, the lessor
653 or the supplier before delivery or if the goods suffer casualty before the
654 risk of loss passes to the lessee under the lease agreement or section 25
655 of this act, the following rules apply:

656 (1) If the loss occurs before the goods are delivered to the lessee, the
657 lessor or supplier shall seasonably notify the lessee of the nature and
658 extent of the loss.

659 (2) If the loss is total, the lease contract is avoided.

660 (3) If the loss is partial or the goods no longer conform to the lease
661 contract, the lessee may nevertheless demand inspection and may treat
662 the lease contract as avoided or, except in a finance lease that is not a
663 consumer lease, accept or retain the goods with due allowance from
664 the rent payable for the balance of the duration of the lease for the
665 nonconformity but without further right against the lessor.

666 Sec. 27. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
667 provided in subsection (b) of this section, on the termination of a lease
668 contract, all obligations that are still executory on both sides are
669 discharged.

670 (b) The following survive termination of a lease contract:

671 (1) A right based on a previous default or performance of the lease
672 contract;

673 (2) A term limiting the scope, manner, method or location of the
674 exercise of rights in the goods;

675 (3) An obligation of confidentiality, nondisclosure or
676 noncompetition;

677 (4) A choice of law or forum;

678 (5) An obligation to return or dispose of goods or return any
679 unearned part of the rent;

680 (6) An obligation to arbitrate or otherwise resolve disputes through
681 alternative dispute resolution procedures;

682 (7) A term limiting the time for bringing an action or for providing
683 notice;

684 (8) An indemnity term;

685 (9) A limitation of remedy or disclaimer of warranty;

686 (10) An obligation to provide an accounting and make any payment

687 due under the accounting;

688 (11) Other rights, remedies or limitations stated in the agreement as
689 surviving to the extent enforceable under applicable law; and

690 (12) Other rights, remedies or limitations if in the circumstances
691 their survival is necessary to achieve the purposes of the parties.

692 Sec. 28. (NEW) (*Effective October 1, 2002*) Except as otherwise
693 provided in title 42a of the general statutes and sections 1 to 90,
694 inclusive, of this act, a lease contract is effective and enforceable
695 according to its terms between the parties, against purchasers of the
696 goods and against creditors.

697 Sec. 29. (NEW) (*Effective October 1, 2002*) Except as otherwise
698 provided in sections 1 to 90, inclusive, of this act, the application of
699 sections 1 to 90, inclusive, of this act is not affected by whether the
700 lessor or a third party has title to the goods, by whether the lessor, the
701 lessee, or a third party has possession of the goods or by any statute or
702 rule of law that possession or the absence of possession is fraudulent.

703 Sec. 30. (NEW) (*Effective October 1, 2002*) (a) In this section, "creation
704 of a security interest" includes the sale of a lease contract that is subject
705 to article 9 of title 42a of the general statutes by reason of subdivision
706 (3) of subsection (a) of section 42a-9-109 of the general statutes, as
707 amended.

708 (b) Except as otherwise provided in subsection (c) of this section and
709 section 42a-9-407 of the general statutes, as amended, a provision in a
710 lease agreement which (1) prohibits the voluntary or involuntary
711 transfer, including a transfer by sale, sublease, creation or enforcement
712 of a security interest, or attachment, levy or other judicial process, of
713 an interest of a party under the lease contract or of the lessor's residual
714 interest in the goods, or (2) makes such a transfer an event of default,
715 gives rise to the rights and remedies provided in subsection (e) of this
716 section. However, a transfer that is prohibited or is an event of default
717 under the lease agreement is otherwise effective.

718 (c) Language in a consumer lease prohibiting the transfer of an
719 interest of a party under the lease contract or making a transfer an
720 event of default must be specific, be in a record and be conspicuous.

721 (d) A term in a lease agreement which (1) prohibits a transfer of a
722 right to damages for default with respect to the whole lease contract or
723 of a right to payment arising out of the transferor's due performance of
724 the transferor's entire obligation, or (2) makes such a transfer an event
725 of default, is not enforceable. Such a transfer is not a transfer that
726 materially impairs the prospect of obtaining return performance by,
727 materially changes the duty of, or materially increases the burden or
728 risk imposed on, the other party to the lease contract within the
729 meaning of subsection (e) of this section.

730 (e) Subject to subsection (d) of this section and section 42a-9-407 of
731 the general statutes, as amended:

732 (1) If a transfer is made that is an event of default under a lease
733 agreement, the other party to the lease contract has the rights and
734 remedies described in subsection (c) of section 55 of this act, unless
735 such party waives the default or otherwise agrees; and

736 (2) If subdivision (1) of this subsection does not apply and a transfer
737 is made that (A) is prohibited under a lease agreement, or (B)
738 materially impairs the prospect of obtaining return performance by,
739 materially changes the duty of, or materially increases the burden or
740 risk imposed on, the other party to the lease contract, unless the party
741 not making the transfer agrees at any time to the transfer in the lease
742 contract or otherwise or unless limited by contract:

743 (i) The transferor is liable to the party not making the transfer for
744 damages caused by the transfer to the extent that the damages could
745 not reasonably be prevented by the party not making the transfer; and

746 (ii) A court having jurisdiction may grant other appropriate relief,
747 including cancellation of the lease contract or an injunction against the
748 transfer.

749 (f) A transfer of "the lease" or of "all my rights under the lease", or a
750 transfer in similar general terms, is a transfer of rights and, unless the
751 language or the circumstances, as in a transfer for security, indicate the
752 contrary, the transfer is a delegation of duties by the transferor to the
753 transferee. Acceptance by the transferee constitutes a promise by the
754 transferee to perform such duties. The promise is enforceable by either
755 the transferor or the other party to the lease contract.

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

759 Sec. 31. (NEW) (*Effective October 1, 2002*) (a) Subject to section 30 of
760 this act, a subsequent lessee from a lessor of goods under an existing
761 lease contract obtains, to the extent of the leasehold interest
762 transferred, the leasehold interest that the lessor had or had power to
763 transfer and, except as otherwise provided in subsection (b) of this
764 section and subsection (d) of section 73 of this act, takes subject to the
765 existing lease contract.

766 (b) A lessor with voidable rights or voidable title acquired in a
767 purchase of goods from a transferor has power to transfer a good
768 leasehold interest to a good faith subsequent lessee for value. Under
769 this subsection, voidable rights or voidable title is acquired when the
770 goods have been delivered under a transaction of purchase even if:

771 (1) The transferor was deceived as to the identity of the lessor;

772 (2) The delivery was in exchange for a check later dishonored;

773 (3) It was agreed that the transaction was to be a cash sale; or

774 (4) The delivery was procured through fraud punishable under
775 criminal law.

776 (c) A subsequent lessee in the ordinary course of business from a
777 lessor that is a merchant dealing in goods of that kind to which the
778 goods were entrusted by the existing lessee of such lessor before the

779 interest of the subsequent lessee became enforceable against such
780 lessor obtains, to the extent of the leasehold interest transferred, all
781 rights to the goods of such lessor and the existing lessee, and takes free
782 of the existing lease contract.

783 (d) A subsequent lessee from the lessor of goods that are subject to
784 an existing lease contract and are covered by a certificate of title issued
785 under a statute of this state or of another jurisdiction takes no greater
786 rights than those provided both by this section and by the certificate of
787 title statute.

788 Sec. 32. (NEW) (*Effective October 1, 2002*) (a) Subject to section 30 of
789 this act, a buyer or sublessee from the lessee of goods under an existing
790 lease contract obtains, to the extent of the interest transferred, the
791 leasehold interest in the goods that the lessee had or had power to
792 transfer and, except as otherwise provided in subsection (b) of this
793 section and in subsection (e) of section 80 of this act, takes subject to
794 the existing lease contract.

795 (b) A lessee with a voidable leasehold interest acquired in a lease
796 transaction from a lessor has power to transfer a good leasehold
797 interest to a good faith subsequent lessee for value to which the goods
798 have been delivered. Under this subsection, a voidable leasehold
799 interest is acquired when the goods have been delivered under the
800 lease contract even if:

801 (1) The lessor was deceived as to the identity of the lessee;

802 (2) The delivery was in exchange for a check later dishonored; or

803 (3) The delivery was procured through fraud punishable under
804 criminal law.

805 (c) A buyer in the ordinary course of business or a sublessee in the
806 ordinary course of business from a lessee that is a merchant dealing in
807 goods of that kind to which the goods were entrusted by the lessor
808 obtains, to the extent of the interest transferred, all of the rights of the

809 lessor and lessee to the goods and takes free of the existing lease
810 contract.

811 (d) A buyer or sublessee from the lessee of goods that are subject to
812 an existing lease contract and are covered by a certificate of title issued
813 under a statute of this state or of another jurisdiction takes no greater
814 rights than those provided both by this section and by the certificate of
815 title statute.

816 Sec. 33. (NEW) (*Effective October 1, 2002*) If a person in the ordinary
817 course of the person's business furnishes services or materials with
818 respect to goods subject to a lease contract, a lien upon such goods in
819 the possession of such person given by statute or rule of law for such
820 services or materials has priority over any interest of the lessor or
821 lessee under the lease contract or sections 1 to 90, inclusive, of this act,
822 unless the lien is created by statute and the statute provides otherwise
823 or the lien is created by rule of law and the rule of law provides
824 otherwise.

825 Sec. 34. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
826 provided in section 33 of this act, a creditor of a lessee takes subject to
827 the lease contract.

828 (b) Except as otherwise provided in subsection (c) of this section and
829 sections 33 and 35 of this act, a creditor of a lessor takes subject to the
830 lease contract unless the creditor holds a lien that attached to the goods
831 before the lease contract became enforceable.

832 (c) Except as otherwise provided in section 42a-9-317 of the general
833 statutes, as amended, and sections 41 and 43 of public act 01-132, a
834 lessee takes a leasehold interest subject to a security interest held by a
835 creditor of the lessor.

836 Sec. 35. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
837 provided in subsections (b) and (c) of this section, the rights of
838 creditors of the lessor with respect to goods identified to a lease
839 contract and retained by the lessor are subject to the lessee's rights

840 under section 61, subsection (d) of section 77 and section 90 of this act
841 if the lessee's rights vest before a creditor's claim in rem attaches to the
842 goods.

843 (b) A creditor of a lessor may treat a lease or an identification of
844 goods to a lease contract as void if, as against the creditor, a retention
845 of possession or identification by the lessor is fraudulent under any
846 law of the state in which the goods are situated. However, the retention
847 of possession in good faith and current course of trade by a merchant
848 lessor for a commercially reasonable time after a lease or identification
849 is not fraudulent.

850 (c) Except as otherwise provided in subsection (a) of this section and
851 sections 31 and 32 of this act, sections 1 to 90, inclusive, of this act do
852 not impair the rights of creditors of the lessor if identification to the
853 lease contract or delivery is not made in current course of trade but is
854 made in satisfaction of or as security for a preexisting claim for money,
855 security or the like under circumstances that under any law of the state
856 where the goods are situated, apart from sections 1 to 90, inclusive, of
857 this act, would constitute a fraudulent transfer or a voidable
858 preference.

859 (d) A creditor of a seller may treat a sale or an identification of goods
860 to a contract for sale as void if, as against the creditor, a retention of
861 possession by the seller is fraudulent under any law of the state where
862 the goods are situated. However, it is not fraudulent for a seller to
863 retain possession of the goods pursuant to a lease contract entered into
864 by the seller as lessee and the buyer as lessor in connection with the
865 sale or identification of the goods if the buyer bought for value and in
866 good faith.

867 Sec. 36. (NEW) (*Effective October 1, 2002*) (a) In this section:

868 (1) "Construction mortgage" means a mortgage to the extent that it
869 secures an obligation incurred for the construction of an improvement
870 on land, including the acquisition cost of the land, if a recorded record
871 of the mortgage so indicates.

872 (2) "Encumbrance" includes a real property mortgage, other lien on
873 real estate and any other right in real property which is not an
874 ownership interest.

875 (3) "Fixture filing" means a filing, in the office where a mortgage on
876 the real property would be filed or recorded, of a financing statement
877 covering goods that are or are to become fixtures and conforming to
878 the requirements of subsections (a) and (b) of section 42a-9-502 of the
879 general statutes, as amended.

880 (4) "Fixtures" means goods that have become so related to particular
881 real property that an interest in them arises under real property law.

882 (5) "Purchase money lease" means a lease in which the lessee does
883 not have possession or use of the goods or the right to possession or
884 use of the goods before the lease agreement is enforceable.

885 (b) A lease under sections 1 to 90, inclusive, of this act may be of
886 goods that are fixtures or may continue in goods that become fixtures,
887 but there may be no lease under sections 1 to 90, inclusive, of this act of
888 ordinary building materials incorporated into an improvement on
889 land.

890 (c) Sections 1 to 90, inclusive, of this act do not prevent creation of a
891 lease of fixtures under real property law.

892 (d) The perfected interest of a lessor of fixtures has priority over a
893 conflicting interest of an encumbrancer or owner of the real property if
894 the lessee has an interest of record in or is in possession of the real
895 property and:

896 (1) Except as otherwise provided in subsection (f) of this section, the
897 lease is a purchase money lease, the interest of the encumbrancer or
898 owner arises before the goods become fixtures and the interest of the
899 lessor is perfected by a fixture filing before the goods become fixtures
900 or within twenty days thereafter; or

901 (2) The interest of the lessor is perfected by a fixture filing before the

902 interest of the encumbrancer or owner is of record and the lessor's
903 interest has priority over any conflicting interest of a predecessor in
904 title of the encumbrancer or owner.

905 (e) The interest of a lessor of fixtures, whether or not perfected, has
906 priority over the conflicting interest of an encumbrancer or owner of
907 the real property if:

908 (1) The fixtures are readily removable factory or office machines,
909 readily removable equipment that is not primarily used or leased for
910 use in the operation of the real property or readily removable
911 replacements of domestic appliances that are goods subject to a
912 consumer lease, and, before the goods become fixtures, the lease
913 contract is enforceable;

914 (2) The conflicting interest is a lien on the real property obtained by
915 legal or equitable proceedings after the lease contract is enforceable;

916 (3) The encumbrancer or owner has, in an authenticated record,
917 consented to the lease or has disclaimed an interest in the goods as
918 fixtures; or

919 (4) The lessee has a right to remove the goods as against the
920 encumbrancer or owner, but if the lessee's right to remove terminates,
921 the priority of the interest of the lessor continues for a reasonable time.

922 (f) Except as otherwise provided in subsections (d) and (e) of this
923 section, the interest of a lessor of fixtures, including the lessor's
924 residual interest, is subordinate to the conflicting interest of an
925 encumbrancer of the real property under a construction mortgage
926 recorded before the goods become fixtures if the goods become fixtures
927 before the completion of the construction. A mortgage has this priority
928 to the same extent as a construction mortgage to the extent that it is
929 given to refinance a construction mortgage.

930 (g) In cases not covered by subsections (c) to (f), inclusive, of this
931 section, priority between the interest of a lessor of fixtures, including

932 the lessor's residual interest, and the conflicting interest of an
933 encumbrancer or owner of the real property which is not the lessee is
934 determined by the priority rules governing conflicting interests in real
935 property.

936 (h) If the interest of a lessor of fixtures, including the lessor's
937 residual interest, has priority over all owners and encumbrancers of
938 the real property, the lessor or the lessee may on default, expiration,
939 termination or cancellation of the lease contract, but subject to the lease
940 agreement and sections 1 to 90, inclusive, of this act, or if necessary to
941 enforce other rights of the lessor or lessee under sections 1 to 90,
942 inclusive, of this act, remove the goods from the real property, free and
943 clear of all conflicting interests of all owners and encumbrancers of the
944 real property. However, the lessor or lessee shall reimburse any
945 encumbrancer or owner of the real property which is not the lessee and
946 which has not otherwise agreed for the cost of repair of any physical
947 injury, but not for any diminution in value of the real property, caused
948 by the absence of the goods removed or by any necessity of replacing
949 them. A person entitled to reimbursement may refuse permission to
950 remove until the party seeking removal gives adequate security for the
951 performance of this obligation.

952 (i) Even if the lease agreement does not create a security interest, the
953 interest of a lessor of fixtures, including the lessor's residual interest, is
954 perfected by filing a financing statement as a fixture filing for leased
955 goods that are or are to become fixtures in accordance with the
956 pertinent provisions of article 9 of title 42a of the general statutes.

957 Sec. 37. (NEW) (*Effective October 1, 2002*) (a) In this section,
958 "accessions" mean goods that are installed in or affixed to other goods.

959 (b) Except as otherwise provided in subsection (c) of this section, the
960 interest of a lessor or a lessee under a lease contract entered into before
961 the goods become accessions is superior to all interests in the whole
962 and valid against all persons subsequently acquiring interests in the
963 whole, but is invalid against any person with an interest in the whole

964 that has not in a record consented to the lease or disclaimed an interest
965 in the goods as part of the whole.

966 (c) The interest of a lessor or a lessee under a lease contract
967 described in subsection (b) of this section is subordinate to the interest
968 of:

969 (1) A buyer in the ordinary course of business or a lessee in the
970 ordinary course of business of any interest in the whole acquired after
971 the goods became accessions; or

972 (2) A creditor with a security interest in the whole perfected before
973 the lease contract was made to the extent that the creditor makes
974 subsequent advances without knowledge of the lease contract.

975 (d) If, under this section, a lessor or lessee holds an interest in
976 accessions which has priority over the claims of all persons that have
977 interests in the whole, the lessor or lessee on default, expiration,
978 termination or cancellation of the lease contract by the other party but
979 subject to the provisions of the lease contract and sections 1 to 90,
980 inclusive, of this act, or if necessary to enforce other rights under
981 sections 1 to 90, inclusive, of this act, may remove the goods from the
982 whole. However, the lessor or lessee shall reimburse any holder of an
983 interest in the whole which is not the lessee and which has not
984 otherwise agreed for the cost of repair of any physical injury, but not
985 for any diminution in value of the whole, caused by the absence of the
986 goods removed or by any necessity for replacing them. A person
987 entitled to reimbursement may refuse permission to remove the goods
988 until the party seeking removal gives adequate security for the
989 performance of this obligation.

990 Sec. 38. (NEW) (*Effective October 1, 2002*) Nothing in sections 1 to 90,
991 inclusive, of this act prevents subordination by agreement by any
992 person entitled to priority.

993 Sec. 39. (NEW) (*Effective October 1, 2002*) In sections 39 to 46,
994 inclusive, of this act:

995 (1) "Damage" means all loss resulting from a breach of warranty,
996 including incidental and consequential damages.

997 (2) "Goods" includes a component incorporated into other goods.

998 (3) "Immediate lessee" means a lessee that has a contract with the
999 lessor.

1000 (4) "Remote lessee" means a lessee from a lessor other than the lessor
1001 or seller against which a claim under sections 39 to 46, inclusive, of this
1002 act is asserted.

1003 (5) "Representation" means a description of the goods, an
1004 affirmation of fact or promise about the quality or performance of the
1005 goods to be delivered, or a sample or model of the goods.

1006 Sec. 40. (NEW) (*Effective October 1, 2002*) (a) Except in a finance lease,
1007 a lessor in a lease contract warrants that, except for claims by any
1008 person by way of infringement or the like, for the duration of the lease
1009 no person holds:

1010 (1) A claim to or interest in the goods which will interfere with the
1011 lessee's enjoyment of the lessee's leasehold interest; or

1012 (2) A colorable claim to or interest in the goods which will
1013 unreasonably expose the lessee to litigation.

1014 (b) A finance lessor warrants that, except for claims by way of
1015 infringement or the like, for the duration of the lease no person holds:

1016 (1) A claim or interest in the goods that arose from an act or
1017 omission of the lessor which will interfere with the lessee's enjoyment
1018 of the lessee's leasehold interest; or

1019 (2) A colorable claim to or interest in the goods that arose from an
1020 act or omission of the lessor which will unreasonably expose the lessee
1021 to litigation.

