



General Assembly

February Session, 2002

Raised Bill No. 5653

LCO No. 1764

Referred to Committee on Judiciary

Introduced by:
(JUD)

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

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

1 Section 1. (NEW) (*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 age" 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 applies 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 said subsection (a) 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) is not controlling.

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

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

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

360 (b) The presence of mandatory language, such as "must" or "shall",
361 or the absence of enabling language, such as "unless otherwise agreed",
362 does not by itself preclude the parties from varying by agreement a
363 provision of sections 1 to 90, inclusive, of this act.

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

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

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

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

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

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

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

389 (1) If the goods are to be specially manufactured or obtained for the
390 lessee and are not suitable for lease or sale by the lessor to others in the
391 ordinary course of business, and the lessor, before notice of repudiation
392 is received and under circumstances that reasonably indicate that the
393 goods are for the lessee, has made either a substantial beginning of
394 their manufacture or commitments for their procurement;

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

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

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

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

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

409 (3) A reasonable duration.

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

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

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

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

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

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

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

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

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

446 Sec. 13. (NEW) (*Effective October 1, 2002*) An offer by a merchant to

447 enter into a lease contract made in an authenticated record that by its
448 terms gives assurance that the offer will be held open is not revocable
449 for lack of consideration during the time stated. If a time is not stated,
450 the offer is irrevocable for a reasonable time not exceeding ninety days.
451 A term of assurance in a record supplied by the offeree is ineffective
452 unless the term is conspicuous.

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

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

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

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

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

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

476 (B) Indicate acceptance of an offer, regardless of other expressions or

477 actions by the individual to which the electronic agent cannot react.

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

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

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

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

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

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

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

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

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

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

508 Sec. 19. (NEW) (*Effective October 1, 2002*) (a) A person that uses an
509 electronic agent for authentication, agreement or performance is bound
510 by the operations of the electronic agent even if no person was aware
511 of or reviewed the electronic agent's actions or the results of the
512 operations.

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

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

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

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

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

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

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

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

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

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

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

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

565 (c) A modification or rescission of a supply contract by the supplier
566 and the lessor is effective between the supplier and the lessee unless,
567 before the modification or rescission, the supplier has received notice
568 that the lessee has entered into a finance lease related to the supply
569 contract. If the modification or rescission is effective between the
570 supplier and the lessee, the lessor assumes, in addition to the
571 obligations of the lessor to the lessee under the lease contract, the
572 promises of the supplier to the lessor and warranties that were so
573 modified or rescinded as they existed and were available to the lessee
574 before modification or rescission.

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

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

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

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

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

593 Sec. 24. (NEW) (*Effective October 1, 2002*) (a) A lessee obtains an
594 insurable interest in existing goods identified to the lease contract even

595 if the goods are nonconforming and the lessee has an option to return
596 or reject them.

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

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

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

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

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

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

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

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

622 (A) If the lease contract does not require delivery at a particular

623 destination, the risk of loss passes to the lessee when the goods are
624 duly delivered to the carrier.

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

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

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

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

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

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

649 Sec. 26. (NEW) (*Effective October 1, 2002*) If the lease contract requires
650 for its performance goods identified when the lease contract is made
651 and the goods suffer casualty without the fault of the lessee, the lessor
652 or the supplier before delivery or if the goods suffer casualty before the

653 risk of loss passes to the lessee under the lease agreement or section 25
654 of this act, the following rules apply:

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

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

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

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

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

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

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

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

676 (4) A choice of law or forum;

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

679 (6) An obligation to arbitrate or otherwise resolve disputes through

680 alternative dispute resolution procedures;

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

683 (8) An indemnity term;

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

685 (10) An obligation to provide an accounting and make any payment
686 due under the accounting;

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

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

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

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

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

707 (b) Except as otherwise provided in subsection (c) of this section and

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

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

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

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

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

735 (2) If subdivision (1) does not apply and a transfer is made that (A)
736 is prohibited under a lease agreement, or (B) materially impairs the
737 prospect of obtaining return performance by, materially changes the
738 duty of, or materially increases the burden or risk imposed on, the