1022 (c) Except in a finance lease, a lessor that is a merchant regularly
1023 dealing in goods of the kind warrants that the goods will be delivered
1024 free of the rightful claim of a third party by way of infringement or the
1025 like. However, a lessee that furnishes specifications to the lessor holds
1026 the lessor harmless against any claim of infringement or the like that
1027 arises out of compliance with the specifications.

1028 (d) A warranty under subsections (a) to (c), inclusive, of this section
1029 may be disclaimed or modified only by specific language or by
1030 circumstances that give the lessee reason to know that the lessor
1031 purports to transfer only such right as the lessor or a third party may
1032 have.

1033 Sec. 41. (NEW) (*Effective October 1, 2002*) (a) Any representation
1034 made by the lessor to the lessee, including a representation made in
1035 any medium of communication to the public, such as advertising,
1036 which relates to the goods and becomes part of the basis of the bargain
1037 creates an express warranty that the goods will conform to the
1038 representation or, with respect to a sample or model, that the whole of
1039 the goods will conform to the sample or model.

1040 (b) To create an express warranty, it is not necessary that the lessor
1041 use formal words such as "warranty" or "guaranty" or have a specific
1042 intention to make a warranty. However, a representation merely of the
1043 value of the goods or an affirmation purporting to be merely the
1044 lessor's opinion or commendation of the goods does not create an
1045 express warranty under subsection (a) of this section.

1046 (c) A representation, including a representation made in any
1047 medium of communication to the public, such as advertising, which
1048 was made to the lessee and which relates to the goods becomes part of
1049 the basis of the bargain unless:

1050 (1) The lessee knew that the representation was not true;

1051 (2) A reasonable person in the position of the lessee would not
1052 believe that the representation was part of the agreement; or

1053 (3) In the case of a representation made in a medium for
1054 communication to the public, including advertising, the lessee did not
1055 know of the representation at the time of the agreement.

1056 (d) A right of action for breach of warranty under this section
1057 accrues as provided under subsection (c) of section 68 of this act.

1058 Sec. 42. (NEW) (*Effective October 1, 2002*) (a) Except in a finance lease
1059 and subject to sections 44 and 45 of this act, a warranty that the goods
1060 are merchantable is implied in a contract for their lease if the lessor is a
1061 merchant with respect to goods of that kind.

1062 (b) Goods, to be merchantable, must:

1063 (1) Pass without objection in the trade under the contract
1064 description;

1065 (2) In the case of fungible goods, be of fair, average quality within
1066 the description;

1067 (3) Be fit for the ordinary purposes for which goods of that
1068 description are used;

1069 (4) Run, within the variation permitted by the lease agreement, of
1070 even kind, quality and quantity within each unit and among all units
1071 involved;

1072 (5) Be adequately contained, packaged and labeled as the lease
1073 agreement or circumstances may require; and

1074 (6) Conform to any representations made on the container or label.

1075 (c) Subject to section 44 of this act, other implied warranties may
1076 arise from course of dealing or usage of trade.

1077 Sec. 43. (NEW) (*Effective October 1, 2002*) Except in a finance lease
1078 and subject to section 44 of this act, if a lessor at the time of contracting
1079 has reason to know any particular purpose for which the goods are

1080 required and that the lessee is relying on the lessor's skill or judgment
1081 to select or furnish suitable goods, there is an implied warranty that
1082 the goods are fit for such purpose.

1083 Sec. 44. (NEW) (*Effective October 1, 2002*) (a) Words or conduct
1084 relevant to the creation of an express warranty and words or conduct
1085 tending to disclaim or modify an express warranty must be construed
1086 wherever reasonable as consistent with each other. However, subject to
1087 section 11 of this act, words or conduct disclaiming or modifying an
1088 express warranty are ineffective to the extent that such construction is
1089 unreasonable.

1090 (b) Subject to subsection (c) of this section, to disclaim or modify an
1091 implied warranty of merchantability or fitness, or any part of either
1092 implied warranty, the following rules apply:

1093 (1) The language must be in a record and be conspicuous.

1094 (2) In other than a consumer lease contract, the language is sufficient
1095 if:

1096 (A) In the case of an implied warranty of merchantability, it
1097 mentions merchantability; and

1098 (B) In the case of an implied warranty of fitness, the language states,
1099 for example, that "There are no warranties which extend beyond the
1100 description on the face hereof".

1101 (c) Unless the circumstances indicate otherwise, all implied
1102 warranties are disclaimed by expressions such as "as is" or "with all
1103 faults", or similar language, or conduct that in common understanding
1104 makes it clear to the lessee that the lessor assumes no responsibility for
1105 the quality or fitness of the goods. In a consumer contract, the
1106 requirements of this subsection must be satisfied by conspicuous
1107 language in a record.

1108 (d) An implied warranty may also be disclaimed or modified by
1109 course of performance, course of dealing or usage of trade.

1110 (e) If a lessee before entering into the contract has examined the
1111 goods or the sample or model as fully as desired or has refused to
1112 examine the goods or the sample or model, there is no implied
1113 warranty with regard to defects which a reasonable examination ought
1114 in the circumstances to have revealed to the lessee.

1115 (f) Remedies for breach of warranty may be limited in accordance
1116 with sections 1 to 90, inclusive, of this act with respect to liquidation or
1117 limitation of damages and contractual modification of remedy.

1118 (g) Subsections (b) to (f), inclusive, of this section shall not apply to
1119 leases of new or used consumer goods, except for those goods clearly
1120 marked "irregular", "factory seconds" or "damaged". Any language,
1121 oral or written, used by a lessor or manufacturer of consumer goods
1122 that attempts to exclude or modify any implied warranties of
1123 merchantability and fitness for a particular purpose, or to exclude or
1124 modify the consumer's remedies for breach of such warranties, shall be
1125 unenforceable.

1126 Sec. 45. (NEW) (*Effective October 1, 2002*) Warranties, whether
1127 express or implied, must be construed as consistent with each other
1128 and as cumulative. However, if such construction is unreasonable, the
1129 intention of the parties determines which warranty is dominant. In
1130 ascertaining such intention, the following rules apply:

1131 (1) Exact or technical specifications prevail over an inconsistent
1132 sample or model or general language of description.

1133 (2) A sample from an existing bulk or a model prevails over
1134 inconsistent general language of description.

1135 (3) Except in a consumer lease, an express warranty prevails over
1136 inconsistent implied warranties other than an implied warranty of
1137 fitness for a particular purpose.

1138 Sec. 46. (NEW) (*Effective October 1, 2002*) (a) In a consumer lease
1139 contract, a lessor's express or implied warranty made to an immediate

1140 consumer lessee extends to any member of the family or household or
1141 an invitee to the household of the immediate consumer lessee or a
1142 transferee from the immediate consumer lessee who may reasonably
1143 be expected to use or be affected by the goods and who suffers damage
1144 other than injury to the person resulting from a breach of warranty.
1145 The lessor may not disclaim, modify or limit damages arising under
1146 this section.

1147 (b) A lessor's warranty, whether express or implied, extends to any
1148 individual who may reasonably be expected to use, consume or be
1149 affected by the goods and who is injured in person by breach of the
1150 warranty. A lessor may not disclaim or limit the operation of this
1151 subsection.

1152 (c) Nothing in sections 1 to 90, inclusive, of this act diminishes the
1153 rights and remedies of any third party beneficiary or assignee under
1154 the law of contracts or of persons to which goods are transferred by
1155 operation of law or displaces any other law that extends a warranty to
1156 or for the benefit of any other person.

1157 (d) The scope of any warranty extended under this section to other
1158 than the immediate lessee and the remedies for breach of such
1159 warranty may be limited by the enforceable terms of the contract
1160 between the lessor and the immediate lessee. To the extent not limited:

1161 (1) The scope of the warranty is determined by sections 29, 30, 31
1162 and 32 of this act; and

1163 (2) The remedies for breach of warranty for other than the
1164 immediate lessee are determined by the terms of the contract between
1165 the lessor and the lessee and by sections 1 to 90, inclusive, of this act.

1166 (e) A right of action for breach of warranty under this section
1167 accrues under section 58 of this act.

1168 Sec. 47. (NEW) (*Effective October 1, 2002*) (a) A lease contract imposes
1169 an obligation on each party not to impair the other's expectation of

1170 receiving due performance. If reasonable grounds for insecurity arise
1171 with respect to the performance of either party, the other party may
1172 demand in a record adequate assurance of due performance and, until
1173 that assurance is received, if commercially reasonable, may suspend
1174 any performance for which the agreed return has not already been
1175 received.

1176 (b) Between merchants, the reasonableness of grounds for insecurity
1177 and the adequacy of any assurance offered is determined according to
1178 commercial standards.

1179 (c) Acceptance of improper delivery or payment does not prejudice
1180 an aggrieved party's right to demand adequate assurance of future
1181 performance.

1182 (d) After receipt of a demand under subsection (a) of this section,
1183 failure to provide within a reasonable time, not exceeding thirty days,
1184 assurance of due performance which is adequate under the
1185 circumstances of the particular case is a repudiation of the contract
1186 under section 48 of this act.

1187 Sec. 48. (NEW) (*Effective October 1, 2002*) (a) If either party to a lease
1188 contract repudiates a performance not yet due and the loss of
1189 performance will substantially impair the value of the lease contract to
1190 the other, the aggrieved party may:

1191 (1) Await performance by the repudiating party for a commercially
1192 reasonable time, or resort to any remedy for default, even if the
1193 aggrieved party has urged the repudiating party to retract the
1194 repudiation or has notified the repudiating party that the aggrieved
1195 party would await the agreed performance; and

1196 (2) In either case, suspend the aggrieved party's own performance
1197 or, if a lessor, proceed in accordance with section 71 of this act.

1198 (b) Repudiation includes language that one party will not or cannot
1199 make a performance still due under the contract or voluntary,

1200 affirmative conduct that reasonably appears to the other party to make
1201 a future performance impossible.

1202 Sec. 49. (NEW) (*Effective October 1, 2002*) (a) A repudiating party may
1203 retract a repudiation until the repudiating party's next performance is
1204 due unless the aggrieved party, after the repudiation, has canceled the
1205 lease contract, materially changed the aggrieved party's position or
1206 otherwise indicated that the repudiation is considered to be final.

1207 (b) A retraction may be by any method that clearly indicates to the
1208 aggrieved party that the repudiating party intends to perform the
1209 contract. However, a retraction must include any assurance justifiably
1210 demanded under section 47 of this act.

1211 (c) Retraction reinstates a repudiating party's rights under the lease
1212 contract with due excuse and allowance to the aggrieved party for any
1213 delay caused by the repudiation.

1214 Sec. 50. (NEW) (*Effective October 1, 2002*) (a) If, without the fault of
1215 the lessee, lessor or supplier, agreed berthing, loading or unloading
1216 facilities or an agreed type of carrier becomes unavailable, or an agreed
1217 manner of delivery otherwise becomes commercially impracticable, a
1218 party may claim excuse under section 51 of this act unless a
1219 commercially reasonable substitute is available. In such case,
1220 reasonable substitute performance must be tendered and accepted.

1221 (b) If an agreed means or manner of payment fails because of
1222 domestic or foreign governmental statute, regulation or order, the
1223 lessor may withhold or stop delivery, or cause the supplier to withhold
1224 or stop delivery, until the lessee provides a means or manner of
1225 payment which is commercially a substantial equivalent. If delivery
1226 has already been made, payment by the means or in the manner
1227 provided by such statute, regulation or order discharges the lessee's
1228 obligation unless such statute, regulation or order is discriminatory,
1229 oppressive or predatory.

1230 Sec. 51. (NEW) (*Effective October 1, 2002*) (a) Subject to section 50 of

1231 this act and subsection (b) of this section, delay in performance or
1232 nonperformance by the lessor or supplier is not a default under the
1233 lease contract if performance as agreed has been made impracticable
1234 by:

1235 (1) The occurrence of a contingency the nonoccurrence of which was
1236 a basic assumption on which the lease contract was made; or

1237 (2) Compliance in good faith with any applicable foreign or
1238 domestic governmental statute, regulation or order, whether or not
1239 such statute, regulation or order later proves to be invalid.

1240 (b) A party claiming excuse under subsection (a) of this section shall
1241 seasonably notify the other party that there will be delay or
1242 nonperformance. If a finance lessor claims excuse under subsection (a)
1243 of this section, the finance lessor shall seasonably notify both the lessor
1244 and the lessee that there will be delay or nonperformance. If the
1245 claimed excuse affects only a part of the lessor's or supplier's capacity
1246 to perform, the lessor or supplier shall also allocate production and
1247 deliveries among its customers in a manner that is fair and reasonable
1248 and notify the lessee of the estimated quota made available. In
1249 allocating production and deliveries, the lessor or supplier may
1250 include regular customers not then under contract as well as its own
1251 requirements for further manufacture.

1252 Sec. 52. (NEW) (*Effective October 1, 2002*) (a) A party that receives
1253 notice of a material or indefinite delay in performance or an allocation
1254 permitted under section 26 or 51 of this act as to any delivery
1255 concerned, or of a breach of the whole lease contract under subsection
1256 (c) of section 79 of this act, by notice in a record may:

1257 (1) Terminate and thereby discharge any unexecuted portion of the
1258 lease contract; or

1259 (2) Except in a finance lease that is not a consumer lease, modify the
1260 lease contract by agreeing to take the available allocation in
1261 substitution under section 51 of this act or by accepting the goods with

1262 due allowance from the rent payable for the balance of the lease period
1263 for the deficiency as provided in section 50 of this act.

1264 (b) If, after receipt of a notice under section 50 or 51 of this act, a
1265 party does not terminate or modify the lease contract within a
1266 reasonable time, not exceeding thirty days, the lease contract is
1267 terminated with respect to any performance affected.

1268 (c) This section may be varied by agreement only to the extent that
1269 the parties have assumed a different obligation under sections 50 and
1270 51 of this act.

1271 Sec. 53. (NEW) (*Effective October 1, 2002*) (a) In a finance lease that is
1272 not a consumer lease, the lessee's promises under the lease contract
1273 become irrevocable and independent upon the lessee's acceptance of
1274 the goods.

1275 (b) A promise that has become irrevocable and independent under
1276 subsection (a) of this section:

1277 (1) Is effective and enforceable between the parties and by or against
1278 third parties including assignees of the parties; and

1279 (2) Is not subject to cancellation, termination, modification,
1280 repudiation, excuse or substitution without the consent of the party to
1281 which the promise runs.

1282 (c) This section does not affect the validity under any other law of a
1283 covenant in any lease agreement making the lessee's promises
1284 irrevocable and independent upon the lessee's acceptance of the goods.

1285 Sec. 54. (NEW) (*Effective October 1, 2002*) The remedies of the lessee,
1286 lessor and other protected persons under sections 1 to 90, inclusive, of
1287 this act are subject to the general limitations and principles stated in
1288 sections 55 to 68, inclusive, of this act.

1289 Sec. 55. (NEW) (*Effective October 1, 2002*) (a) Whether the lessor or
1290 the lessee is in default under a lease contract is determined by the lease

1291 agreement and sections 1 to 90, inclusive, of this act.

1292 (b) The cumulative effect of individual, insubstantial defaults may
1293 substantially impair the value of the whole lease contract to the other
1294 party.

1295 (c) If a party is in default under the lease contract, the party seeking
1296 enforcement:

1297 (1) Has the rights and remedies under sections 1 to 90, inclusive, of
1298 this act and, except as limited by sections 1 to 90, inclusive, of this act,
1299 under the lease agreement.

1300 (2) May reduce its claim to judgment or otherwise enforce the lease
1301 contract by self-help or any available administrative or judicial
1302 procedure or the like, including arbitration or other dispute resolution
1303 procedure if agreed to by the parties; and

1304 (3) May enforce the rights granted by and remedies available under
1305 other law.

1306 (d) If the lease agreement covers both real property and goods, the
1307 party seeking enforcement may proceed (1) under sections 54 to 90,
1308 inclusive, of this act as to the goods, or (2) under other applicable law
1309 as to both the real property and the goods in accordance with such
1310 party's rights and remedies in respect of the real property, in which
1311 case sections 54 to 90, inclusive, of this act do not apply.

1312 (e) (1) In this subsection, "electronic self-help" means the use of
1313 electronic means to exercise a term of the lease agreement with respect
1314 to the lessor's rights, and includes the use of electronic means to locate
1315 leased goods.

1316 (2) Electronic self-help is permitted only if the lessee separately
1317 agrees to a term of the lease agreement authorizing electronic self-help
1318 that requires notice of exercise as provided in subdivision (3) of this
1319 subsection.

1320 (3) Before resorting to electronic self-help authorized by a term of
1321 the lease agreement, the lessor shall give notice to the lessee stating:

1322 (A) That the lessor intends to resort to electronic self-help as a
1323 remedy on or after fifteen days following communication of the notice
1324 to the lessee;

1325 (B) The nature of the claimed breach which entitled the lessor to
1326 resort to electronic self-help; and

1327 (C) The name, title, address and telephone number of a person
1328 representing the lessor with whom the lessee may communicate
1329 concerning the lease agreement.

1330 (4) A lessee may recover damages, including incidental damages,
1331 caused by wrongful use of electronic self-help. The lessee may also
1332 recover consequential damages for wrongful use of electronic self-help
1333 even if such damages are excluded by the terms of the lease
1334 agreement.

1335 (5) Even if the lessor complies with subdivisions (2) and (3) of this
1336 subsection, electronic self-help may not be used if the lessor has reason
1337 to know that such use will result in substantial injury or harm to the
1338 public health or safety or grave harm to the public interest
1339 substantially affecting third parties not involved in the dispute.

1340 Sec. 56. (NEW) (*Effective October 1, 2002*) Except as otherwise
1341 provided in sections 1 to 90, inclusive, of this act or the lease
1342 agreement, a lessor or lessee in default under a lease contract is not
1343 entitled to notice of default or notice of enforcement from the other
1344 party.

1345 Sec. 57. (NEW) (*Effective October 1, 2002*) (a) In accordance with
1346 section 42a-1-106 of the general statutes, the remedies provided in
1347 sections 1 to 90, inclusive, of this act must be liberally administered
1348 with the purpose of placing the aggrieved party in as good a position
1349 as if the other party had fully performed.

1350 (b) Unless the lease contract provides for liquidated damages
1351 enforceable under section 63 of this act or a limited remedy enforceable
1352 under section 64 of this act, an aggrieved party may not recover that
1353 part of a loss resulting from a default that could have been avoided by
1354 reasonable measures under the circumstances. The burden of
1355 establishing that reasonable measures under the circumstances were
1356 not taken is on the defaulting party.

1357 (c) The rights and remedies provided in sections 1 to 90, inclusive, of
1358 this act are cumulative, but a party may not recover more than once for
1359 the same injury.

1360 (d) Sections 1 to 90, inclusive, of this act do not impair a remedy for
1361 breach of an obligation or promise collateral or ancillary to a lease
1362 contract.

1363 Sec. 58. (NEW) (*Effective October 1, 2002*) If a default occurs, the
1364 aggrieved party may recover compensation for the loss resulting in the
1365 ordinary course from the default as determined under sections 69 to
1366 90, inclusive, of this act or as determined in any reasonable manner,
1367 together with incidental damages and consequential damages, less
1368 expenses and costs saved as a result of the default.

1369 Sec. 59. (NEW) (*Effective October 1, 2002*) Incidental damages
1370 resulting from a default under a lease contract include compensation
1371 for any commercially reasonable charges, expenses or commissions
1372 with respect to:

1373 (1) Inspection, receipt, transportation, care or custody of identified
1374 goods which are the subject of the default;

1375 (2) Stopping delivery or shipment;

1376 (3) Effecting cover, return or disposition of the goods;

1377 (4) Reasonable efforts otherwise to minimize or avoid the
1378 consequences of default; and

1379 (5) Effectuating other remedies after the default or otherwise
1380 dealing with the goods.

1381 Sec. 60. (NEW) (*Effective October 1, 2002*) Consequential damages
1382 resulting from a default include compensation for:

1383 (1) Any loss resulting from the aggrieved party's general or
1384 particular requirements and needs of which the defaulting party at the
1385 time of contracting had reason to know and which could not
1386 reasonably be prevented; and

1387 (2) Injury to person or property proximately resulting from any
1388 breach of warranty.

1389 Sec. 61. (NEW) (*Effective October 1, 2002*) (a) The court may enter a
1390 decree for specific performance if the goods or the agreed performance
1391 of the defaulting party are unique or in other proper circumstances. In
1392 a lease other than a consumer lease, the court may enter a decree for
1393 specific performance if the parties have agreed to such remedy.
1394 However, even if the parties agree to specific performance, the court
1395 may not enter a decree for specific performance if the breaching party's
1396 sole remaining contractual obligation is the payment of money.

1397 (b) The decree for specific performance may include terms and
1398 conditions as to payment of the rent, damages or other relief the court
1399 considers just.

1400 Sec. 62. (NEW) (*Effective October 1, 2002*) (a) An aggrieved party may
1401 cancel a lease contract if the conditions of section 69 or 77 of this act are
1402 satisfied or the agreement so provides, unless there is a waiver of the
1403 default or the right to cancel under section 21 of this act or there is a
1404 right to cure the default under section 82 of this act.

1405 (b) Upon cancellation, the lessee is subject to the same obligations
1406 and duties with respect to goods in the lessee's possession or control as
1407 the lessee would be if the lessee had rejected a nonconforming tender
1408 and remained in control of the goods of the lessor or if the lease

1409 contract had terminated according to its own terms.

1410 (c) Except as otherwise provided in subsection (e) of this section,
1411 upon cancellation, all obligations that are still executory on both sides
1412 are discharged.

1413 (d) The obligations surviving cancellation include:

1414 (1) A right based on previous default or performance of the lease
1415 contract;

1416 (2) Any term limiting disclosure of information;

1417 (3) An obligation to return or dispose of goods;

1418 (4) A term establishing a choice of law or forum;

1419 (5) A term creating an obligation to arbitrate or otherwise resolve
1420 disputes by alternative dispute resolution procedures;

1421 (6) A term limiting the time for commencing an action or for
1422 providing notice;

1423 (7) A remedy for breach of the whole lease contract or any
1424 unperformed balance;

1425 (8) Any other right, remedy or obligation stated in the agreement as
1426 surviving cancellation to the extent enforceable under law other than
1427 sections 1 to 90, inclusive, of this act; and

1428 (9) Other rights, remedies or limitations if under the circumstances
1429 their survival is necessary to achieve the purposes of the parties.

1430 (e) Unless a contrary intention clearly appears, language of
1431 cancellation, rescission or avoidance of the lease contract, or similar
1432 language, is not a renunciation or discharge of any claim in damages
1433 for an antecedent default.

1434 Sec. 63. (NEW) (*Effective October 1, 2002*) (a) Damages for default or

1435 any other act or omission, including indemnity for loss or diminution
1436 of anticipated tax benefits or loss or damage to the lessor's residual
1437 interest, may be liquidated in the lease agreement but only at an
1438 amount or by a formula that is reasonable in light of either the actual
1439 loss or the then anticipated loss caused by the default or other act or
1440 omission. If a term fixing liquidated damages is unenforceable under
1441 this subsection, the aggrieved party may pursue the remedies
1442 provided in sections 1 to 90, inclusive, of this act. A term that does not
1443 liquidate damages but attempts to limit damages available to the
1444 aggrieved party must be evaluated under section 65 of this act.

1445 (b) If the lessor justifiably withholds delivery of goods or stops
1446 performance because of the lessee's default or insolvency, the lessee is
1447 entitled to restitution of the amount by which the sum of payments
1448 exceeds the amount to which the lessor is entitled under a term fixing
1449 liquidated damages in accordance with subsection (a) of this section,
1450 except that, in the case of a consumer lease, the lessor is entitled to the
1451 lesser of such restitution amount or five hundred dollars.

1452 (c) The lessee's right to restitution under subsection (b) of this
1453 section is subject to setoff to the extent that the lessor establishes a right
1454 to recover damages under the provisions of sections 1 to 90, inclusive,
1455 of this act other than subsection (a) of this section and to the extent of
1456 the amount or value of any benefits received by the lessee directly or
1457 indirectly by reason of the lease contract.

1458 Sec. 64. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
1459 provided in sections 1 to 90, inclusive, of this act, the lease agreement
1460 may include rights and remedies for default in addition to or in
1461 substitution for those provided in sections 1 to 90, inclusive, of this act
1462 and may, except in a consumer lease, limit or alter the measure of
1463 damages recoverable under sections 1 to 90, inclusive, of this act.

1464 (b) Resort to a remedy provided under sections 1 to 90, inclusive, of
1465 this act or in the lease agreement is optional unless the remedy is
1466 expressly agreed to be exclusive. If circumstances cause an exclusive or

1467 limited remedy to fail of its essential purpose, or provision for an
1468 exclusive remedy is unconscionable, remedies may be pursued as
1469 provided in sections 1 to 90, inclusive, of this act.

1470 (c) Consequential damages may be liquidated under section 63 of
1471 this act, or may otherwise be limited, altered or excluded unless the
1472 limitation, alteration or exclusion is unconscionable. Limitation,
1473 alteration or exclusion of consequential damages for injury to the
1474 person in the case of consumer goods is prima facie unconscionable,
1475 but limitation, alteration or exclusion of damages where the loss is
1476 commercial is not prima facie unconscionable.

1477 (d) Sections 1 to 90, inclusive, of this act do not impair rights and
1478 remedies on default by the lessor or the lessee with respect to any
1479 obligation or promise collateral or ancillary to the lease contract.

1480 Sec. 65. (NEW) (*Effective October 1, 2002*) Remedies for material
1481 misrepresentation or fraud include all remedies available under
1482 sections 1 to 90, inclusive, of this act for nonfraudulent default.
1483 Rescission or a claim for rescission of a lease contract or rejection or
1484 return of the goods does not bar and is not inconsistent with a claim
1485 for damages or other remedy.

1486 Sec. 66. (NEW) (*Effective October 1, 2002*) (a) Damages based on
1487 market rent are determined according to the rent for the use of the
1488 goods concerned for a lease term identical to the remaining period of
1489 the original lease agreement and prevailing at the times specified in
1490 sections 74 and 88 of this act.

1491 (b) If evidence of rent for the use of the goods concerned for a
1492 period identical to the remaining period of the original lease
1493 agreement and prevailing at the times or places described in sections 1
1494 to 90, inclusive, of this act is not readily available, the following rules
1495 apply:

1496 (1) The rent prevailing within any reasonable time before or after the
1497 time described may be used.

1498 (2) The rent prevailing at any other place or for a different lease
1499 period which in commercial judgment or usage of trade is a reasonable
1500 substitute may be used, making proper allowance for the difference,
1501 including the cost of transporting the goods to or from the other place.

1502 (3) Evidence of a relevant rent prevailing at another time or place or
1503 for a lease period other than the period described in this section
1504 offered by one party is not admissible unless the party has given the
1505 other party notice that the court finds sufficient to prevent unfair
1506 surprise.

1507 (c) If the prevailing rent or value of goods regularly leased in any
1508 established market is in dispute, reports in official publications or
1509 trade journals or in newspapers, periodicals or other means of
1510 communication in general circulation and published as the reports of
1511 such market, are admissible in evidence. The circumstances of the
1512 preparation of such a report may affect the weight of the evidence but
1513 not its admissibility.

1514 Sec. 67. (NEW) (*Effective October 1, 2002*) (a) If a third party deals
1515 with goods identified to a lease contract and causes actionable injury to
1516 the goods, the lessor has a right of action against the third party, and
1517 the lessee has a right of action against the third party, if the lessee:

1518 (1) Has a security interest in the goods;

1519 (2) Has an insurable interest in the goods; or

1520 (3) Bears the risk of loss under the lease contract or has, since the
1521 injury, assumed such risk as against the lessor and the goods have been
1522 converted or destroyed.

1523 (b) If, at the time of the injury, the plaintiff did not bear the risk of
1524 loss as against the other party to the lease contract and there is no
1525 arrangement between them for disposition of the recovery, any
1526 recovery or settlement is subject to the plaintiff's interest as fiduciary
1527 for the other party to the lease contract.

1528 (c) Either party with the consent of the other may maintain an action
1529 for the benefit of a concerned party.

1530 Sec. 68. (NEW) (*Effective October 1, 2002*) (a) An action for default
1531 under a lease contract, including breach of warranty or indemnity,
1532 must be commenced within four years after the right of action has
1533 accrued. Except in a consumer lease or an action for indemnity, the
1534 original lease agreement may reduce the period of limitations to not
1535 less than one year.

1536 (b) Except as otherwise provided in subsection (c) of this section, a
1537 right of action accrues when the act or omission on which the default
1538 or breach of warranty is based is or should have been discovered by
1539 the aggrieved party. A right of action for indemnity accrues when the
1540 act or omission on which the claim for indemnity is based is or should
1541 have been discovered by the indemnified party.

1542 (c) If an action commenced within the applicable period of
1543 limitation is terminated but a remedy by another action for the same
1544 default or breach of warranty or indemnity is available, the other
1545 action may be commenced after the expiration of the time limitation
1546 and within six months after the termination of the first action unless
1547 the termination resulted from voluntary discontinuance or from
1548 dismissal for failure to prosecute.

1549 (d) This section does not alter the law on tolling of the statute of
1550 limitations and does not apply to a right of action that accrued before
1551 the effective date of sections 1 to 90, inclusive, of this act.

1552 Sec. 69. (NEW) (*Effective October 1, 2002*) (a) If the lessee wrongfully
1553 rejects or revokes acceptance of goods or fails to make a payment when
1554 due or repudiates with respect to a part or the whole, the lessee is in
1555 default under the lease contract with respect to any goods involved,
1556 and with respect to all of the goods if under an installment lease
1557 contract the value of the whole lease contract is substantially impaired,
1558 and the lessor may do one or more of the following:

1559 (1) Withhold delivery of the goods and take possession of goods
1560 previously delivered;

1561 (2) Stop delivery of the goods by any carrier or bailee under
1562 subsection (b) of section 72 of this act;

1563 (3) Proceed under section 71 of this act with respect to goods still
1564 unidentified to the lease contract or unfinished;

1565 (4) Obtain specific performance under section 61 of this act or
1566 recover the rent under section 75 of this act;

1567 (5) Dispose of the goods and recover damages under section 73 of
1568 this act or retain the goods and recover damages under section 74 of
1569 this act;

1570 (6) Recover incidental and consequential damages under sections 59
1571 and 60 of this act;

1572 (7) Cancel the lease contract under section 62 of this act;

1573 (8) Recover liquidated damages under section 63 of this act;

1574 (9) Enforce limited remedies under section 64 of this act;

1575 (10) Recover damages under section 58 of this act; or

1576 (11) Exercise any other rights or pursue any other remedies
1577 provided in the lease agreement.

1578 (b) If the lessor does not fully exercise a right or obtain a remedy to
1579 which the lessor is entitled under subsection (a) of this section, the
1580 lessor may recover the loss resulting in the ordinary course of events
1581 from the lessee's default as determined in any reasonable manner,
1582 together with incidental damages, less expenses avoided as a result of
1583 the lessee's default.

1584 (c) If the lessee is otherwise in default under a lease contract, the
1585 lessor may exercise the rights and pursue the remedies provided in the

1586 lease agreement, which may include a right to cancel the lease. In
1587 addition, except as otherwise provided in the lease agreement:

1588 (1) If the default substantially impairs the value of the lease contract
1589 to the lessor, the lessor may exercise the rights and pursue the
1590 remedies under subsection (a) or (b) of this section; or

1591 (2) If the default does not substantially impair the value of the lease
1592 contract to the lessor, the lessor may recover under subsection (b) of
1593 this section.

1594 Sec. 70. (NEW) (*Effective October 1, 2002*) (a) Upon a default by the
1595 lessee under a lease contract of the type described in subsection (a) or
1596 subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1597 upon other default by the lessee, the lessor may take possession of the
1598 goods. If the lease agreement so provides, the lessor may require the
1599 lessee to assemble the goods and make them available to the lessor at a
1600 place to be designated by the lessor which is reasonably convenient to
1601 both parties. Without removal, the lessor may render unusable any
1602 goods employed in trade or business and may dispose of goods on the
1603 lessee's premises.

1604 (b) A lessor may proceed under subsection (a) of this section without
1605 judicial process if it can be done without breach of the peace, or the
1606 lessor may proceed by judicial process.

1607 Sec. 71. (NEW) (*Effective October 1, 2002*) (a) Upon default by the
1608 lessee under the lease contract of the type described in subsection (a)
1609 or subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1610 after other default by the lessee, the lessor may:

1611 (1) Identify to the lease contract conforming goods not already
1612 identified if they are in the lessor's or supplier's possession or control
1613 at the time the lessor learned of the default; and

1614 (2) Dispose of goods that are shown to have been intended for the
1615 particular lease contract even if such goods are unfinished.

1616 (b) If goods are unfinished at the time of default, an aggrieved lessor
1617 or the supplier, in the exercise of reasonable commercial judgment for
1618 the purposes of minimizing loss and of effective realization, may
1619 complete the manufacture and wholly identify the goods to the lease
1620 contract, cease manufacture and lease, sell or otherwise dispose of the
1621 goods for scrap or salvage value, or proceed in any other reasonable
1622 manner.

1623 Sec. 72. (NEW) (*Effective October 1, 2002*) (a) A lessor that discovers
1624 that the lessee is insolvent may refuse to deliver the goods.

1625 (b) Subject to subsection (d) of this section, the lessor may stop
1626 delivery of goods in the possession of a carrier or other bailee if the
1627 lessee is insolvent or repudiates or fails to make a payment due before
1628 delivery, whether for rent, security or otherwise under the lease
1629 contract or if, for any other reason, the lessor has a right to withhold or
1630 reclaim the goods.

1631 (c) As against a lessee under subsection (b) of this section, the lessor
1632 may stop delivery until:

1633 (1) Receipt of the goods by the lessee;

1634 (2) Acknowledgment to the lessee by any bailee of the goods, other
1635 than a carrier, or a carrier by reshipment or as a warehouseman, that
1636 the bailee holds the goods for the lessee; or

1637 (3) Acknowledgment to the lessee by a carrier by reshipment or as
1638 warehouseman that the carrier holds the goods for the lessee.

1639 (d) If notice to stop delivery has been given, the following rules
1640 apply:

1641 (1) The notice must afford the carrier or bailee a reasonable
1642 opportunity to prevent delivery of the goods.

1643 (2) After notice, the carrier or bailee shall hold and deliver the goods
1644 according to the directions of the lessor. The lessor is liable to the bailee

1645 or carrier for any resulting charges or damages. A carrier or bailee need
1646 not stop delivery if the lessor does not provide indemnity for charges
1647 or damages upon the carrier's or bailee's demand.

1648 (3) A carrier or bailee that has issued a nonnegotiable document
1649 need not obey a notice to stop received from a person other than the
1650 person named in the document as the person from which the goods
1651 have been received for shipment or storage.

1652 Sec. 73. (NEW) (*Effective October 1, 2002*) (a) Upon a default by a
1653 lessee under the lease contract of the type described in subsection (a)
1654 or subdivision (1) of subsection (c) of section 69 of this act, or upon the
1655 lessor's refusal to deliver or taking possession of goods under section
1656 70 or 72 of this act, or, if agreed, upon other default by a lessee, the
1657 lessor may dispose of the goods concerned or the undelivered balance
1658 thereof by lease, sale or otherwise.

1659 (b) Except as otherwise provided with respect to damages
1660 liquidated in the lease agreement or otherwise determined by
1661 agreement of the parties, if the disposition is by lease agreement
1662 substantially similar to the original lease agreement and the new lease
1663 agreement is made in good faith and in a commercially reasonable
1664 manner, the lessor may recover from the lessee as damages
1665 compensation for:

1666 (1) Accrued and unpaid rent as of the date of the commencement of
1667 the period of the new lease agreement;

1668 (2) The present value, as of the same date, of the total rent for the
1669 then remaining lease period of the original lease agreement, minus the
1670 present value, as of the same date, of the rent under the new lease
1671 agreement applicable to that part of the new lease period which is
1672 comparable to the then remaining period of the original lease
1673 agreement; and

1674 (3) Any incidental damages allowed under section 59 of this act, less
1675 expenses avoided as a result of the lessee's default.

1676 (c) If the lessor's disposition is by a lease agreement that for any
1677 reason does not qualify for treatment under subsection (b) of this
1678 section, or is by sale or otherwise, the lessor may recover from the
1679 lessee as if the lessor had elected not to dispose of the goods, and
1680 section 74 of this act governs.

1681 (d) A person that subsequently buys or leases from the lessor in
1682 good faith for value as a result of a disposition under this section takes
1683 the goods free of the original lease contract and any rights of the
1684 original lessee even if the lessor fails to comply with one or more of the
1685 requirements of sections 1 to 90, inclusive, of this act.

1686 (e) A lessor is not accountable to the lessee for any profit made on
1687 any disposition. A lessee that has rightfully rejected or justifiably
1688 revoked acceptance shall account to the lessor for any excess over the
1689 amount of the lessee's security interest.

1690 Sec. 74. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
1691 provided with respect to damages liquidated in the lease agreement
1692 under section 63 of this act or otherwise determined by agreement of
1693 the parties under subdivision (3) of section 42a-1-102 of the general
1694 statutes and section 64 of this act, if a lessor elects to retain the goods
1695 or elects to dispose of the goods and the disposition is by lease
1696 agreement that for any reason does not qualify for treatment under
1697 subsection (b) of section 73 of this act or is by sale or otherwise, the
1698 lessor may recover from the lessee as damages for a default of the type
1699 described in subsection (a) or subdivision (1) of subsection (c) of
1700 section 69 of this act or, if agreed, for other default of the lessee:

1701 (1) Accrued and unpaid rent as of the date of default if the lessee has
1702 never taken possession of the goods, or, if the lessee has taken
1703 possession of the goods, as of the date the lessor repossesses the goods
1704 or an earlier date on which the lessee makes a tender of the goods to
1705 the lessor;

1706 (2) The present value, as of the date determined under subdivision
1707 (1) of this subsection, of the total rent for the then remaining period of

1708 the original lease agreement, minus the present value as of the same
1709 date of the market rent at the place where the goods are located
1710 computed for the same lease term; and

1711 (3) Any incidental or consequential damages allowed under section
1712 59 or 60 of this act, less expenses saved in consequence of the lessee's
1713 default.

1714 (b) If the measure of damages provided in subsection (a) of this
1715 section or section 73 of this act is inadequate under subsection (a) of
1716 section 57 of this act, a lessor may recover damages measured by other
1717 than the market price or the amount received on a disposition of the
1718 goods, together with incidental and consequential damages, including:

1719 (1) The present value of lost profits, including reasonable overhead,
1720 resulting from the default of the lessee determined in any reasonable
1721 manner; and

1722 (2) Reasonable expenditures made in preparing for or performing
1723 the contract.