739 other party to the lease contract, unless the party not making the
740 transfer agrees at any time to the transfer in the lease contract or
741 otherwise or unless limited by contract:

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

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

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

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

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

765 (b) A lessor with voidable rights or voidable title acquired in a
766 purchase of goods from a transferor has power to transfer a good
767 leasehold interest to a good faith subsequent lessee for value. Under
768 this subsection, voidable rights or voidable title is acquired when the

769 goods have been delivered under a transaction of purchase even if:

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

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

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

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

775 (c) A subsequent lessee in the ordinary course of business from a
776 lessor that is a merchant dealing in goods of that kind to which the
777 goods were entrusted by the existing lessee of such lessor before the
778 interest of the subsequent lessee became enforceable against such
779 lessor obtains, to the extent of the leasehold interest transferred, all
780 rights to the goods of such lessor and the existing lessee, and takes free
781 of the existing lease contract.

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

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

794 (b) A lessee with a voidable leasehold interest acquired in a lease
795 transaction from a lessor has power to transfer a good leasehold
796 interest to a good faith subsequent lessee for value to which the goods
797 have been delivered. Under this subsection, a voidable leasehold

798 interest is acquired when the goods have been delivered under the
799 lease contract even if:

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

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

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

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

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

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

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

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

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

835 Sec. 35. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
836 provided in subsections (b) and (c) of this section, the rights of
837 creditors of the lessor with respect to goods identified to a lease
838 contract and retained by the lessor are subject to the lessee's rights
839 under section 61, subsection (d) of section 77 and section 90 of this act
840 if the lessee's rights vest before a creditor's claim in rem attaches to the
841 goods.

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

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

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

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

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

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

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

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

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

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

888 land.

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

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

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

900 (2) The interest of the lessor is perfected by a fixture filing before the
901 interest of the encumbrancer or owner is of record and the lessor's
902 interest has priority over any conflicting interest of a predecessor in
903 title of the encumbrancer or owner.

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

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

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

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

917 fixtures; or

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

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

929 (g) In cases not covered by subsections (c) to (f) of this section,
930 inclusive, priority between the interest of a lessor of fixtures, including
931 the lessor's residual interest, and the conflicting interest of an
932 encumbrancer or owner of the real property which is not the lessee is
933 determined by the priority rules governing conflicting interests in real
934 property.

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

949 remove until the party seeking removal gives adequate security for the
950 performance of this obligation.

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

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

958 (b) Except as otherwise provided in subsection (c) of this section, the
959 interest of a lessor or a lessee under a lease contract entered into before
960 the goods become accessions is superior to all interests in the whole
961 and valid against all persons subsequently acquiring interests in the
962 whole, but is invalid against any person with an interest in the whole
963 that has not in a record consented to the lease or disclaimed an interest
964 in the goods as part of the whole.

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

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

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

974 (d) If, under this section, a lessor or lessee holds an interest in
975 accessions which has priority over the claims of all persons that have
976 interests in the whole, the lessor or lessee on default, expiration,
977 termination or cancellation of the lease contract by the other party but
978 subject to the provisions of the lease contract and sections 1 to 90,

979 inclusive, of this act, or if necessary to enforce other rights under
980 sections 1 to 90, inclusive, of this act, may remove the goods from the
981 whole. However, the lessor or lessee shall reimburse any holder of an
982 interest in the whole which is not the lessee and which has not
983 otherwise agreed for the cost of repair of any physical injury, but not
984 for any diminution in value of the whole, caused by the absence of the
985 goods removed or by any necessity for replacing them. A person
986 entitled to reimbursement may refuse permission to remove the goods
987 until the party seeking removal gives adequate security for the
988 performance of this obligation.

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

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

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

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

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

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

1002 (5) "Representation" means a description of the goods, an
1003 affirmation of fact or promise about the quality or performance of the
1004 goods to be delivered, or a sample or model of the goods.