1724 Sec. 75. (NEW) (*Effective October 1, 2002*) (a) Upon a default by the
1725 lessee under the lease contract of the type described in subsection (a)
1726 or subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1727 upon another default by the lessee, if the lessor complies with
1728 subsection (c) of this section, the lessor may recover from the lessee the
1729 damages specified in subsection (b) of this section for:

1730 (1) Goods accepted by the lessee and not repossessed by or tendered
1731 to the lessor;

1732 (2) Goods identified to the lease contract if the lessor is unable after
1733 reasonable effort to dispose of them at a reasonable price or the
1734 circumstances reasonably indicate such effort will be unavailing; and

1735 (3) Conforming goods lost or damaged after risk of loss passes to
1736 the lessee, but if the lessor has retained or regained control of the
1737 goods, the loss or damage must occur within a commercially

1738 reasonable time after the risk of loss has passed to the lessee.

1739 (b) The damages available under the circumstances described in
1740 subsection (a) of this section are:

1741 (1) Accrued and unpaid rent as of the date of entry of judgment in
1742 favor of the lessor;

1743 (2) The present value as of the same date of the rent for the then
1744 remaining lease term of the lease agreement; and

1745 (3) Any incidental or consequential damages allowed under section
1746 59 or 60 of this act, less expenses avoided as a result of the lessee's
1747 default.

1748 (c) Except as otherwise provided in subsection (d) of this section, a
1749 lessor shall hold for the lessee for the remaining period of the lease
1750 agreement any goods that have been identified to the lease contract
1751 and are in the lessor's control.

1752 (d) A lessor may dispose of the goods at any time before collection
1753 of the judgment for damages obtained pursuant to subsection (a) of
1754 this section. If the disposition is before the end of the remaining period
1755 of the lease agreement, the lessor's recovery against the lessee for
1756 damages is governed by section 73 or 74 of this act, and the lessor shall
1757 provide an appropriate credit against a judgment for damages to the
1758 extent that the amount of the judgment exceeds the recovery available
1759 under section 73 or 74 of this act.

1760 (e) Payment of the judgment for damages obtained under
1761 subsection (a) of this section entitles the lessee to the use and
1762 possession of the goods not then disposed of for the remaining period
1763 of, and in accordance with, the lease agreement.

1764 (f) Upon default by the lessee under the lease contract of the type
1765 described in subsection (a) or subdivision (1) of subsection (c) of
1766 section 69 of this act or, if agreed, upon other default by the lessee, a
1767 lessor that is not entitled to rent under this section is still entitled to

1768 damages for nonacceptance under section 73 or 74 of this act.

1769 Sec. 76. (NEW) (*Effective October 1, 2002*) In addition to any other
1770 recovery permitted by sections 1 to 90, inclusive, of this act or other
1771 law, a lessor may recover from a lessee an amount that will fully
1772 compensate the lessor for any loss of or damage to the lessor's residual
1773 interest in the goods caused by the lessee's default.

1774 Sec. 77. (NEW) (*Effective October 1, 2002*) (a) If the lessor fails to
1775 deliver the goods in conformity to the lease contract or repudiates the
1776 contract, or a lessee rightfully rejects the goods or justifiably revokes
1777 acceptance of the goods, with respect to any goods involved and with
1778 respect to all of the goods if under an installment lease contract the
1779 value of the whole lease contract is substantially impaired, the lessor is
1780 in default under the lease contract, and the lessee may do one or more
1781 of the following:

1782 (1) Cancel the lease contract under section 62 of this act;

1783 (2) Recover so much of the rent and security as has been paid and is
1784 just under the circumstances;

1785 (3) Cover and obtain damages under section 87 of this act;

1786 (4) Recover damages for nondelivery under section 88 of this act;

1787 (5) If an acceptance of goods has not been justifiably revoked,
1788 recover damages for default with regard to accepted goods under
1789 section 89 of this act;

1790 (6) Enforce a security interest under subsection (d) of this section;

1791 (7) Recover identified goods under section 90 of this act;

1792 (8) Obtain specific performance under section 61 of this act;

1793 (9) Recover incidental and consequential damages under sections 59
1794 and 60 of this act;

- 1795 (10) Recover liquidated damages under section 63 of this act;
- 1796 (11) Enforce limited remedies under section 64 of this act;
- 1797 (12) Recover damages under section 58 of this act; or
- 1798 (13) Exercise any other rights or pursue any other remedy provided
1799 in the lease contract.
- 1800 (b) If the lessor is otherwise in default under a lease contract, the
1801 lessee may exercise the rights and pursue the remedies provided in the
1802 lease agreement, which may include a right to cancel the lease, and the
1803 rights and remedies under subsection (a) of section 89 of this act.
- 1804 (c) If a lessor has breached a warranty, whether express or implied,
1805 the lessee may recover damages under subsection (b) of section 89 of
1806 this act.
- 1807 (d) On rightful rejection or justifiable revocation of acceptance, a
1808 lessee has a security interest in goods in the lessee's possession or
1809 control for any rent and security that has been paid and any expenses
1810 reasonably incurred in their inspection, receipt, transportation, care
1811 and custody. In such case, the lessee may hold the goods and dispose
1812 of them in good faith and in a commercially reasonable manner. The
1813 disposition is subject to subsections (d) and (e) of section 73 of this act.
- 1814 (e) Subject to section 53 of this act, a lessee, on so notifying the
1815 lessor, may deduct all or any part of the damages resulting from any
1816 default under the lease contract from any part of the rent still due
1817 under the same contract.
- 1818 Sec. 78. (NEW) (*Effective October 1, 2002*) (a) Subject to sections 63, 64
1819 and 79 of this act, if the goods or the tender or delivery fail in any
1820 respect to conform to the lease contract, the lessee may:
- 1821 (1) Reject the whole;
- 1822 (2) Accept the whole; or

1823 (3) Accept any commercial unit or units and reject the rest.

1824 (b) Rejection of goods must be within a reasonable time after their
1825 delivery or tender and is not effective unless the lessee notifies the
1826 lessor within a reasonable time.

1827 Sec. 79. (NEW) (*Effective October 1, 2002*) (a) In this section,
1828 "installment lease contract" means a lease contract in which the terms
1829 require or the circumstances permit the delivery of goods in separate
1830 lots to be separately accepted, even if the lease agreement requires
1831 payment other than in installments or contains a term stating "Each
1832 delivery is a separate lease", or words of similar import.

1833 (b) In an installment lease contract, the lessee may reject any
1834 nonconforming installment of delivery of goods if the nonconformity
1835 of the goods substantially impairs the value of such installment to the
1836 buyer.

1837 (c) If a nonconformity or default with respect to one or more
1838 installments in an installment lease contract is a substantial
1839 impairment of the value to the aggrieved party of the whole lease
1840 contract, there is a breach of the whole lease contract and the aggrieved
1841 party may reject any nonconforming unaccepted installment and
1842 cancel the installment lease contract. If the aggrieved party accepts a
1843 nonconforming installment without seasonably giving notice of
1844 cancellation, brings an action with respect only to past installments or
1845 demands performance as to future installments, the installment lease
1846 contract has not been canceled.

1847 Sec. 80. (NEW) (*Effective October 1, 2002*) (a) Subject to a lessee's
1848 security interest under subsection (d) of section 77 of this act, if the
1849 lessor or supplier does not have an agent or place of business at the
1850 market where the goods were rejected or acceptance was revoked, a
1851 merchant lessee, after an effective rejection or justifiable revocation of
1852 acceptance of goods in the lessee's possession or control, shall follow
1853 any reasonable instructions received from the lessor or supplier with
1854 respect to the goods. In the absence of such instructions, a merchant

1855 lessee shall make a reasonable effort to sell, lease or otherwise dispose
1856 of the goods for the lessor's account if the goods threaten to decline
1857 speedily in value. In the case of a rightful rejection or justifiable
1858 revocation of acceptance, instructions are not reasonable if, on
1859 demand, indemnity for expenses is not forthcoming.

1860 (b) In the case of a rightful rejection or justifiable revocation of
1861 acceptance:

1862 (1) A merchant lessee that sells or leases goods under subsection (a)
1863 of this section is entitled to reimbursement from the lessor or supplier,
1864 or out of the proceeds, for the reasonable expenses of caring for and
1865 disposing of the goods.

1866 (2) If the expenses under subdivision (1) of this subsection do not
1867 include a disposition commission, the lessee is entitled to a
1868 commission usual in the trade or, if there is none, to a reasonable sum
1869 not exceeding ten per cent of the gross proceeds.

1870 (c) Except as otherwise provided in subsection (a) of this section,
1871 after an effective rejection or a justifiable revocation of acceptance, a
1872 lessee may store the rejected goods for the account of the lessor or
1873 supplier, reship them to the lessor or supplier, or resell them for the
1874 account of the lessor or supplier, with reimbursement in the case of a
1875 rightful rejection or a justifiable revocation of acceptance as provided
1876 in subsection (b) of this section.

1877 (d) In complying with this section or section 81 of this act, the lessee
1878 shall act in good faith. Conduct in good faith under this section does
1879 not constitute acceptance or conversion and may not be the basis of a
1880 claim for damages.

1881 (e) A person that purchases in good faith from a lessee under this
1882 section or section 81 of this act takes the goods free of any rights of the
1883 lessor and the supplier, even if the lessee fails to comply with the
1884 requirements of sections 1 to 90, inclusive, of this act.

1885 Sec. 81. (NEW) (*Effective October 1, 2002*) (a) Subject to subsection (d)
1886 of section 77 and section 80 of this act, after an effective rejection or
1887 justifiable revocation of acceptance, a lessee in physical possession of
1888 the goods shall hold the goods with reasonable care at the lessor's or
1889 supplier's disposition for a sufficient time to permit the lessor or
1890 supplier to remove them. However, the lessee has no further obligation
1891 with regard to goods rightfully rejected or to which an acceptance has
1892 been justifiably revoked.

1893 (b) An action by the lessee under subsection (a) of this section is not
1894 acceptance or conversion.

1895 Sec. 82. (NEW) (*Effective October 1, 2002*) (a) If a lessee rightfully
1896 rejects goods or a tender of delivery under section 78 of this act or
1897 justifiably revokes an acceptance under section 86 of this act and the
1898 agreed time for performance has not expired, the lessor or supplier,
1899 upon seasonable notice to the buyer and at the lessor's or supplier's
1900 own expense, may cure any default by making a conforming tender of
1901 delivery within the agreed time. The lessor is obligated to compensate
1902 the lessee for all of the lessee's reasonable and necessary expenses
1903 caused by the nonconforming tender and subsequent cure.

1904 (b) If a lessee rightfully rejects goods or a tender of delivery under
1905 section 78 of this act or justifiably revokes acceptance under section 86
1906 of this act and the agreed time for performance has expired, the lessor
1907 or supplier, upon seasonable notice to the lessee and at the lessor's or
1908 supplier's own expense, may cure a default, if the cure is appropriate
1909 and timely under the circumstances, by making a tender of conforming
1910 goods. The lessor or supplier is obligated to compensate the lessee for
1911 all of the lessee's reasonable and necessary expenses caused by the
1912 nonconforming tender and subsequent cure.

1913 Sec. 83. (NEW) (*Effective October 1, 2002*) (a) Goods are accepted
1914 when the lessee:

1915 (1) After a reasonable opportunity to inspect the goods, signifies to
1916 the lessor or the supplier that the goods conform or will be taken or

1917 retained in spite of their nonconformity;

1918 (2) After a reasonable opportunity to inspect the goods, fails to make
1919 an effective rejection; or

1920 (3) Does any act inconsistent with the interest of the lessor or
1921 supplier in the goods or inconsistent with the lessor's claim of rejection
1922 or revocation of acceptance and the act is ratified by the lessor or
1923 supplier as an acceptance.

1924 (b) Acceptance of a part of a commercial unit is acceptance of the
1925 entire unit.

1926 Sec. 84. (NEW) (*Effective October 1, 2002*) A lessee is precluded from
1927 relying on a nonconforming performance as follows:

1928 (1) The lessee's failure to state, in connection with a rejection under
1929 section 78 of this act, a particular nonconformity that is ascertainable
1930 by reasonable inspection precludes reliance on the unstated
1931 nonconformity to justify rejection or to establish default if:

1932 (A) The lessor, upon a seasonable particularization, had a right to
1933 cure under section 82 of this act and would have cured the
1934 nonconformity; or

1935 (B) Between merchants, the lessor or the supplier after rejection has
1936 made a request in a record for a full and final statement in a record of
1937 all nonconformities on which the lessee proposes to rely.

1938 (2) The lessee's failure to state, in connection with a revocation of
1939 acceptance under section 86 of this act, the nonconformity that justifies
1940 the revocation precludes the lessee from relying on the nonconformity
1941 to justify the revocation or to establish default if the lessor had a right
1942 to cure the default under section 82 of this act and could have cured
1943 the breach.

1944 Sec. 85. (NEW) (*Effective October 1, 2002*) (a) A lessee shall pay rent in
1945 accordance with the lease contract for any goods accepted.

1946 (b) Acceptance of goods by a lessee precludes rejection of the goods
1947 accepted but does not by itself impair any other remedy provided by
1948 sections 1 to 90, inclusive, of this act or the lease agreement for
1949 nonconformity.

1950 (c) If a tender of delivery has been accepted, the following rules
1951 apply:

1952 (1) The lessee, or a person entitled to enforce a warranty or warranty
1953 obligation, shall notify the party claimed against within a reasonable
1954 time after the default or breach of warranty was discovered or should
1955 have been discovered. However, a failure to give timely notice bars the
1956 lessee from a remedy only to the extent that the party entitled to notice
1957 establishes that the party was prejudiced by the failure.

1958 (2) Except in the case of a consumer lease, if a claim for infringement
1959 or the like is made against a lessee for which a lessor or supplier is
1960 answerable over and the lessee is sued as a result of such claim, the
1961 lessee shall notify the lessor or supplier within a reasonable time after
1962 receiving notice of the litigation or be barred from any remedy over for
1963 liability established by the litigation.

1964 (d) A lessee has the burden of establishing a default with respect to
1965 goods accepted. A person entitled to enforce a warranty obligation
1966 under section 46 of this act has the burden of establishing that the
1967 warranty was breached.

1968 (e) In a claim for breach of a warranty, indemnity or other obligation
1969 against the lessee for which another party is answerable over, the
1970 following rules apply:

1971 (1) The lessee may give notice of the litigation to the other party in a
1972 record, and the person notified may then give similar notice of the
1973 litigation to any other person that is answerable over. If the notice
1974 invites the person notified to intervene in the litigation and defend and
1975 states that failure to do so will bind the person notified in any action
1976 later brought by the lessor as to any determination of fact common to

1977 the two actions, the person notified is so bound, unless, after
1978 reasonable receipt of the notice, the person notified intervenes in the
1979 litigation and defends.

1980 (2) If the claim is one for infringement or the like, the original lessor
1981 or supplier may demand in a record that its lessee turn over control of
1982 the litigation, including settlement, or otherwise be barred from any
1983 remedy over. If the lessor or supplier also agrees to bear all expense
1984 and to satisfy any adverse judgment, the lessee is so barred unless,
1985 after reasonable receipt of the demand, control is turned over to the
1986 lessor or supplier.

1987 (f) Subsections (c), (d) and (e) of this section apply to an obligation
1988 of a lessee to hold the lessor or the supplier harmless against
1989 infringement or the like.

1990 Sec. 86. (NEW) (*Effective October 1, 2002*) (a) A lessee may revoke
1991 acceptance of a lot or commercial unit whose nonconformity
1992 substantially impairs its value to the lessee if the lot or unit was
1993 accepted:

1994 (1) Except in the case of a finance lease, on the reasonable
1995 assumption that its nonconformity would be cured and the
1996 nonconformity has not been seasonably cured; or

1997 (2) Without discovery of its nonconformity if acceptance was
1998 reasonably induced either by the lessor's assurances or, except in the
1999 case of a finance lease, by the difficulty of discovery before acceptance.

2000 (b) Except in the case of a finance lease that is not a consumer lease,
2001 a lessee may revoke acceptance of a lot or commercial unit if the lessor
2002 defaults under the lease contract and the default substantially impairs
2003 the value of such lot or commercial unit to the lessee.

2004 (c) If the lease agreement so provides, the lessee may revoke
2005 acceptance of a lot or commercial unit because of other defaults by the
2006 lessor.

2007 (d) A lessee's acceptance must be revoked under subsections (a) and
2008 (b) of this section within a reasonable time after the lessee discovers or
2009 should have discovered the grounds for it and before any substantial
2010 change in condition of the goods which is not caused by their own
2011 defects. The revocation is not effective until the lessee notifies the
2012 lessor of the revocation.

2013 (e) A lessee that justifiably revokes acceptance has the same rights
2014 and duties under sections 80 and 81 of this act with regard to the goods
2015 involved as if the goods had been rejected.

2016 Sec. 87. (NEW) (*Effective October 1, 2002*) (a) Upon a default by a
2017 lessor under the lease contract of the type described in subsection (a) of
2018 section 77 or, if agreed, upon other default by the lessor, the lessee may
2019 cover by making in good faith and without unreasonable delay any
2020 purchase or lease of, or contract to purchase or lease, comparable
2021 goods to substitute for those due from the lessor.

2022 (b) Except as otherwise provided with respect to damages
2023 liquidated in the lease agreement or determined by agreement of the
2024 parties, if a lessee's cover is by a lease contract substantially similar to
2025 the original lease contract and the new lease contract is made in good
2026 faith and in a commercially reasonable manner, a lessee that covers in
2027 the manner required by subsection (a) of this section may recover
2028 damages measured by the present value, as of the date of the
2029 commencement of the period of the new lease contract, of the rent
2030 under the new lease contract applicable to that part of the new lease
2031 period which is comparable to the then remaining period of the
2032 original lease contract minus the present value as of the same date of
2033 the total rent for the then remaining lease period of the original lease
2034 contract together with any incidental or consequential damages, less
2035 expenses avoided as a result of the lessor's default.

2036 (c) If a lessee's cover is by a lease agreement that for any reason does
2037 not qualify for treatment under subsection (b) of this section, or is by
2038 purchase or otherwise, the lessee may recover from the lessor as if the

2039 lessee had elected not to cover, and section 88 of this act governs.

2040 Sec. 88. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
2041 provided with respect to damages liquidated in the lease agreement or
2042 otherwise determined by agreement of the parties, if a lessee elects not
2043 to cover or a lessee elects to cover and the cover is by lease agreement
2044 that for any reason does not qualify for treatment under section 87 of
2045 this act, or is by purchase or otherwise, the measure of damages for
2046 nondelivery or repudiation by the lessor or for rejection or revocation
2047 of acceptance by the lessee is the present value, as of the date of the
2048 default, of the then market rent minus the present value as of the same
2049 date of the original rent, computed for the remaining period of the
2050 original lease agreement, together with incidental and consequential
2051 damages, less expenses saved in consequence of the lessor's default.

2052 (b) Market rent is determined as of the place for tender or, in cases
2053 of rejection after arrival or revocation of acceptance, as of the place of
2054 arrival.

2055 Sec. 89. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
2056 agreed, a lessee that has accepted goods and not justifiably revoked
2057 acceptance and has given notice pursuant to subsection (c) of section
2058 85 of this act may recover as damages for any nonconforming tender or
2059 other default by a lessor the loss resulting in the ordinary course of
2060 events from the lessor's default as determined in any reasonable
2061 manner.

2062 (b) Except as otherwise agreed, a measure of damages for breach of
2063 a warranty of quality is the present value at the time and place of
2064 acceptance of the difference between the value of the use of the goods
2065 accepted and the value if the goods had been as warranted for the
2066 lease period, unless special circumstances show proximate damages of
2067 a different amount.

2068 (c) A lessee may also recover incidental and consequential damages.

2069 Sec. 90. (NEW) (*Effective October 1, 2002*) (a) A lessee that pays all or

2070 a part of the rent or security for goods identified to the lease contract,
2071 whether or not the goods have been shipped, on making and keeping
2072 good a tender of any unpaid portion of the rent and security due under
2073 the lease contract, has a right to recover the goods from the lessor if the
2074 lessor repudiates or fails to deliver as required by the lease contract.

2075 (b) A lessee may recover from the lessor by replevin, detinue,
2076 sequestration, claim and delivery, or the like, goods identified to the
2077 lease contract if, after reasonable efforts, the lessee is unable to effect
2078 cover for the goods or the circumstances reasonably indicate that an
2079 effort to obtain cover would be unavailing.

2080 (c) If the requirements of subsection (a) or (b) of this section are
2081 satisfied, the lessor's right vests upon identification of the goods to the
2082 lease contract even if the lessor has not then repudiated the lease
2083 contract or failed to deliver as required by the lease contract.

2084 Sec. 91. Section 42a-1-105 of the general statutes, as amended by
2085 section 134 of public act 01-195, is repealed and the following is
2086 substituted in lieu thereof (*Effective October 1, 2002*):

2087 (1) Except as provided hereafter in this section, when a transaction
2088 bears a reasonable relation to this state and also to another state or
2089 nation the parties may agree that the law either of this state or of such
2090 other state or nation shall govern their rights and duties. Failing such
2091 agreement this title applies to transactions bearing an appropriate
2092 relation to this state.

2093 (2) Where one of the following provisions of this title specifies the
2094 applicable law, that provision governs and a contrary agreement is
2095 effective only to the extent permitted by the law, including the conflict
2096 of laws rules, so specified:

T1 Rights of creditors against sold goods. Section 42a-2-402.

T2 Applicability of the article on leases. Sections 5 and 6 of this act.

T3 Applicability of the article on bank deposits and collections.

T4 Section 42a-4-102.
T5 Governing law in the article on funds transfers. Section
T6 42a-4a-507.
T7 Letters of credit. Section 42a-5-116.
T8 Applicability of the article on investment securities. Section
T9 42a-8-110.
T10 Law governing perfection, the effect of perfection or
T11 nonperfection and the priority of security interests and
T12 agricultural liens. Sections 42a-9-301 to 42a-9-307, inclusive,
T13 as amended by [this act] public act 01-132.

2097 Sec. 92. Subdivision (37) of section 42a-1-201 of the general statutes,
2098 as amended by section 137 of public act 01-132, is repealed and the
2099 following is substituted in lieu thereof (*Effective October 1, 2002*):

2100 (37) "Security interest" means an interest in personal property or
2101 fixtures which secures payment or performance of an obligation. The
2102 term also includes any interest of a consignor and a buyer of accounts,
2103 chattel paper, a payment intangible or a promissory note in a
2104 transaction that is subject to article 9. The special property interest of a
2105 buyer of goods on identification of such goods to a contract for sale
2106 under section 42a-2-401 is not a "security interest", but a buyer may
2107 also acquire a "security interest" by complying with article 9. [Whether
2108 a lease is intended as security is to be determined by the facts of each
2109 case; however, (a) the inclusion of an option to purchase does not of
2110 itself make the lease one intended for security, and (b) an agreement
2111 that upon compliance with the terms of the lease the lessee shall
2112 become or has the option to become the owner of the property for no
2113 additional consideration or for a nominal consideration does make the
2114 lease one intended for security. Except as otherwise provided in
2115 section 42a-5-505, the right of a seller or lessor of goods under article 2
2116 to retain or acquire possession of the goods is not a "security interest",
2117 but a seller or lessor may also acquire a "security interest" by
2118 complying with article 9. The retention or reservation of title by a seller
2119 of goods notwithstanding shipment or delivery to the buyer, as

2120 provided by section 42a-2-401, is limited in effect to a reservation of a
2121 "security interest". For purposes of this section, "security interest" does
2122 not include a rent-to-own agreement, as defined in section 42-240.]
2123 Except as otherwise provided in section 42a-2-505, the right of a seller
2124 or lessor of goods under article 2 or sections 1 to 90, inclusive, of this
2125 act to retain or acquire possession of the goods is not a "security
2126 interest", but a seller or lessor may also acquire a "security interest" by
2127 complying with article 9. The retention or reservation of title by a seller
2128 of goods, notwithstanding shipment or delivery to the buyer pursuant
2129 to section 42a-2-401, is limited in effect to a reservation of a "security
2130 interest". Whether a transaction creates a lease or a "security interest" is
2131 determined by the facts of each case; however, a transaction creates a
2132 "security interest" if the consideration the lessee is to pay the lessor for
2133 the right to possession and use of the goods is an obligation for the
2134 term of the lease not subject to termination by the lessee, and (a) the
2135 original term of the lease is equal to or greater than the remaining
2136 economic life of the goods, (b) the lessee is bound to renew the lease
2137 for the remaining economic life of the goods or is bound to become
2138 owner of the goods, (c) the lessee has an option to renew the lease for
2139 the remaining economic life of the goods for no additional
2140 consideration or nominal additional consideration upon compliance
2141 with the lease agreement, or (d) the lessee has an option to become the
2142 owner of the goods for no additional consideration or nominal
2143 additional consideration upon compliance with the lease agreement. A
2144 transaction does not create a "security interest" merely because it
2145 provides that (A) the present value of the consideration the lessee is
2146 obligated to pay the lessor for the right to possession and use of the
2147 goods is substantially equal to or is greater than the fair market value
2148 of the goods at the time the lease is entered into, (B) the lessee assumes
2149 risk of loss of the goods, or agrees to pay taxes, insurance, filing,
2150 recording or registration fees, or service or maintenance costs with
2151 respect to the goods, (C) the lessee has an option to renew the lease or
2152 to become the owner of the goods, (D) the lessee has an option to
2153 renew the lease for a fixed rent that is equal to or greater than the
2154 reasonably predictable fair market rent for the use of the goods for the

2155 term of the renewal at the time the option is to be performed, or (E) the
2156 lessee has an option to become the owner of the goods for a fixed price
2157 that is equal to or greater than the reasonably predictable fair market
2158 value of the goods at the time the option is to be performed. For the
2159 purposes of this subdivision: (i) Additional consideration is not
2160 nominal if (I) when the option to renew the lease is granted to the
2161 lessee, the rent is stated to be the fair market rent for the use of the
2162 goods for the term of the renewal determined at the time the option is
2163 to be performed, or (II) when the option to become the owner of the
2164 goods is granted to the lessee, the price is stated to be the fair market
2165 value of the goods determined at the time the option is to be
2166 performed; (ii) additional consideration is nominal if it is less than the
2167 lessee's reasonably predictable cost of performing under the lease
2168 agreement if the option is not exercised; (iii) "reasonably predictable"
2169 and "remaining economic life of the goods" are to be determined with
2170 reference to the facts and circumstances at the time the transaction is
2171 entered into; and (iv) "present value" means the amount as of a date
2172 certain of one or more sums payable in the future, discounted to the
2173 date certain. The discount is determined by the interest rate specified
2174 by the parties if the rate is not manifestly unreasonable at the time the
2175 transaction is entered into; otherwise, the discount is determined by a
2176 commercially reasonable rate that takes into account the facts and
2177 circumstances of each case at the time the transaction was entered into.

2178 Sec. 93. Subdivision (72) of subsection (a) of section 42a-9-102 of the
2179 general statutes, as amended by section 2 of public act 01-132, is
2180 repealed and the following is substituted in lieu thereof (*Effective*
2181 *October 1, 2002*):

2182 (72) "Secured party" means:

2183 (A) A person in whose favor a security interest is created or
2184 provided for under a security agreement, whether or not any
2185 obligation to be secured is outstanding;

2186 (B) A person that holds an agricultural lien;

- 2187 (C) A consignor;
- 2188 (D) A person to which accounts, chattel paper, payment intangibles
2189 or promissory notes have been sold;
- 2190 (E) A trustee, indenture trustee, agent, collateral agent or other
2191 representative in whose favor a security interest or agricultural lien is
2192 created or provided for; or
- 2193 (F) A person that holds a security interest arising under section 42a-
2194 2-401, section 42a-2-505, subsection (3) of section 42a-2-711, subsection
2195 (d) of section 77 of this act, section 42a-4-210 or section 42a-5-118, as
2196 amended by [this act] public act 01-132.
- 2197 Sec. 94. Subsection (b) of section 42a-9-102 of the general statutes, as
2198 amended by section 2 of public act 01-132, is repealed and the
2199 following is substituted in lieu thereof (*Effective October 1, 2002*):
- 2200 (b) The following definitions in other articles apply to this article:
- T14 "Applicant". Section 42a-5-102.
T15 "Beneficiary". Section 42a-5-102.
T16 "Broker". Section 42a-8-102.
T17 "Certificated security". Section 42a-8-102.
T18 "Check". Section 42a-3-104.
T19 "Clearing corporation". Section 42a-8-102.
T20 "Contract for sale". Section 42a-2-106.
T21 "Customer". Section 42a-4-104.
T22 "Entitlement holder". Section 42a-8-102.
T23 "Financial asset". Section 42a-8-102.
T24 "Holder in due course". Section 42a-3-302.
T25 "Issuer" (with respect to a letter of credit or letter-of-credit right).
T26 Section 42a-5-102.
T27 "Issuer" (with respect to a security). Section 42a-8-201.
T28 "Lease". Section 2 of this act.
T29 "Lease agreement". Section 2 of this act.
T30 "Lease contract". Section 2 of this act.

T31	<u>"Leasehold interest". Section 2 of this act.</u>
T32	<u>"Lessee". Section 2 of this act.</u>
T33	<u>"Lessee in ordinary course of business". Section 2 of this act.</u>
T34	<u>"Lessor". Section 2 of this act.</u>
T35	<u>"Lessor's residual interest". Section 2 of this act.</u>
T36	"Letter of credit". Section 42a-5-102.
T37	"Merchant". Section 42a-2-104.
T38	"Negotiable instrument". Section 42a-3-104.
T39	"Nominated person". Section 42a-5-102.
T40	"Note". Section 42a-3-104.
T41	"Proceeds of a letter of credit". Section 42a-5-114.
T42	"Prove". Section 42a-3-103.
T43	"Sale". Section 42a-2-106.
T44	"Securities account". Section 42a-8-501.
T45	"Securities intermediary". Section 42a-8-102.
T46	"Security". Section 42a-8-102.
T47	"Security certificate". Section 42a-8-102.
T48	"Security entitlement". Section 42a-8-102.
T49	"Uncertificated security". Section 42a-8-102.

2201 Sec. 95. Subsection (a) of section 42a-9-109 of the general statutes, as
2202 amended by section 9 of public act 01-132, is repealed and the
2203 following is substituted in lieu thereof (*Effective October 1, 2002*):

2204 (a) Except as otherwise provided in subsections (c) and (d), this
2205 article applies to:

2206 (1) A transaction, regardless of its form, that creates a security
2207 interest in personal property or fixtures by contract;

2208 (2) An agricultural lien;

2209 (3) A sale of accounts, chattel paper, payment intangibles or
2210 promissory notes;

2211 (4) A consignment;

2212 (5) A security interest arising under section 42a-2-401, section 42a-2-
2213 505, [or] subsection (3) of section 42a-2-711 or subsection (d) of section
2214 77 of this act, as provided in section 42a-9-110, as amended by [this act]
2215 public act 01-132 and this act; and

2216 (6) A security interest arising under section 42a-4-210 or 42a-5-118,
2217 as amended by [this act] public act 01-132.

2218 Sec. 96. Section 42a-9-110 of the general statutes, as amended by
2219 section 10 of public act 01-132, is repealed and the following is
2220 substituted in lieu thereof (*Effective October 1, 2002*):

2221 A security interest arising under section 42a-2-401, section 42a-2-
2222 505, [or] subsection (3) of section 42a-2-711 or subsection (d) of section
2223 77 of this act is subject to this article. However, until the debtor obtains
2224 possession of the goods:

2225 (1) The security interest is enforceable, even if subdivision (3) of
2226 subsection (b) of section 42a-9-203, as amended, has not been satisfied;

2227 (2) Filing is not required to perfect the security interest;

2228 (3) The rights of the secured party after default by the debtor are
2229 governed by article 2 or sections 1 to 90, inclusive, of this act; and

2230 (4) The security interest has priority over a conflicting security
2231 interest created by the debtor.

2232 Sec. 97. Subsection (c) of section 42a-9-203 of the general statutes, as
2233 amended by section 13 of public act 01-132, is repealed and the
2234 following is substituted in lieu thereof (*Effective October 1, 2002*):

2235 (c) Subsection (b) is subject to section 42a-4-210, as amended, on the
2236 security interest of a collecting bank, section 42a-5-118, as amended, on
2237 the security interest of a letter-of-credit issuer or nominated person,
2238 section 42a-9-110, as amended by this act, on a security interest arising
2239 under article 2 or sections 1 to 90, inclusive, of this act, and section 42a-
2240 9-206, as amended, on security interests in investment property.

2241 Sec. 98. Section 42a-9-309 of the general statutes, as amended by
2242 section 29 of public act 01-132, is repealed and the following is
2243 substituted in lieu thereof (*Effective October 1, 2002*):

2244 The following security interests are perfected when they attach:

2245 (1) A purchase-money security interest in consumer goods, except as
2246 otherwise provided in subsection (b) of section 42a-9-311, as amended,
2247 with respect to consumer goods that are subject to a statute or treaty
2248 described in subsection (a) of section 42a-9-311, as amended;

2249 (2) An assignment of accounts or payment intangibles which does
2250 not by itself or in conjunction with other assignments to the same
2251 assignee transfer a significant part of the assignor's outstanding
2252 accounts or payment intangibles;

2253 (3) A sale of a payment intangible;

2254 (4) A sale of a promissory note;

2255 (5) A security interest created by the assignment of a health-care-
2256 insurance receivable to the provider of the health-care goods or
2257 services;

2258 (6) A security interest arising under section 42a-2-401, section 42a-2-
2259 505, [or] subsection (3) of section 42a-2-711 or subsection (d) of section
2260 77 of this act, until the debtor obtains possession of the collateral;

2261 (7) A security interest of a collecting bank arising under section 42a-
2262 4-210, as amended;

2263 (8) A security interest of an issuer or nominated person arising
2264 under section 42a-5-118, as amended;

2265 (9) A security interest arising in the delivery of a financial asset
2266 under subsection (c) of section 42a-9-206, as amended;

2267 (10) A security interest in investment property created by a broker

2268 or securities intermediary;

2269 (11) A security interest in a commodity contract or a commodity
2270 account created by a commodity intermediary;

2271 (12) An assignment for the benefit of all creditors of the transferor
2272 and subsequent transfers by the assignee thereunder; and

2273 (13) A security interest created by an assignment of a beneficial
2274 interest in a decedent's estate.

2275 Sec. 99. Subsection (d) of section 42a-9-311 of the general statutes, as
2276 amended by section 31 of public act 01-132, is repealed and the
2277 following is substituted in lieu thereof (*Effective October 1, 2002*):

2278 (d) During any period in which collateral subject to a statute
2279 specified in subdivision (2) of subsection (a) of this section is inventory
2280 held for sale or lease by a person or leased by that person as lessor and
2281 that person is in the business of selling or leasing goods of that kind,
2282 this section does not apply to a security interest in that collateral
2283 created by that person.

2284 Sec. 100. Subsection (f) of section 42 of public act 01-132 is repealed
2285 and the following is substituted in lieu thereof (*Effective October 1,*
2286 *2002*):

2287 (f) Subsections (a) to (e), inclusive, of this section are subject to:

2288 (1) Subsection (g) of this section and the other provisions of sections
2289 42a-9-301 to 42a-9-318, inclusive, of the general statutes, as amended
2290 by [this act] public act 01-132, and sections 39 to 62, inclusive, of [this
2291 act] public act 01-132;

2292 (2) Section 42a-4-210 of the general statutes, as amended, with
2293 respect to a security interest of a collecting bank;

2294 (3) Section 42a-5-118 of the general statutes, as amended by [this act]
2295 public act 01-132, with respect to a security interest of an issuer or

2296 nominated person; and

2297 (4) Section 42a-9-110 of the general statutes, as amended by [this act]
2298 public act 01-132 and this act, with respect to a security interest arising
2299 under article 2 or sections 1 to 90, inclusive, of this act.

2300 Sec. 101. Subsection (b) of section 45 of public act 01-132 is repealed
2301 and the following is substituted in lieu thereof (*Effective October 1,*
2302 *2002*):

2303 (b) Subsection (a) subordinates a security interest only if the security
2304 interest:

2305 (1) Otherwise would have priority solely under subsection (a) of
2306 section 42 of [this act] public act 01-132 or section 44 of [this act] public
2307 act 01-132; or

2308 (2) Arose solely under subdivision (3) of section 42a-2-711 of the
2309 general statutes or subsection (d) of section 77 of this act.

2310 Sec. 102. Subsection (d) of section 42a-9-406 of the general statutes,
2311 as amended by section 68 of public act 01-132, is repealed and the
2312 following is substituted in lieu thereof (*Effective October 1, 2002*):

2313 (d) Except as otherwise provided in subsection (e) and in section 30
2314 of this act and section 42a-9-407, as amended by [this act] public act 01-
2315 132 and this act, and subject to subsection (h), a term in an agreement
2316 between an account debtor and an assignor or in a promissory note is
2317 ineffective to the extent that it:

2318 (1) Prohibits, restricts or requires the consent of the account debtor
2319 or person obligated on the promissory note to the assignment or
2320 transfer of, or the creation, attachment, perfection or enforcement of a
2321 security interest in, the account, chattel paper, payment intangible or
2322 promissory note; or

2323 (2) Provides that the assignment or transfer or the creation,
2324 attachment, perfection or enforcement of the security interest may give

2325 rise to a default, breach, right of recoupment, claim, defense,
2326 termination, right of termination or remedy under the account, chattel
2327 paper, payment intangible or promissory note.

2328 Sec. 103. Subsection (f) of section 42a-9-406 of the general statutes, as
2329 amended by section 68 of public act 01-132, is repealed and the
2330 following is substituted in lieu thereof (*Effective October 1, 2002*):

2331 (f) Except as otherwise provided in section 30 of this act and section
2332 42a-9-407, as amended by [this act] public act 01-132 and this act, and
2333 subject to subsections (h) and (i), a rule of law, statute or regulation
2334 that prohibits, restricts or requires the consent of a government,
2335 governmental body or official or account debtor to the assignment or
2336 transfer of, or creation of a security interest in, an account or chattel
2337 paper is ineffective to the extent that the rule of law, statute or
2338 regulation:

2339 (1) Prohibits, restricts or requires the consent of the government,
2340 governmental body or official or account debtor to the assignment or
2341 transfer of, or the creation, attachment, perfection or enforcement of a
2342 security interest in the account or chattel paper; or

2343 (2) Provides that the assignment or transfer or the creation,
2344 attachment, perfection or enforcement of the security interest may give
2345 rise to a default, breach, right of recoupment, claim, defense,
2346 termination, right of termination or remedy under the account or
2347 chattel paper.

2348 Sec. 104. Section 42a-9-407 of the general statutes, as amended by
2349 section 69 of public act 01-132, is repealed and the following is
2350 substituted in lieu thereof (*Effective October 1, 2002*):

2351 (a) Except as otherwise provided in subsection (b), a term in a lease
2352 agreement is ineffective to the extent that it:

2353 (1) Prohibits, restricts or requires the consent of a party to the lease
2354 to the assignment or transfer of, or the creation, attachment, perfection

2355 or enforcement of a security interest in, an interest of a party under the
2356 lease contract or in the lessor’s residual interest in the goods; or

2357 (2) Provides that the assignment or transfer or the creation,
2358 attachment, perfection or enforcement of the security interest may give
2359 rise to a default, breach, right of recoupment, claim, defense,
2360 termination, right of termination or remedy under the lease.

2361 (b) [A] Except as otherwise provided in subsection (g) of section 30
2362 of this act, a term described in subdivision (2) of subsection (a) is
2363 effective to the extent that there is:

2364 (1) A transfer by the lessee of the lessee’s right of possession or use
2365 of the goods in violation of the term; or

2366 (2) A delegation of a material performance of either party to the
2367 lease contract in violation of the term.