1005 Sec. 40. (NEW) (*Effective October 1, 2002*) (a) Except in a finance lease,
1006 a lessor in a lease contract warrants that, except for claims by any
1007 person by way of infringement or the like, for the duration of the lease

1008 no person holds:

1009 (1) A claim to or interest in the goods which will interfere with the
1010 lessee's enjoyment of the lessee's leasehold interest; or

1011 (2) A colorable claim to or interest in the goods which will
1012 unreasonably expose the lessee to litigation.

1013 (b) A finance lessor warrants that, except for claims by way of
1014 infringement or the like, for the duration of the lease no person holds:

1015 (1) A claim or interest in the goods that arose from an act or
1016 omission of the lessor which will interfere with the lessee's enjoyment
1017 of the lessee's leasehold interest; or

1018 (2) A colorable claim to or interest in the goods that arose from an
1019 act or omission of the lessor which will unreasonably expose the lessee
1020 to litigation.

1021 (c) Except in a finance lease, a lessor that is a merchant regularly
1022 dealing in goods of the kind warrants that the goods will be delivered
1023 free of the rightful claim of a third party by way of infringement or the
1024 like. However, a lessee that furnishes specifications to the lessor holds
1025 the lessor harmless against any claim of infringement or the like that
1026 arises out of compliance with the specifications.

1027 (d) A warranty under subsections (a) to (c), inclusive, of this section
1028 may be disclaimed or modified only by specific language or by
1029 circumstances that give the lessee reason to know that the lessor
1030 purports to transfer only such right as the lessor or a third party may
1031 have.

1032 Sec. 41. (NEW) (*Effective October 1, 2002*) (a) Any representation
1033 made by the lessor to the lessee, including a representation made in
1034 any medium of communication to the public, such as advertising,
1035 which relates to the goods and becomes part of the basis of the bargain
1036 creates an express warranty that the goods will conform to the

1037 representation or, with respect to a sample or model, that the whole of
1038 the goods will conform to the sample or model.

1039 (b) To create an express warranty, it is not necessary that the lessor
1040 use formal words such as "warranty" or "guaranty" or have a specific
1041 intention to make a warranty. However, a representation merely of the
1042 value of the goods or an affirmation purporting to be merely the
1043 lessor's opinion or commendation of the goods does not create an
1044 express warranty under subsection (a) of this section.

1045 (c) A representation, including a representation made in any
1046 medium of communication to the public, such as advertising, which
1047 was made to the lessee and which relates to the goods becomes part of
1048 the basis of the bargain unless:

1049 (1) The lessee knew that the representation was not true;

1050 (2) A reasonable person in the position of the lessee would not
1051 believe that the representation was part of the agreement; or

1052 (3) In the case of a representation made in a medium for
1053 communication to the public, including advertising, the lessee did not
1054 know of the representation at the time of the agreement.

1055 (d) A right of action for breach of warranty under this section
1056 accrues as provided under subsection (c) of section 68 of this act.

1057 Sec. 42. (NEW) (*Effective October 1, 2002*) (a) Except in a finance lease
1058 and subject to sections 44 and 45 of this act, a warranty that the goods
1059 are merchantable is implied in a contract for their lease if the lessor is a
1060 merchant with respect to goods of that kind.

1061 (b) Goods, to be merchantable, must:

1062 (1) Pass without objection in the trade under the contract
1063 description;

1064 (2) In the case of fungible goods, be of fair, average quality within

1065 the description;

1066 (3) Be fit for the ordinary purposes for which goods of that
1067 description are used;

1068 (4) Run, within the variation permitted by the lease agreement, of
1069 even kind, quality and quantity within each unit and among all units
1070 involved;

1071 (5) Be adequately contained, packaged and labeled as the lease
1072 agreement or circumstances may require; and

1073 (6) Conform to any representations made on the container or label.

1074 (c) Subject to section 44 of this act, other implied warranties may
1075 arise from course of dealing or usage of trade.

1076 Sec. 43. (NEW) (*Effective October 1, 2002*) Except in a finance lease
1077 and subject to section 44 of this act, if a lessor at the time of contracting
1078 has reason to know any particular purpose for which the goods are
1079 required and that the lessee is relying on the lessor's skill or judgment
1080 to select or furnish suitable goods, there is an implied warranty that
1081 the goods are fit for such purpose.

1082 Sec. 44. (NEW) (*Effective October 1, 2002*) (a) Words or conduct
1083 relevant to the creation of an express warranty and words or conduct
1084 tending to disclaim or modify an express warranty must be construed
1085 wherever reasonable as consistent with each other. However, subject to
1086 section 11 of this act, words or conduct disclaiming or modifying an
1087 express warranty are ineffective to the extent that such construction is
1088 unreasonable.

1089 (b) Subject to subsection (c) of this section, to disclaim or modify an
1090 implied warranty of merchantability or fitness, or any part of either
1091 implied warranty, the following rules apply:

1092 (1) The language must be in a record and be conspicuous.

1093 (2) In other than a consumer lease contract, the language is sufficient
1094 if:

1095 (A) In the case of an implied warranty of merchantability, it
1096 mentions merchantability; and

1097 (B) In the case of an implied warranty of fitness, the language states,
1098 for example, that "There are no warranties which extend beyond the
1099 description on the face hereof".

1100 (c) Unless the circumstances indicate otherwise, all implied
1101 warranties are disclaimed by expressions such as "as is" or "with all
1102 faults", or similar language, or conduct that in common understanding
1103 makes it clear to the lessee that the lessor assumes no responsibility for
1104 the quality or fitness of the goods. In a consumer contract, the
1105 requirements of this subsection must be satisfied by conspicuous
1106 language in a record.

1107 (d) An implied warranty may also be disclaimed or modified by
1108 course of performance, course of dealing or usage of trade.

1109 (e) If a lessee before entering into the contract has examined the
1110 goods or the sample or model as fully as desired or has refused to
1111 examine the goods or the sample or model, there is no implied
1112 warranty with regard to defects which a reasonable examination ought
1113 in the circumstances to have revealed to the lessee.

1114 (f) Remedies for breach of warranty may be limited in accordance
1115 with sections 1 to 90, inclusive, of this act with respect to liquidation or
1116 limitation of damages and contractual modification of remedy.

1117 (g) Subsections (b) to (f), inclusive, of this section shall not apply to
1118 leases of new or used consumer goods, except for those goods clearly
1119 marked "irregular", "factory seconds" or "damaged". Any language,
1120 oral or written, used by a lessor or manufacturer of consumer goods
1121 that attempts to exclude or modify any implied warranties of
1122 merchantability and fitness for a particular purpose, or to exclude or

1123 modify the consumer's remedies for breach of such warranties, shall be
1124 unenforceable.

1125 Sec. 45. (NEW) (*Effective October 1, 2002*) Warranties, whether
1126 express or implied, must be construed as consistent with each other
1127 and as cumulative. However, if such construction is unreasonable, the
1128 intention of the parties determines which warranty is dominant. In
1129 ascertaining such intention, the following rules apply:

1130 (1) Exact or technical specifications prevail over an inconsistent
1131 sample or model or general language of description.

1132 (2) A sample from an existing bulk or a model prevails over
1133 inconsistent general language of description.

1134 (3) Except in a consumer lease, an express warranty prevails over
1135 inconsistent implied warranties other than an implied warranty of
1136 fitness for a particular purpose.

1137 Sec. 46. (NEW) (*Effective October 1, 2002*) (a) In a consumer lease
1138 contract, a lessor's express or implied warranty made to an immediate
1139 consumer lessee extends to any member of the family or household or
1140 an invitee to the household of the immediate consumer lessee or a
1141 transferee from the immediate consumer lessee who may reasonably
1142 be expected to use or be affected by the goods and who suffers damage
1143 other than injury to the person resulting from a breach of warranty.
1144 The lessor may not disclaim, modify or limit damages arising under
1145 this section unless the lessor has a substantial interest in having a
1146 warranty extend only to the immediate consumer lessee.