2368 (c) The creation, attachment, perfection or enforcement of a security
2369 interest in the lessor’s interest under the lease contract or the lessor’s
2370 residual interest in the goods is not a transfer that materially impairs
2371 the lessee’s prospect of obtaining return performance or materially
2372 changes the duty of or materially increases the burden or risk imposed
2373 on the lessee within the purview of subsection (d) of section 30 of this
2374 act unless, and then only to the extent that, enforcement actually
2375 results in a delegation of material performance of the lessor.

This act shall take effect as follows:	
Section 1	October 1, 2002
Sec. 2	October 1, 2002
Sec. 3	October 1, 2002
Sec. 4	October 1, 2002
Sec. 5	October 1, 2002
Sec. 6	October 1, 2002
Sec. 7	October 1, 2002
Sec. 8	October 1, 2002
Sec. 9	October 1, 2002

Sec. 10	<i>October 1, 2002</i>
Sec. 11	<i>October 1, 2002</i>
Sec. 12	<i>October 1, 2002</i>
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Sec. 100	<i>October 1, 2002</i>
Sec. 101	<i>October 1, 2002</i>
Sec. 102	<i>October 1, 2002</i>
Sec. 103	<i>October 1, 2002</i>
Sec. 104	<i>October 1, 2002</i>

OLR Amended Bill Analysis

sHB 5653 (as amended by House "A")*

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

This bill codifies the law on leasing goods, fills gaps, and clarifies ambiguities in the Uniform Commercial Code (UCC) Article 2 on sales and common law contracts and remedies rules.

The bill distinguishes between true leases, finance leases, and consumer leases. The latter two types are subsets of true leases. In a true lease the lessor gives possession and the right to use the goods to a lessee for a period of time in return for rent. Title to the goods and a residual interest remain with the lessor.

Finance leases are made by lessors who are not the fundamental supplier of the leased goods. They lease goods to lessees as a means of financing their acquisition. Consumer leases are those between a merchant and a consumer, in which the lessee takes the lease primarily for a personal, family, or household purpose. The bill provides certain protections for consumers, such as provisions on unconscionable leases, choice of law, and options to accelerate.

The bill establishes criteria for creating and interpreting lease contracts. It specifies how the contract must be performed and how it can be modified, rescinded, or waived. It establishes criteria for identifying the goods subject to the contract. It specifies who can insure the goods and who bears the risk of loss. It imposes express and implied warranties.

The bill defines conditions for performance and repudiation of a lease contract, as well as the responsibility of parties when performance is impaired. It creates an extensive structure of remedies in the event of default by the lessor or lessee.

The bill creates rules governing lessor and lessee relationships with third parties. In particular, it specifies when lessors and lessees can assign their rights and the effect of this assignment. It identifies the effect of subsequent leases or sales of the goods on the rights of the lessor, lessee, and subsequent lessee or buyer. It establishes lien priorities and the priority of interests when the leased goods are fixtures or accessions. The bill does not prevent an agreement by a party to subordinate his priority.

The bill delineates the distinctions between leases and security interests and establishes when leases are subject to the UCC's secured transactions requirements (Article 9). It generally makes security interests arising solely under the bill subject to those requirements.

The bill allows parties to agree on provisions different from those in the bill unless the bill prohibits it.

The bill also makes conforming changes.

EFFECTIVE DATE: October 1, 2002

*House Amendment "A" makes a technical change.

*House Amendment "B" (1) eliminates a provision that allowed a lessor in a consumer lease to disclaim, modify, or limit damages for non-personal injuries caused by a breach of warranty when the lessor had a substantial interest in limiting them only to the lessee; (2) makes provisions that limit, alter, or exclude consequential damages for personal injuries involving consumer goods unconscionable on their face, rather than presumptively unconscionable, and provides that one of these provisions is not unconscionable on its face when the loss is commercial, rather than having a presumption that it was not unconscionable; and (3) makes a technical change.

SCOPE OF THE BILL

Under the bill, transactions subject to its provisions are also subject to certificate of title statutes of this state and other jurisdictions, laws that set different rules for consumer leases, and certain other Connecticut laws. Transactions are subject to Connecticut certificate of title statutes on motor vehicles, trailers, mobile homes, boats, farm tractors and similar vehicles, and certain provisions relating to public utilities and

public service companies. But these statutes do not apply to the rights of a lessee in the ordinary course of business whose rights arose before the certificate of title became effective in another purchaser.

The other Connecticut laws that apply include those covering (1) sale or lease of agricultural products; (2) consignment or transfer of works of art or fine prints by artists; (3) distribution agreements, franchises, and other relationships through which goods are leased; (4) liability for products that cause personal or property injury; (5) making and disclaimer of warranties; (6) dealers in particular products such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids; and (7) noncommercial motor vehicle leases.

GENERAL PROVISIONS

Authenticated Records

The bill requires the use of an authenticated record in many circumstances. A “record” is information in a tangible medium or an electronic or other medium that can be retrieved in a perceivable form. To “authenticate” is to (1) sign or (2) execute or adopt a symbol, encrypt, or process a record in whole or part with the intent of the person to identify himself and adopt or accept a record.

Under the bill, a record or authentication (1) cannot be denied effect or enforceability because it is in electronic form and (2) need not be generated, stored, sent, received, or otherwise processed by electronic means or in electronic form. A person can set reasonable requirements for the type of authentication or record that is acceptable.

The bill allows a person to use an electronic agent for authentication, agreement, or performance. An electronic agent is a computer program, electronic, or other automated means used to initiate an action or respond to electronic messages or performances without intervention by a person. A person who uses an electronic agent is bound by its operations even if no one is aware of or reviews the actions or their results.

Conspicuous Terms

In some instances, the bill requires a term in a record or agreement to be conspicuous. Under the bill, a term is “conspicuous” if it is written,

displayed, or presented so that a reasonable person (against whom it is to operate) should have noticed it. For electronic records that are to evoke a response from an electronic agent, a term is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review by an individual. The bill specifies that to a person, conspicuous terms include (1) headings in capitals of equal or greater size or contrasting type, font, or color to the surrounding text; (2) language in the body of a record or display that is larger or in contrasting type, font, or color or set off from surrounding text by symbols or marks that call attention to it, or (3) terms prominently referenced in an electronic record or display that is readily accessible and reviewable. For a person or electronic agent, a conspicuous term includes a term or reference to one placed in a record or display so that the person or agent cannot proceed without taking some action on the term or reference.

Notice

Under the bill, notice is received when it (1) comes to a person's attention or (2) is delivered and available (a) at a location designated by agreement for the notice or (b) if no agreed location, the person's residence, place of business where the contract was made, any other place held out as a place to receive notices or, for electronic records, in an information processing system in a form capable of being processed or perceived if the recipient uses, designated, or holds out that the system is a place for receiving notices.

Altering the Bill's Provisions

The bill allows parties to agree on provisions different than those in the bill unless the bill prohibits it. Terms such as "must" or "shall" or the lack of language such as "unless otherwise agreed" does not necessarily prohibit the parties from agreeing to a different provision. The bill specifies that parties may shift an allocation of risk or apportion the risk or burden even if it is set by a provision of the bill.

FINANCE LEASES

The bill creates a separate category of leases known as "finance leases," which are three-party transactions. A supplier manufactures or supplies the goods, the lessor enters into a sales or lease agreement with the supplier, and the lessor and lessee enter into the finance lease

of the goods. The lessor acts as a financier for the acquisition of the leased goods. By definition, the lessor does not select, manufacture, or supply the goods. It acquires them or the right to possess or use them in connection with the particular lease, or in connection with another lease, if the goods were previously leased by lessor and are not being leased to a consumer.

For a transaction to qualify as a finance lease, one of the following must occur:

1. before authenticating the lease agreement, the lessee receives a copy of the supply agreement by which the lessor acquired or proposes to acquire the goods or the right to possess or use them;
2. the lessee's approval of the supply agreement becomes a condition to the effectiveness of the lease contract;
3. before authenticating the lease agreement, the lessee is given a complete statement of the promises and warranties, any disclaimers of warranties, limitations or modifications of remedies, and liquidated damages, provided to the lessor by the supplier, including those of third parties such as the manufacturer; or
4. if the lease is not a consumer lease, the lessor informs the lessee in writing before he authenticates the lease agreement (a) of the supplier's identity, (b) that the lessee is entitled under the bill to the promises and warranties provided to the lessor by the supplier, and (c) that the lessee may communicate with the supplier and receive a complete statement of the promises and warranties.

The finance lessee is the automatic beneficiary of all warranties under the supply contract.

The finance lessor is held only to express warranties and an implied warranty that for the lease term no person holds a claim to the goods that arose from the lessor's act or omission. The bill exempts the finance lessor from implied warranties of fitness and merchantability and that goods are delivered free of rightful claims.

Upon the lessee's acceptance of the goods, his promises to the lessor under the lease contract become irrevocable and independent. The lessee must perform even if the lessor's performance is not in accordance with the contract provisions.

An independent and irrevocable promise is one that is:

1. enforceable between the parties and by or against their assignees or other third parties; and
2. cannot be cancelled, terminated, modified, repudiated, excused, or substituted for without the consent of the party who is owed the promised performance.

The bill states that this provision does not affect the validity under any other law of a lease covenant making the lessee's promises irrevocable and independent when the lessee accepts the goods.

Supply Contracts Affecting Finance Leases

Under the bill, the lessee in a finance lease has an enforceable right to the benefits of a supplier's contractual promises to the lessor, as well as any applicable express or implied warranties. (A supply contract is one under which the lessor buys or leases goods to be leased to another person or entity.) But the lessee's rights are subject to the terms of the supply contract and warranty and all defenses or claims arising from them.

Under the bill, any modification or rescission of the supply contract is effective between the supplier and lessee unless, prior to the modification or rescission, the supplier knew that the lessee had entered into the finance lease. Where the supply contract is rescinded or modified, the bill requires the lessor to provide to the lessee what he would otherwise lose through the rescission or modification.

CONSUMER LEASES

Under the bill, a consumer lease is one in which the lessee is an individual who takes the lease primarily for a personal, family, or household purpose, and the lessor is regularly engaged in the business of leasing or selling.

The bill makes unenforceable a consumer lease provision that applies the law of a jurisdiction other than where (1) the lessee resides at the time the lease becomes enforceable or within 30 days after or (2) goods are to be used. Parties can choose a judicial forum but in a consumer lease, it must be the judicial district where the consumer resides or where the transaction occurred.

Under the bill, if the court finds that a consumer lease contract or term was induced by unconscionable conduct, or that unconscionable conduct occurred in the collection of money due under the contract, the court may award appropriate relief. If, for any type of lease, the court finds the contract or a term to have been unconscionable at the time it was made, it may refuse to enforce the entire contract or the term, or may require that the term be applied in a way, which would not be unconscionable. For unconscionability claims successfully raised by a consumer lessee, the bill requires the court to award reasonable attorney's fees to the lessee.

If a lease authorizes a party to accelerate payment or performance or require collateral or additional collateral, either "at will" or "when he deems himself insecure," the party may do so only if, in good faith, he believes that the prospect of payment or performance is impaired. For consumer leases, the burden of establishing good faith is on the party who exercised the power; for other leases, it is on the party against whom the provision was exercised.

FORMATION OF LEASE CONTRACTS

Under the bill, a lease contract may be made in any way. This includes offer and acceptance, the parties' conduct that shows their agreement, and the interaction of electronic agents (see below). A contract is sufficient even if (1) it has indefinite terms, as long as the parties intended to make a contract and there is a reasonably certain basis for providing a remedy; (2) the time of its creation is undetermined; (3) the records do not otherwise establish a lease contract; or (4) one party reserves the right to modify terms.

Unless otherwise unambiguously indicated by the language or circumstances, the offer to make a contract invites acceptance in any way and by any medium reasonable in the circumstances. If beginning requested performance is a reasonable way to show acceptance, the person who makes the offer can treat it as having lapsed if he is not notified of its acceptance within a reasonable time.

The bill limits the ability of a merchant to revoke an offer made in an authenticated record that states that it will be held open. The period of irrevocability is (1) the amount of time stated in the offer, if there has been no payment or (2) a reasonable period up to 90 days if no deadline is stated. An assurance in the record is ineffective unless it is

conspicuous.

Electronic Agents

Under the bill, the interaction of electronic agents can form a lease contract if it satisfies the bill's provisions on contract formation, unless it resulted from fraud, electronic mistake, or similar reasons.

The interaction of an electronic agent and an individual acting on his own or someone else's behalf can also form a lease contract. The contract is formed if the individual takes actions that he can refuse to take or makes a statement that he has reason to know will (1) cause the electronic agent to complete the transaction or performance or (2) indicate acceptance of an offer regardless of the individual's other expressions or actions that the electronic agent cannot react to.

In an interaction between individuals, an offer that evokes an electronic message in response forms a lease contract when (1) the offer is accepted validly under the bill's provisions and the acceptance is received or (2) electronic performance is received (unless acceptance was required in a different manner).

An electronic record is effective when it is received even if no one is aware of its receipt. If an offer in an electronic message evokes an electronic message in response, a lease contract can be formed under these provisions.

An electronic agent is attributed to a person if (1) the person or his electronic agent acted or (2) the person is bound by it under the law of agency. The party relying on the attribution of an electronic message to another person has the burden of establishing it.

An electronic message is an electronic record or display that is stored, generated, or transmitted by electronic means to communicate with a person or electronic agent.

Enforceability

Under the bill, to be enforceable, a lease must either be (1) authenticated in a record by the party against whom enforcement is sought (or his agent) or (2) require total payments, excluding payments for options to renew or buy, of under \$1,000.

An authenticated record must indicate that a contract has been made between the parties and describe the leased goods and the lease duration. The description of the goods or duration, whether or not specific, is sufficient if it reasonably identifies what is described. A lease that omits or incorrectly states certain terms is enforceable, but if it states a quantity it is enforceable only up to that amount.

If a contract is made that does not meet the requirements described above but is valid in other respects, it is enforceable:

1. if the goods are specially made or obtained for the lessee and are unsuitable for other customers and the lessor has substantially begun their manufacture or procurement under circumstances that indicate that they are for the lessee before receiving a notice of repudiation;
2. if a party being sued admits in legal proceedings that a lease was made (but only enforceable as to the quantity of goods admitted);
or
3. with respect to goods that have been received and accepted by the lessee.

For these leases, the lease duration is: (1) the duration specified in a record authenticated by a defendant in a suit, (2) the duration admitted to by the defendant in court, or (3) a reasonable duration.

An enforceable lease contract does not become unenforceable just because it cannot be performed within a year or any other applicable period after its making.

If the parties agree on final terms in records, they cannot be contradicted by evidence of prior agreement or simultaneous oral agreement. But they can be supplemented by evidence of (1) the course of dealing or performance or the usage of trade (the court need not first find the record ambiguous) or (2) consistent additional terms unless the court finds that the record was meant to be the exclusive statement of the terms. The court can use other sources to explain terms under applicable law.

Course of Performance

Under the bill, any course of performance accepted without objection

is relevant to the interpretation of an agreement regarding a contract that involves repeated chances for performance and an opportunity for the other party to object. (Course of performance is the conduct of the parties in performing a contract that creates an understanding between them about performance.)

The agreement's express terms and any course of performance, course of dealing, and usage of trade must be construed as consistent with each other when this is reasonable. If this is not reasonable, the bill establishes the following hierarchy in interpreting the agreement: (1) its express terms prevail over the course of performance, course of dealing, and usage of trade; (2) the course of performance prevails over the course of dealing and usage of trade; and (3) the course of dealing prevails over usage of trade. Generally, the course of performance is relevant in showing that there has been a waiver or modification of a term inconsistent with the course of performance.

Modification, Rescission, and Waiver

An agreement made in good faith to modify a lease does not require consideration to be binding. (Consideration refers to something of value in return for a performance or a promise of performance by another.) A term in an authenticated record that prohibits modification or rescission except by an authenticated record cannot be modified or rescinded in any other way. If the term is in a form or record from a merchant to a non-merchant, it must be separately authenticated. A party whose language or conduct is inconsistent with such a term, cannot enforce the term if it would be unjust because the other party relied on that language or conduct and materially changed his position.

A party can waive a lease condition if it was included for his benefit. Language or conduct is relevant to showing waiver. The party who has made a waiver can retract it by providing reasonable notice to the other party, who must receive it, stating that strict performance will be required. This provision does not apply if the retraction would be unjust due to a material change of position of a party in relying on the waiver.

IDENTIFICATION OF GOODS SUBJECT TO THE CONTRACT

The bill allows the parties to agree on the time and manner of

identifying goods subject to the lease contract. If there is no explicit agreement, the identification is made:

1. when the contract is made, if it is for a lease of existing and designated goods; or
2. when the goods are shipped, marked, or otherwise designated by the lessor as being the ones referred to in the contract, if the lease involves goods that are not existing and identified.

The bill also covers leases of animals, including their unborn young. For the latter type of lease, identification occurs when the young are conceived.

INSURANCE

A lessee obtains an insurable interest in existing goods once they are identified, even if they are nonconforming and he can reject them. If the lessee's interest is based only on the lessor's identification of goods, the lessor can substitute other goods for them until default, insolvency, or notification to the lessee that the identification is final.

The lessor retains an insurable interest until the lessee exercises an option to buy them and the risk of loss has passed to the lessee.

The parties can agree as to (1) who must obtain and pay for insurance and (2) who the beneficiary is. These provisions do not affect insurable interests recognized under other law.

RISK OF LOSS

Under the bill, for finance leases, the lessee bears the risk of loss. For all other types of leases, the lessor retains this risk.

If the risk of loss passes to the lessee under the lease contract and the contract does not specify when the risk changes hands, the following rules apply:

1. if the contract allows or requires goods to be shipped by a carrier and does not require delivery at a specific destination, the risk passes when they are delivered to the carrier;
2. if such a contract specifies a delivery point and the carrier tenders them to the lessee, the risk passes when tendered;

3. if the goods are held by a bailee to be delivered without being moved, the risk passes when the bailee acknowledges to the lessee that he has the right to possess the goods (a bailee is a person or entity to whom property is delivered in trust to carry out some object or purpose); or
4. the risk passes when the lessee receives the goods (or control of them if the lessee does not intend to take possession).

In three situations, default under the contract by either party affects the risk of loss.

1. If the lessee rightfully rejects the goods or justifiably revokes acceptance, the lessor has the risk of loss once the rejection or revocation is effective.
2. If (a) the lessor tenders nonconforming goods that the lessee could rightfully reject or revoke acceptance of, (b) the goods are damaged or lost before rejection or revocation, and (c) the lessee would otherwise have the risk of loss, the lessor has the risk of loss to the extent the nonconformity caused the damage or loss.
3. If a lessee repudiates or breaches a contract when conforming goods are identified to it and the risk of loss has not passed to him, he has the risk of loss for a commercially reasonable time after the breach or repudiation.

DAMAGE TO IDENTIFIED GOODS

Under the bill, if a contract requires that goods be identified when the contract is made and they are damaged or destroyed because of a third party's fault or before the risk or loss has passed to the lessee, the following rules apply.

1. If the loss occurs before delivery to the lessee, the lessor or supplier must seasonably notify the lessee of the nature and extent of the loss.
2. The contract is avoided if the loss is total.
3. If the loss is partial or the goods have become nonconforming, the lessee may demand to inspect the goods and choose to treat the contract as avoided or accept the goods with an allowance against the rent.

If the lessee chooses the last option, he waives further rights against the lessor. The option concerning partial loss of nonconforming goods

is not applicable for finance leases unless they are consumer leases.