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 lessor's rights term of the lease
1314 agreement, and includes the use of electronic means to locate leased
1315 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 direct and incidental damages caused by
1331 wrongful use of electronic self-help. The lessee may also recover
1332 consequential damages for wrongful use of electronic self-help even if
1333 such damages are excluded by the terms of the lease agreement.

1334 (5) Even if the lessor complies with subdivisions (2) and (3) of this
1335 subsection, electronic self-help may not be used if the lessor has reason
1336 to know that such use will result in substantial injury or harm to the
1337 public health or safety or grave harm to the public interest
1338 substantially affecting third parties not involved in the dispute.

1339 Sec. 56. (NEW) (*Effective October 1, 2002*) Except as otherwise
1340 provided in sections 1 to 90, inclusive, of this act or the lease
1341 agreement, a lessor or lessee in default under a lease contract is not
1342 entitled to notice of default or notice of enforcement from the other
1343 party.

1344 Sec. 57. (NEW) (*Effective October 1, 2002*) (a) In accordance with
1345 section 42a-1-106 of the general statutes, the remedies provided in
1346 sections 1 to 90, inclusive, of this act must be liberally administered
1347 with the purpose of placing the aggrieved party in as good a position
1348 as if the other party had fully performed.

1349 (b) Unless the lease contract provides for liquidated damages
1350 enforceable under section 63 of this act or a limited remedy enforceable
1351 under section 64 of this act, an aggrieved party may not recover that
1352 part of a loss resulting from a default that could have been avoided by
1353 reasonable measures under the circumstances. The burden of
1354 establishing that reasonable measures under the circumstances were
1355 not taken is on the defaulting party.

1356 (c) The rights and remedies provided in sections 1 to 90, inclusive, of
1357 this act are cumulative, but a party may not recover more than once for
1358 the same injury.

1359 (d) Sections 1 to 90, inclusive, of this act do not impair a remedy for
1360 breach of an obligation or promise collateral or ancillary to a lease
1361 contract.

1362 Sec. 58. (NEW) (*Effective October 1, 2002*) If a default occurs, the
1363 aggrieved party may recover compensation for the loss resulting in the
1364 ordinary course from the default as determined under sections 69 to
1365 90, inclusive, of this act or as determined in any reasonable manner,
1366 together with incidental damages and consequential damages, less
1367 expenses and costs saved as a result of the default.

1368 Sec. 59. (NEW) (*Effective October 1, 2002*) Incidental damages
1369 resulting from a default under a lease contract include compensation
1370 for any commercially reasonable charges, expenses or commissions
1371 with respect to:

1372 (1) Inspection, receipt, transportation, care or custody of identified
1373 goods which are the subject of the default;

1374 (2) Stopping delivery or shipment;

1375 (3) Effecting cover, return or disposition of the goods;

1376 (4) Reasonable efforts otherwise to minimize or avoid the
1377 consequences of default; and

1378 (5) Effectuating other remedies after the default or otherwise
1379 dealing with the goods.

1380 Sec. 60. (NEW) (*Effective October 1, 2002*) Consequential damages
1381 resulting from a default include compensation for:

1382 (1) Any loss resulting from the aggrieved party's general or
1383 particular requirements and needs of which the defaulting party at the
1384 time of contracting had reason to know and which could not
1385 reasonably be prevented; and

1386 (2) Injury to person or property proximately resulting from any

1387 breach of warranty.

1388 Sec. 61. (NEW) (*Effective October 1, 2002*) (a) The court may enter a
1389 decree for specific performance if the goods or the agreed performance
1390 of the defaulting party are unique or in other proper circumstances. In
1391 a lease other than a consumer lease, the court may enter a decree for
1392 specific performance if the parties have agreed to such remedy.
1393 However, even if the parties agree to specific performance, the court
1394 may not enter a decree for specific performance if the breaching party's
1395 sole remaining contractual obligation is the payment of money.

1396 (b) The decree for specific performance may include terms and
1397 conditions as to payment of the rent, damages or other relief the court
1398 considers just.

1399 Sec. 62. (NEW) (*Effective October 1, 2002*) (a) An aggrieved party may
1400 cancel a lease contract if the conditions of section 69 or 77 of this act are
1401 satisfied or the agreement so provides, unless there is a waiver of the
1402 default or the right to cancel under section 21 of this act or there is a
1403 right to cure the default under section 82 of this act.

1404 (b) Upon cancellation, the lessee is subject to the same obligations
1405 and duties with respect to goods in the lessee's possession or control as
1406 the lessee would be if the lessee had rejected a nonconforming tender
1407 and remained in control of the goods of the lessor or if the lease
1408 contract had terminated according to its own terms.

1409 (c) Except as otherwise provided in subsection (e) of this section,
1410 upon cancellation, all obligations that are still executory on both sides
1411 are discharged.

1412 (d) The obligations surviving cancellation include:

1413 (1) A right based on previous default or performance of the lease
1414 contract;

1415 (2) Any term limiting disclosure of information;

- 1416 (3) An obligation to return or dispose of goods;
- 1417 (4) A term establishing a choice of law or forum;
- 1418 (5) A term creating an obligation to arbitrate or otherwise resolve
1419 disputes by alternative dispute resolution procedures;
- 1420 (6) A term limiting the time for commencing an action or for
1421 providing notice;
- 1422 (7) A remedy for breach of the whole lease contract or any
1423 unperformed balance;
- 1424 (8) Any other right, remedy or obligation stated in the agreement as
1425 surviving cancellation to the extent enforceable under law other than
1426 sections 1 to 90, inclusive, of this act; and
- 1427 (9) Other rights, remedies or limitations if under the circumstances
1428 their survival is necessary to achieve the purposes of the parties.
- 1429 (e) Unless a contrary intention clearly appears, language of
1430 cancellation, rescission or avoidance of the lease contract, or similar
1431 language, is not a renunciation or discharge of any claim in damages
1432 for an antecedent default.
- 1433 Sec. 63. (NEW) (*Effective October 1, 2002*) (a) Damages for default or
1434 any other act or omission, including indemnity for loss or diminution
1435 of anticipated tax benefits or loss or damage to the lessor's residual
1436 interest, may be liquidated in the lease agreement but only at an
1437 amount or by a formula that is reasonable in light of either the actual
1438 loss or the then anticipated loss caused by the default or other act or
1439 omission. If a term fixing liquidated damages is unenforceable under
1440 this subsection, the aggrieved party may pursue the remedies
1441 provided in sections 1 to 90, inclusive, of this act. A term that does not
1442 liquidate damages but attempts to limit damages available to the
1443 aggrieved party must be evaluated under section 65 of this act.

1444 (b) If the lessor justifiably withholds delivery of goods or stops
1445 performance because of the lessee's default or insolvency, the lessee is
1446 entitled to restitution of the amount by which the sum of payments
1447 exceeds the amount to which the lessor is entitled under a term fixing
1448 liquidated damages in accordance with subsection (a) of this section,
1449 except that, in the case of a consumer lease, the lessor is entitled to the
1450 lesser of such restitution amount or five hundred dollars.

1451 (c) The lessee's right to restitution under subsection (b) of this
1452 section is subject to setoff to the extent that the lessor establishes a right
1453 to recover damages under the provisions of sections 1 to 90, inclusive,
1454 of this act other than subsection (a) of this section and to the extent of
1455 the amount or value of any benefits received by the lessee directly or
1456 indirectly by reason of the lease contract.

1457 Sec. 64. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
1458 provided in sections 1 to 90, inclusive, of this act, the lease agreement
1459 may include rights and remedies for default in addition to or in
1460 substitution for those provided in sections 1 to 90, inclusive, of this act
1461 and may, except in a consumer lease, limit or alter the measure of
1462 damages recoverable under sections 1 to 90, inclusive, of this act.