WARRANTIES

The bill clarifies and standardizes the law of warranties for leases. (A warranty is a seller or lessor statement or representation promising that the goods that are part of the sale or lease have the character, quality, or title that the seller or lessor states).

Warranties on Interference and Infringement

Under the bill, a finance lessor warrants that no one, due to the lessor's acts or omissions, has (1) a claim or interest in the goods that will interfere with the lessee's enjoyment of the leasehold interest or (2) a colorable claim or interest in the goods that unreasonably exposes the lessee to litigation. Other lessors warrant that no one has such a claim or interest.

Except in a finance lease, when the lessor is a merchant who regularly deals in goods of the kind included in the lease, the bill imposes an implied warranty that the goods are delivered free of any rightful claim of infringement.

These warranties can be disclaimed or modified only by specific language or by circumstances that give the lessee reason to know that the lessor purports to transfer only the rights that the lessor or a third party has.

Express Warranties

Under the bill, any representation (a description of the goods, affirmation of fact, or promise about the quality or performance of the goods) made by a lessor to a lessee that relates to the goods and becomes part of the bargain is an express warranty that the goods will conform to the representation. A sample or model represents that all the goods will conform to the sample or model. A representation includes those made in any communication to the public, such as advertising.

It is not necessary to use formal words such as "warranty" or "guaranty" to create an express warranty and there need not be a specific intent to do so. A representation merely of the good's value or

an affirmation that is merely the lessor's opinion or recommendation is not an express warranty.

The representation becomes part of the basis of the bargain unless (1) the lessee knew it was not true, (2) a reasonable person in the lessee's position would not believe it was part of the agreement, or (3) for representations to the public, the lessee did not know of it at the time of the agreement.

A lessee has a right to sue for breach of warranty under the bill's provisions.

Words or conduct that are relevant to creation, disclaimer, or modification of an express warranty must be construed as consistent with each other whenever reasonable. Words or conduct that disclaim or modify an express warranty are not effective to the extent that construction is unreasonable.

Implied Warranties

Under the bill, there are implied warranties of (1) merchantability and (2) fitness for a particular purpose. These two warranties do not apply to lessors in finance leases. The warranty of merchantability operates where the lessor is a merchant in goods of that kind. It assures, among other things, (1) that the goods are considered by the trade to meet the description in the lease agreement, (2) are fit for the ordinary purposes for which goods of that type are used, and (3) conform to any representation on the container or label. The implied warranty of fitness for a particular purpose operates when the lessor, at the time the contract is made, has reason to know of any particular purpose for which the goods are required and that the lessee is relying on his skill or judgment to provide suitable goods.

These implied warranties can be disclaimed or modified in a record with conspicuous language. The bill includes certain wording requirements and examples for such agreements. The bill specifies that all implied warranties are disclaimed, unless the circumstances show otherwise, (1) by expressions such as "as is," "with all faults," or similar language, or (2) conduct that in common understanding makes it clear to the lessee that the lessor assumes no responsibility for the quality or fitness of the goods. For consumer contracts, this must be done by conspicuous language in a record.

If the lessee examined the goods, a sample, or model fully or refused to do so, there is no implied warranty regarding defects that a reasonable examination in the circumstances should have revealed.

Under the bill, other implied warranties can arise from the course of dealing or usage of trade.

Provisions on Warranties

Under the bill, an express or implied warranty that benefits the lessee also extends to any person who suffers a personal injury due to a breach of the warranty if that person could reasonably be expected to use or be affected by the goods. For consumer leases, this also extends to family, the household, their invitees, and transferees from the lessee for non-personal injuries (the lessor cannot disclaim, modify, or limit these damages). The bill prohibits any lease provision, which would limit, modify, or exclude warranties that assure against personal injury.

Remedies for a breach of warranty can be limited according to the bill's provisions for liquidation or limitation of damages and modification of remedy.

Any language by a lessor or manufacturer of consumer goods that excludes or modifies any implied warranties of merchantability or fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of warranties are not enforceable. But these provisions on disclaimer or modification do apply to leases of consumer goods that are marked irregular, factory seconds, or damaged.

Under the bill, warranties must be construed as consistent and cumulative. If this is unreasonable, the parties' intention determines which warranty is dominant according to the following rules: (1) exact specifications prevail over an inconsistent sample, model, or general description; (2) a sample from bulk or a model prevails over an inconsistent general description; and (3) an express warranty prevails over inconsistent implied warranties other than the warranty of fitness for a particular purpose (except for consumer leases).

The bill does not limit rights and remedies of third party beneficiaries

or assignees under contract law or those to which goods are transferred by law. It does not replace any law that extends a warranty to benefit another person.

A warranty to someone other than the immediate lessee and remedies for breach can be limited by terms of the contract between the lessor and immediate lessee subject to certain exceptions.

Breach of Warranty and Infringement Claims

Under the bill, if delivery is accepted, the following rules apply to claims.

1. A lessee or person entitled to enforce a warranty must provide notice of a claim within a reasonable time after default or breach of warranty is, or should have been, discovered. Untimely notice prohibits the use of remedies to the extent the party entitled to notice proves it was prejudiced.
2. Except for consumer leases, a lessee must notify the lessor or supplier within a reasonable time if the lessee is sued for infringement or a similar claim that the lessor or supplier is answerable for. Otherwise, the lessee can be barred from a remedy for liability in the claim.

Unless agreed otherwise, the measure of damages for breach of warranty of quality is the present value (at the time and place of acceptance) of the difference between the value of the goods and the value if they had been as warranted. Special circumstances can show damages of a different amount. A lessee can also recover incidental and consequential damages.

A person claiming breach of a lessor's express or implied warranty must prove the breach.

The following rules apply to claims against the lessee for breach of warranty, indemnity, or other obligations when another party is answerable.

1. The lessee must give notice to the other party in a record and that party can give notice to any other person who is answerable. If the notice invites the person to intervene and defend and states that failure to do so will bind the person in future suits by the lessor for

facts common to the two actions, the person must intervene after reasonable receipt of the notice or be bound.

2. If the claim is for infringement, the original lessor or supplier can demand in a record that the lessee turn over control of the litigation or be barred from having a remedy. If the lessor or supplier also agrees to pay expenses and any judgment, the lessee is barred unless he turns over control after reasonable receipt of the demand.

PERFORMANCE UNDER A LEASE CONTRACT

A lease imposes performance obligations on both parties. The bill allows several ways for the parties to deal with failure to perform these obligations, whether through the fault of one of them or through circumstances beyond their control.

Insecurity

The bill allows a party who has reasonable grounds for believing that the other will not perform its lease obligations to demand assurances in a record and, if commercially reasonable, to suspend its own obligations until it receives the assurance. If the assurance is not given within a reasonable time (not more than 30 days after the demand), the lease is considered repudiated.

Under the bill, the fact that a party accepts a delivery or payment that does not conform to the lease terms does not mean that it cannot demand assurance of future performance. The bill requires that, between merchants, the reasonableness of the grounds for insecurity and the adequacy of assurances be judged according to commercial standards.

Repudiation Before Performance is Due

Under the bill, repudiation includes (1) language that a party cannot or will not make a performance that is due under the contract or (2) voluntary, affirmative conduct that reasonably appears to the other party to make a future performance impossible.

When one party repudiates a lease over something not yet due under the lease terms, the bill gives the other party certain remedies if the repudiation substantially impairs the lease's value to him. The aggrieved party may:

1. wait a commercially reasonable time for the other party to change its mind and perform its lease obligations;
2. use any other default remedy even if he has urged retraction or given notice that he will wait for performance;
3. suspend performance; or
4. if a lessor, identify goods to the contract and dispose of them.

If the aggrieved party has not cancelled the lease, materially changed its position, or otherwise indicated that it considers the repudiation final, the other party may change its mind and, before the time for performing its obligation, clearly retract its repudiation. Such a retraction reinstates the repudiating party's rights under the lease, allowing for any delay the repudiation has caused.

The retraction must include any assurance justifiably demanded under the bill's provisions.

CHANGES IN PERFORMANCE CAUSED BY OUTSIDE CIRCUMSTANCES

Delivery Facilities

Under the bill, if through no fault of the lessee, lessor, or supplier, an agreed-upon delivery facility, carrier, or manner of delivery becomes unavailable or commercially impracticable, a commercially reasonable substitute, if available, must be offered and accepted.

Payment Method

If the agreed-upon payment method is not available because of domestic or foreign government regulations and the lessee fails to provide a payment method that is commercially substantially equivalent, the lessor may withhold or stop delivery or stop its supplier from delivering the released goods. If the lessee has already taken delivery, the bill requires the lessor to accept payment by whatever means or manner is provided for in the government regulations. This requirement applies as long as those regulations are not discriminatory, oppressive, or predatory.

Excused Performance

A lessor or lessor's supplier who fails to make or delays a performance is not considered to be in default if its performance is affected by (1) something the parties assumed would not happen or (2) good faith compliance with a foreign or domestic government statute, order, or regulation. This provision applies even if the government statute, order, or regulation is later invalidated.

If the event or government action affects only part of the lessor's or supplier's ability to perform it must reasonably and fairly allocate its production and deliveries among its customers. The lessor or supplier can allocate part of the reduced capacity to regular customers who are not under contract at the moment and for its own needs for further production.

The bill requires the lessor to notify the lessee of the delay or nondelivery or of its estimated share of a reduced delivery within a reasonable time. If the lease does not require the lessor itself to supply the goods, the burden is on the actual supplier to notify the lessor and the lessee, of the delay, nondelivery, or reduced delivery.

A party who receives notice of a reduced delivery or indefinite or material delay may, by notice in a record, either terminate the lease or modify it (except in a finance lease) by accepting the reduced delivery or accept delivery and make an appropriate allowance in the rent.

If a party fails to modify or terminate the lease within a reasonable time, but no more than 30 days after receiving notice of the delay or reduced delivery, the lease contract terminates with respect to any affected performance.

TERMINATION

Under the bill, termination is the ending of a contract (or part of it) by a party's action under a power created by agreement or law or by operation of the agreement's terms for a reason other than a party's default.

Under the bill, termination of a lease discharges all obligations except:

1. rights based on a previous default or performance of the lease;
2. terms limiting the scope, manner, method, or location of the exercise of rights in the goods;

3. obligations of confidentiality, nondisclosure, or non-competition;
4. a choice of law or forum;
5. obligations to return or dispose of goods or return an unearned part of rent;
6. obligations to arbitrate or use alternative dispute resolution procedures;
7. terms limiting the time to bring an action or provide notice;
8. indemnity terms;
9. limitations on remedies or warranty disclaimers;
10. obligations to account and make payments on an accounting;
11. other rights, remedies, or limitations in the agreement to the extent enforceable under the law; and
12. other rights, remedies, or limitations if necessary to achieve the purposes of the parties under the circumstances.

CANCELLATION

An aggrieved party can cancel a lease when allowed by either the bill's provisions or the agreement unless there is a waiver of default or the right to cancel or there is a right to cure the default under the bill.

When a lease is cancelled, the lessee has the same obligations and duties with respect to goods he possesses or controls as if he had rejected a nonconforming tender and remained in control or if the lease terminated on its own terms.

On cancellation, all obligations are discharged except for:

1. rights based on previous default or performance of the lease;
2. terms limiting disclosure of information;
3. an obligation to return or dispose of goods;
4. a choice of law or forum;
5. obligations to arbitrate or use alternative dispute resolution;
6. terms limiting the time to bring an action or give notice;
7. a remedy for breach of the whole lease contract or any unperformed balance;
8. other rights, remedies, or obligations that the agreement states survive cancellation to the extent they are enforceable under other law; and
9. other rights, remedies, or limitations if necessary to achieve the purposes of the parties under the circumstances.

Language of cancellation, rescission, avoidance, or similar language does not renounce or discharge a claim for damages for an earlier default unless that intention is clear.

ACCEPTANCE

Under the bill, goods are accepted when: (1) after a reasonable opportunity to inspect the goods the lessee either (a) signifies that they conform or will be kept in spite of their nonconformity or (b) does not make an effective rejection or (2) the lessee's actions are inconsistent with the lessor's or supplier's interest in the goods or lessor's claim of rejection or revocation of acceptance and the lessor or supplier treats this as acceptance.

Acceptance of part of a commercial unit is acceptance of the entire unit.

A lessee must pay rent under the lease contract for any goods accepted. Acceptance precludes rejection but does not impair any other remedy in the bill or the agreement regarding nonconformity.

REMEDIES FOR DEFAULT

General Provisions

Whether a lessor or lessee is in default is determined by the bill's provisions as well as the lease agreement. The injured party can avail himself of the remedies specified in the bill as well as the lease agreement. The agreement may provide for rights and remedies in addition to or in substitution for those in the bill and may (except in a consumer lease) change or limit the measure of damages under the bill unless the bill specifically prohibits it. If an exclusive or limited contract remedy fails to achieve its purpose or a provision for an exclusive remedy is unconscionable, the remedies under the bill apply.

The cumulative effect of individual, insubstantial defaults may substantially impair the value of the whole lease contract. A party in default is not entitled to notice of default or enforcement unless the bill or the lease agreement requires it.

The party seeking enforcement can seek a judgment or use self-help or any available administrative or judicial procedure, including arbitration or dispute resolution if agreed to by the parties. A party

can enforce rights and remedies available in other law. If the lease covers real property and goods, a party can proceed under the bill's provisions or other law regarding real property and goods, according to the party's rights and remedies in the real property.

The bill's remedies must be liberally administered to place the aggrieved party in as good a position as if the other party had fully performed.

Unless the lease contract provides for liquidated damages or a limited remedy enforceable under the bill, an aggrieved party cannot recover for the loss resulting from default that could have been avoided by reasonable measures under the circumstances (the defaulting party must prove reasonable measures were not taken).

The bill's rights and remedies are cumulative but a party can only recover once for an injury.

The bill does not affect a remedy for breach of an obligation or promise that is collateral or ancillary to a lease contract.

A party can pursue all remedies under the bill for material misrepresentation or fraud. Rescission or a claim of it or rejection or return of goods is not inconsistent with a claim for damages or other remedies.

Damages

Under the bill, the aggrieved party can recover for the loss that results in the ordinary course from default as determined by the bill or any reasonable manner, incidental damages, and consequential damages. This is reduced by expenses and costs saved as a result of the default.

Consequential damages include any loss resulting from the aggrieved party's needs or requirements that the defaulting party had reason to know at the time of contracting and which could not be reasonably prevented, and personal or property injury resulting from a breach of warranty.

Consequential damages may be liquidated or otherwise limited, altered, or excluded unless this is unconscionable. On its face, a provision to limit, alter, or exclude consequential damages for personal

injury involving consumer goods is unconscionable. But such a provision that applies where the loss is commercial is not on its face unconscionable.

The lease agreement may provide for the liquidation of damages payable for default or any other act or omission (including indemnity for loss, diminution of expected tax benefits, or damage to the lessor's residual interest). But the liquidation amount or formula must be reasonable in light of the actual harm or the harm anticipated at the time the agreement was entered.

When the lessor justifiably withholds delivery or stops performance because of the lessee's default or insolvency, the lessee is entitled to restitution of any amount paid the lessor that is above the amount provided in a liquidated damages term in the lease. But in a consumer lease, the lessor is entitled to no more than \$500.

The lessee's amount of restitution is set off to the extent the lessor has a right to recover damages under the bill and to the amount or value received by the lessee under the lease contract.

The bill defines incidental damages as commercially reasonable charges for:

1. inspection, receipt, transportation, care, or custody of the goods;
2. stopping delivery or shipment;
3. cover, return, or disposition of the goods;
4. reasonable efforts to minimize or avoid the consequences of default; and
5. taking other remedies after default or dealing with the goods.

Specific Performance

The bill authorizes a court to order specific performance of the agreement if the goods or the agreed performance are unique, or in other proper circumstances. In commercial leases, the court can order specific performance if the parties agreed to it but not if the breaching party's sole remaining contractual obligation is to pay money. The court order can include terms and conditions such as payment of rent, damages, or other just relief.

Statute of Limitations

For an action for default under a lease contract, including breach of warranty or indemnity, the bill makes the statute of limitations four years after the cause of action accrued. In the original lease contract, the parties may reduce the period to no less than one year (but not in a consumer lease, or an action for indemnity). A cause of action accrues when the act or omission on which the default is based is, or should have been, discovered by the aggrieved party. A cause of action for indemnity accrues when the underlying act or omission is, or should have been, discovered by the indemnified party.

If an action is terminated, but a remedy in another action is available, the party can bring the other action after the limitations period has expired if it is within six months after the first action terminated. This rule does not apply if the first action ended voluntarily or was dismissed for failure to prosecute. The bill does not alter the law on tolling a limitations period and does not apply to rights of action that accrued before its effective date.

Default by Lessor

Under the bill, a lessor defaults when (1) the lessor fails to deliver goods in conformity with the contract, (2) the lessor repudiates the contract, (3) the lessee rightfully rejects the goods, or (4) the lessee justifiably revokes acceptance of the goods.

If the lessor defaults, the lessee may:

1. cancel the lease contract;
2. recover as much of the rent and security as has been paid and is just;
3. cover and pursue damages;
4. recover damages;
5. enforce a security interest;
6. recover identified goods;
7. obtain specific performance;
8. recover incidental and consequential damages;
9. recover liquidated damages;
10. enforce remedies as limited by agreement; and
11. exercise any right or remedy in the lease contract.

On rightful rejection or justifiable revocation of acceptance, the lessee

retains a security interest in goods in his possession or control for rent and security paid, and any expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of the goods. The lessee may dispose of the goods in good faith and in a commercially reasonable manner. If the goods or their delivery fail to conform to the lease contract, the lessee may reject or accept the goods or any commercial units. He must reject and provide notice in a reasonable time.

For contracts that authorize or require the delivery of goods in separate lots to be separately accepted (installment lease contracts), a lessee may reject any nonconforming delivery if it substantially impairs the value of the delivery. If a nonconformity or default for one or more installments is a substantial impairment of the value of the whole lease, it is a breach of the whole lease and the aggrieved party can reject any nonconforming, unaccepted installment and cancel the contract. The lease is not cancelled if the party (1) accepts a nonconforming installment without seasonable notice of cancellation, (2) brings an action about past installments, or (3) demands performance for future installments.

Lessee's Disposal of Goods. If a lessor or supplier has no agent or place of business where the goods are rejected or acceptance was revoked, the bill requires a merchant lessee to follow reasonable instructions regarding the goods from the lessor or supplier. Instructions are not reasonable if payment for expenses is not available when demanded. If the goods might rapidly decline in value and no instructions have been given, the merchant lessee must attempt to sell, lease, or otherwise dispose of them for the lessor's account.

If the goods are not likely to rapidly decline in value or are not subject to a security interest of the lessee, the lessee must hold them for a reasonable time to await the lessor's or supplier's instructions, and then may store the rejected goods, ship them to the lessor or supplier, or dispose of them for the lessor's account. The lessor must act in good faith and hold the goods with reasonable care

A merchant lessee that sells or leases the goods is entitled to reimbursement for the reasonable expenses of caring for and disposing of the goods. If this does not include a commission, he is entitled to the commission usual in the trade or a reasonable sum up to 10% of gross proceeds.

Someone who buys these goods in good faith takes them free of any rights of the lessor and supplier.

Nonconforming Goods and Revocations. If the lessee rejects any nonconforming delivery or revokes acceptance and the time for performance has not yet expired, the bill allows the lessor or supplier (with seasonable notice and at his own expense) to make a conforming delivery within the time provided in the lease. If the time for performance has passed, the lessor can still cure if it is appropriate and timely under the circumstances. The lessor must pay the lessee's reasonable and necessary expenses caused by the nonconformity.

When a nonconformity substantially impairs the value to the lessee of a lot or commercial unit, the lessee may revoke acceptance if he accepted on the reasonable assumption the nonconformity would be cured (and it has not been seasonably cured). This does not apply to finance leases. He may also revoke acceptance if he had not discovered the nonconformity, and his acceptance was induced by the lessor's assurances or, except with a finance lease, by the difficulty of discovery before acceptance.

A lessee may revoke acceptance for defaults that do not relate to nonconformity of the goods themselves. Specifically, the lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of the lot or unit to the lessee. This provision does not apply to commercial finance leases.

A lessee can revoke acceptance of a lot or a commercial unit for other defaults if the lease agreement provides for it.

A lessee must revoke in a reasonable time after the grounds for it are, or should have been, discovered and before any substantial change in the conditions of the goods occurs. Revocation is effective on notice to the lessor. A revocation creates the same rights and duties with regard to the goods as a rejection.

Damages and Right to Cover. After a lessor defaults, in specified instances, the lessee may cover by purchasing or leasing (in good faith and without unreasonable delay) additional goods in substitution for those due from the lessor. Under the bill, the right of cover applies if

the (1) lessor fails to deliver goods that conform to the lease or repudiates the lease, (2) lessee rightfully rejects the goods or justifiably revokes acceptance, or (3) parties agree that this right applies. The bill establishes how to calculate the cost of cover when a new lease is made in good faith and in a commercially reasonable manner. The lessee can recover the present value (as of the date of the commencement of the new agreement) of the rent under the new lease applicable to the remaining period of the original lease agreement, less the present value of the rent for the remaining period under the original lease, together with incidental or consequential damages, less expenses saved due to the default.

The bill establishes the measure of damages if the lessee elects not to cover or the bill's cover provisions do not apply. The measure of damages is the present value, as of the date of default, of the market rent for the remaining term of the lease, less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved because of the default. Market rent is determined at the place of tender (or place of arrival for rejection after arrival or revocation).

The bill also grants a lessee the right of replevin or similar actions for goods identified to the contract if, after reasonable efforts, the lessee is unable to cover or attempting to cover would be unavailing. (Replevin is a legal proceeding to recover possession of property wrongfully taken or withheld.)

Market Rent. If evidence of market rent is not readily available, the bill allows use of the (1) rent prevailing in a reasonable time before or after the time required and (2) rent prevailing at another place or for a different period which in commercial judgment or usage of trade is a reasonable substitute (with allowance for differences including transportation costs).

Evidence of relevant rent at another time or place or for a period other than the period described is not admissible unless the party offering it gives notice that prevents unfair surprise. Reports in official publications, trade journals, newspapers, or other general circulation communications about markets are admissible. The circumstances of the report's preparation can affect the weight of the evidence but not its admissibility.

Default by Lessee

Under the bill, the lessee defaults when he (1) wrongfully rejects or revokes acceptance of goods, (2) fails to make a payment when due, or (3) repudiates with respect to a part or the whole of the agreement.

For these defaults, the lessor may:

1. withhold delivery of the goods and take possession of goods previously delivered,
2. stop delivery of the goods by any carrier or bailee,
3. dispose of goods not identified to the contract as allowed by the bill,
4. obtain specific performance or recover rent,
5. dispose of or retain the goods and recover damages,
6. recover incidental and consequential damages,
7. cancel the lease contract,
8. recover liquidated damages,
9. enforce the limited remedies in the agreement (if allowed by the bill),
10. recover damages as allowed by the bill for loss resulting in the ordinary course, or
11. exercise other rights and remedies under the lease agreement.

If a lessor does not pursue to completion a right or actually obtain one of the above remedies or, if the default does not substantially impair the value of the lease contract to him, he may recover damages for loss resulting in the ordinary course from the default (determined in a reasonable manner), plus incidental damages minus expenses avoided. If the default substantially impairs the value of the contract to the lessor, he may recover damages or exercise the available remedies.

After a statutory or other material default by the lessee or, if agreed to, other contractual default, the lessor can take possession of the goods. If the lease requires it, the lessor can require the lessee to assemble the goods and make them available to the lessor. The lessor can also, without removal, render unusable any goods employed in trade and dispose of goods on the lessee's premises.

The lessor can also (1) identify conforming goods that are in the lessor's or supplier's possession or control at the time of learning of the default and (2) dispose of goods that were intended for the lease

contract even if they are unfinished. For unfinished goods, the lessor or supplier can, using reasonable commercial judgment to minimize loss, (1) complete manufacturing and identify the goods to the lease, (2) cease manufacture and lease, (3) sell or dispose of the goods for scrap or salvage, or (4) proceed in any reasonable manner.

If a lessee is insolvent, the lessor can refuse to deliver the goods. He can stop delivery of goods by a carrier or bailee if the lessee is insolvent, repudiates, or fails to make a payment, or if the lessor has a right to withhold or reclaim the goods. The lessor can stop delivery until the lessee receives the goods or the bailee or carrier acknowledges it holds the goods for the lessee. The bill includes provisions on notice to a carrier or bailee and how they proceed.

The bill also gives the lessor the right to recover for any loss or damage to his residual interest caused by the lessee's default. (The lessor's residual interest is his interest in the goods after expiration, termination, or cancellation of the lease contract.)

Disposing of Goods and Damages. The lessor can dispose of the goods after default by the lessee, after the lessor refuses to deliver or takes possession of the goods, or, if agreed, after other contractual default.

The bill establishes how damages are to be calculated when the lessor disposes of the goods through a new lease, the new lease agreement is substantially similar to the original lease agreement, and the disposition is in good faith and in a commercially reasonable manner. The lessor can recover (1) the unpaid rent as of the date of commencement of the new lease; (2) the present value of the rent under the original lease for the remaining term less the present value of the rent under the new lease for a comparable period; and (3) incidental damages less expenses saved because of the lessee's default.

If the new lease does not qualify for this treatment, or if the lessor disposes of the goods by sale or in a manner other than leasing, the lessor may recover damages from the lessee just as if he had elected not to dispose of the goods. Someone who takes the goods from the lessor in good faith for value takes them free of the original lease and any rights of the original lessee. A lessor is not accountable for any profit. A lessee that rightfully rejects or justifiably revokes acceptance must account to the lessor for any amount over the lessee's security interest.

If the lessee has never taken possession of the goods, the measure of damages is based on factors assessed as of the date of default: (1) the accrued and unpaid rent; (2) the present value of the original rent for the remaining term of the lease, less the present value of market rent; and (3) incidental or consequential damages, less expenses saved because of the default. If the lessee has taken possession of the goods, the same items comprise the damage award, but the date used in calculation is the earlier of the date the lessor repossesses the goods or the date the lessee tenders the goods to the lessor.

If this measure of damages does not put the lessor in as good a position as performance would have, damages can be measured in another way including lost profits (including overhead) and reasonable expenses incurred in preparing for or performing the contract, together with incidental and consequential damages.

Rent. A lessor may sue for unpaid rent for goods that are (1) retained by the lessee; (2) in the possession of the lessor and identified to the lease, but unable to be disposed of at a reasonable price after reasonable effort; or (3) lost or damaged after risk of loss passes to the lessee (but if the lessor retained or regained control, the loss or damage must occur in a commercially reasonable time after the risk passed to the lessee). In general, a lessor who elects to sue for rent due under a lease must hold identified goods in his possession for the lessee for the remaining lease term. If the lessor disposes of them before collection of the judgment and before the end of the remaining lease term, he recovers damages under the provisions of the bill dealing with disposition of the goods after default.

The lessor can obtain unpaid rent as of the date of judgment, the present value as of that date of the rent for the remaining term of the lease, and incidental and consequential damages allowed under the bill, minus expenses avoided.

Payment of the judgment entitles the lessee to use and possess goods not disposed of for the rest of the lease.

Electronic Self-Help. The bill defines electronic self-help as using electronic means to exercise a term of the lease agreement with respect to the lessor's rights and includes using electronic means to locate the goods.

The bill allows a lessor to use electronic self-help if the lessee separately agrees to a term in the lease agreement authorizing it and requiring notice. The lessor must give notice (1) that it will use electronic self-help no sooner than 15 days later; (2) stating the nature of the claimed breach; and (3) stating the name, title, address, and phone number of the lessor's representative that the lessee can contact about the lease agreement.

The bill allows a lessee to recover damages, including incidental damages. He can also recover consequential damages (even if prohibited by the lease agreement) for a lessor's wrongful use of electronic self-help.

The bill prohibits a lessor from using electronic self-help if he has reason to know that it will cause substantial injury or harm to public health or safety or grave harm to the public interest that substantially affects third parties not involved in the dispute.

Non-Conforming Performance

The bill prohibits a lessee from relying on a nonconforming performance in certain circumstances.

1. If in making a rejection the lessee fails to state a particular nonconformity that he could know by reasonable inspection, he cannot rely on it for rejection or default if (a) the lessor had a right to cure and would have done so or (b) between merchants, the lessor or supplier made a request in a record after rejection for a full and final statement in a record of all nonconformities.
2. If the lessee fails to state in making a revocation of acceptance, the nonconformity that justifies the revocation, he cannot rely on it for revocation or to establish default if the lessor had a right to cure and could have done so.

RELATIONSHIPS WITH THIRD PARTIES

Transfer of Lease Interest or Residual Interest

Under the bill, the transfer of a party's interest under the lease agreement or of the lessor's residual interest is effective even if the contract prohibits the transfer or makes it an event of default. This

applies even for transfers that occur by virtue of the creation or enforcement of a security interest. These provisions are subject to those in UCC Article 9 regarding creation and enforcement of security interests.

Although the transfers are effective, the lease provisions are generally enforceable to the extent that the bill authorizes remedies for their violation. Thus, if the transfer is an event of default, the aggrieved party has the rights and remedies provided generally for default under the bill, unless the party waives default or agrees otherwise. If the transfer is prohibited by the lease, materially impairs performance, materially changes duties, or materially increases risks, the aggrieved party may recover damages (to the extent they could not reasonably be prevented by the aggrieved party) from the transferor and a court may grant other appropriate relief, including cancellation of the lease contract and an injunction against the transfer.

A lease agreement provision is not enforceable if it prohibits the transfer of a right to damages for default with respect to the whole contract or a right to payment arising from the transferor's performance of his entire obligation or that makes such a transfer an event of default. Such a transfer does not materially impair performance, change duties, or increase risks such as to permit recovery for damages under the bill.

A provision in a consumer lease that prohibits a transfer or makes it an event of default must be specific, in a record, and conspicuous.

Voidable Rights, Title, and Leasehold Interests

A lessor with voidable rights or voidable title acquired in a purchase of goods from a transferor can transfer a good leasehold interest to a good faith subsequent lessee for value. Voidable rights or voidable title is acquired when the goods are delivered under a purchase transaction even if (1) the transferor was deceived about the lessor's identity, (2) the delivery was in exchange for a check that was later dishonored, (3) it was agreed that it was to be a cash sale transaction, or (4) the delivery was made through criminal fraud.

A lessee with a voidable leasehold interest acquired in a lease transaction can transfer a good leasehold interest to a good faith subsequent lessee for value to which the goods have been delivered. A

voidable leasehold interest is acquired when the goods are delivered under the lease contract even if (1) the lessor was deceived about the lessee's identity, (2) the delivery was in exchange for a check that was later dishonored, or (3) the delivery was made through criminal fraud.

Subsequent Leases or Sales of Goods

If a subsequent lease of goods is made by a lessor, it is subject to the prior lease. But, a subsequent lessee in the ordinary course of business will take the goods free of the prior lease contract if the lessor is a merchant dealing in goods of the kind leased and the goods were entrusted to him by the existing lessee.

If a subsequent lease or sale of the goods is made by the lessee, the buyer or sublessee takes the goods subject to the prior lease. He takes them free of the prior lease if he buys or leases in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind and the goods were entrusted to that lessee by the lessor. (A person is a buyer in the ordinary course of business if he buys in good faith and without knowledge that the sale to him violates the rights of a third party, and he buys in ordinary course from a person in the business of selling goods of that kind.)

A subsequent lessee of goods covered by a certificate of title statute takes no greater rights than those provided by the bill and the certificate of title statute.

Damages By a Third Party

If a third party deals with goods that are identified to a lease contract and damages them, the lessor has an action against the third party. A lessee has an action if he has (1) a security interest in the goods, (2) an insurable interest in the goods, or (3) the risk of loss under the contract or has since assumed the risk of loss and the goods were converted or destroyed.

Lien Priorities

Under the bill, a lien for services or materials furnished in the ordinary course of business with respect to the leased goods takes priority over any interest of the lessee or lessor under a lease contract, unless the law which creates the lien provides otherwise.

In general, a creditor's lien or security interest can only attach to what the lessee has. A creditor of the lessor has rights superior to the lease contract if the creditor's lien attached before the lease contract became enforceable. The creditor's interest is also superior if it holds a security interest in the goods, but not if the lessee gave value and took delivery without knowledge of the interest and the creditor's security interest was not perfected before the lease agreement became enforceable.

A lessee in the ordinary course of business takes the leased goods free of any security interest in the goods created by the lessor. A lessee other than in the ordinary course of business takes them free of any security interest to the extent that it secures future advances made after the secured party learned about the lease or more than 45 days after the lease contract became enforceable (this does not apply to advances under a commitment made without knowledge of the lease and before the end of the 45-day period).

Fixtures

Under the bill, "fixtures" are goods that become so related to particular real property that an interest in them arises under real property law. "Encumbrances" are mortgages and liens on real property and other nonownership interests.

In general, a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate when the lessee has an interest in or possesses the real property and either:

1. the lease is a purchase money lease (when the lessee does not possess or use the goods or have the right to do so before the lease is enforceable), the interest of the encumbrancer or owner arises before the goods become fixtures, and the lessor perfects his interest by a fixture filing under UCC Article 9 within 20 days of the goods becoming fixtures, or
2. lessor perfects his interest by a fixture filing before the encumbrancer or owner records its interest on the land records and the lessor has priority over conflicting interest of a predecessor in title of the encumbrancer or owner.

Generally, the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer under a construction mortgage

(a mortgage that secures construction, including acquiring the land, if it is stated in a recorded record). The construction mortgage must be recorded before the goods become fixtures and the goods must become fixtures before completing construction. A mortgage also has this priority to the extent it refinances a construction mortgage.

The bill gives the lessor priority regardless of whether he has filed if (1) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances that are subject to a consumer lease and the lease is enforceable before they become fixtures, (2) the conflicting interest is a lien on real property obtained through a court proceeding after the lease became enforceable, (3) the encumbrancer or owner consented in an authenticated record to the lease, or (4) the lessee has a right to remove the goods against the encumbrancer or owner (if the lessee's right terminates the lessor's priority continues for a reasonable time). For cases not covered by the bill, the priority rules governing conflicting interests in real property apply.

If a lessor of fixtures has priority over conflicting real property interests, the lessor or lessee may remove the goods, as long as he reimburses the encumbrancer or owner of the real property (but not the lessee) for the cost of repairing any physical damage. He is not responsible for the diminution in value of the real property caused by the removal of the goods. A person entitled to reimbursement can refuse permission to remove the goods until given adequate security.

The bill does not permit a lease under its provisions for ordinary building materials incorporated into an improvement on land.

Accessions

Under the bill, goods are "accessions" when they are installed in, or affixed to, other goods. In general, existing rights in a lease contract entered into before the goods became accessions are superior to any rights in the whole (the goods with the accessions installed or affixed to them), including all those with subsequent interest in the whole. But it is not valid against an interest in the whole if that person did not consent to the lease in a record or disclaim an interest in the goods. The interest of a lessor or lessee under a lease contract is subordinate to the interest of a buyer or lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions.

It is also subordinate to the interest of a creditor with a security interest in the whole that was perfected before the lease contract was made, to the extent the creditor makes subsequent advances without knowing about the lease contract.

If a lessor or lessee of accessions has an interest superior to all interests in the whole, he may remove the goods on default, expiration, termination, or cancellation of the lease subject to the provisions of the bill and the lease. But he must reimburse any holder of an interest in the whole for the cost of repairing any physical damage. He is not responsible for the diminution in value of the whole caused by the removal of the goods. A person entitled to reimbursement can refuse permission to remove the goods until given adequate security.

Creditors and Identified Goods

Under the bill, the rights of a lessor's creditor regarding goods identified to a lease and retained by the lessor are subject to the lessee's rights to obtain the goods under certain circumstances when his rights vest before a creditor's claim attaches.

A creditor can treat the lease or the identification of goods to a lease contract as void if a retention of possession or identification is fraudulent under the law of the state where the goods are located. It is not fraudulent for a merchant lessor to retain the goods in good faith and course of trade for a commercially reasonable time after a lease or identification.

Except as otherwise provided, the bill does not impair the rights of lessors' creditors if the identification to the lease or delivery is not made in the course of trade but is made in satisfaction of or as security for a preexisting claim for money or security under circumstances that the law would consider a fraudulent transfer or voidable.

A creditor of a seller can treat a sale or identification of goods to the contract as void if the seller's retention of the goods is fraudulent under the law of the state where the goods are located. It is not fraudulent if the seller retains the goods under a lease contract between the seller as lessee and the buyer as lessor in connection with the sale or identification of goods, if the buyer bought for value and in good faith.

SECURITY INTEREST OR LEASE

A security interest arising solely under the bill is generally subject to the UCC's secured transactions provisions. Under current law, whether a lease is intended as security is based on the facts of each case. An option to purchase does not make the lease a security interest. Neither does a purchase option for no additional or for nominal consideration.

Under the bill, the question of whether a transaction creates a lease or security interest continues to be determined by factual circumstances. But a security interest is created if the lessee's payment to possess and use the goods is an obligation the lessee cannot terminate during the lease and:

1. the original lease term is at least as long as the remaining economic life of the goods;
2. the lessee must renew the lease for the duration of the goods' remaining economic life or become the owner;
3. the lessee has an option to renew the lease for the duration of the goods' remaining economic life for no, or nominal, additional consideration upon compliance with the lease; or
4. the lessee has an option to become the goods' owner for no, or nominal, additional consideration upon compliance with the lease.

No security interest is created merely because:

1. at the time of the transaction the present value of the amount paid for use of the goods is substantially equal to or greater than the goods' fair market value;
2. the lessee assumes risk of loss or agrees to pay taxes, insurance, filing, recording, registration fees, or service or maintenance costs;
3. the lessee has an option to renew the lease or become owner of the goods;
4. the lessee has an option to renew the lease for a fixed rent equal to or greater than the reasonably predictable fair market rent for use of the goods for the renewal term at the time the option is to be performed; or
5. the lessee has an option to become owner for a fixed price equal to or greater than the reasonably predictable fair market value at the time the option is to be performed.

In delineating the distinctions between leases and security interests, the additional amount the lessee must pay to renew is not “nominal” if:

1. when the renewal option is granted the rent is stated to be the fair market rent for the use of the goods for the renewal term determined at the time of exercising the option, or
2. when the option to become owner is granted the price to the lessee is stated to be the fair market value at the time of exercising the option.

An additional amount is considered nominal if it is less than the lessee's reasonably predictable performance cost if the option is unexercised.

In describing what does not create security interests the term “present value” means the amount, as of a date certain, payable in the future and discounted to the date certain. The discount is based on an interest rate the parties specify if not “manifestly unreasonable” at the time the transaction is entered into, or on a commercially reasonable rate taking into consideration the transaction's facts and circumstances at the time it was entered into. “Reasonably predictable” and “remaining economic life of the goods” are determined with reference to the facts and circumstances at the time the transaction is entered into.

BACKGROUND

Related Bill

The General Law Committee favorably reported sHB 5248, originally File No. 83, “An Act Concerning the Uniform Consumer Leases Act.” On April 10, the House referred the bill to the Appropriations Committee, which favorably reported it on April 16. On April 26, the House passed the bill as amended by House “A.” The amended bill applies to consumer leases, which it defines as a lease that lasts at least four months with a total obligation of up to \$150,000 in which the goods are leased for a personal, family, or household purpose.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0