1463 (b) Resort to a remedy provided under sections 1 to 90, inclusive, of
1464 this act or in the lease agreement is optional unless the remedy is
1465 expressly agreed to be exclusive. If circumstances cause an exclusive or
1466 limited remedy to fail of its essential purpose, or provision for an
1467 exclusive remedy is unconscionable, remedies may be pursued as
1468 provided in sections 1 to 90, inclusive, of this act.

1469 (c) Consequential damages may be liquidated under section 63 of
1470 this act, or may otherwise be limited, altered or excluded unless the
1471 limitation, alteration or exclusion is unconscionable. Limitation,
1472 alteration or exclusion of consequential damages for injury to the
1473 person in the case of consumer goods is presumed to be
1474 unconscionable, but limitation, alteration or exclusion of damages
1475 where the loss is commercial is not presumed to be unconscionable.

1476 (d) Sections 1 to 90, inclusive, of this act do not impair rights and
1477 remedies on default by the lessor or the lessee with respect to any
1478 obligation or promise collateral or ancillary to the lease contract.

1479 Sec. 65. (NEW) (*Effective October 1, 2002*) Remedies for material
1480 misrepresentation or fraud include all remedies available under
1481 sections 1 to 90, inclusive, of this act for nonfraudulent default.
1482 Rescission or a claim for rescission of a lease contract or rejection or
1483 return of the goods does not bar and is not inconsistent with a claim
1484 for damages or other remedy.

1485 Sec. 66. (NEW) (*Effective October 1, 2002*) (a) Damages based on
1486 market rent are determined according to the rent for the use of the
1487 goods concerned for a lease term identical to the remaining period of
1488 the original lease agreement and prevailing at the times specified in
1489 sections 74 and 88 of this act.

1490 (b) If evidence of rent for the use of the goods concerned for a
1491 period identical to the remaining period of the original lease
1492 agreement and prevailing at the times or places described in sections 1
1493 to 90, inclusive, of this act is not readily available, the following rules
1494 apply:

1495 (1) The rent prevailing within any reasonable time before or after the
1496 time described may be used.

1497 (2) The rent prevailing at any other place or for a different lease
1498 period which in commercial judgment or usage of trade is a reasonable
1499 substitute may be used, making proper allowance for the difference,
1500 including the cost of transporting the goods to or from the other place.

1501 (3) Evidence of a relevant rent prevailing at another time or place or
1502 for a lease period other than the period described in this section
1503 offered by one party is not admissible unless the party has given the
1504 other party notice that the court finds sufficient to prevent unfair
1505 surprise.

1506 (c) If the prevailing rent or value of goods regularly leased in any
1507 established market is in dispute, reports in official publications or
1508 trade journals or in newspapers, periodicals or other means of
1509 communication in general circulation and published as the reports of
1510 such market, are admissible in evidence. The circumstances of the
1511 preparation of such a report may affect the weight of the evidence but
1512 not its admissibility.

1513 Sec. 67. (NEW) (*Effective October 1, 2002*) (a) If a third party deals
1514 with goods identified to a lease contract and causes actionable injury to
1515 the goods, the lessor has a right of action against the third party, and
1516 the lessee has a right of action against the third party, if the lessee:

1517 (1) Has a security interest in the goods;

1518 (2) Has an insurable interest in the goods; or

1519 (3) Bears the risk of loss under the lease contract or has, since the
1520 injury, assumed such risk as against the lessor and the goods have been
1521 converted or destroyed.

1522 (b) If, at the time of the injury, the plaintiff did not bear the risk of
1523 loss as against the other party to the lease contract and there is no
1524 arrangement between them for disposition of the recovery, any
1525 recovery or settlement is subject to the plaintiff's interest as fiduciary
1526 for the other party to the lease contract.

1527 (c) Either party with the consent of the other may maintain an action
1528 for the benefit of a concerned party.

1529 Sec. 68. (NEW) (*Effective October 1, 2002*) (a) An action for default
1530 under a lease contract, including breach of warranty or indemnity,
1531 must be commenced within four years after the right of action has
1532 accrued. Except in a consumer lease or an action for indemnity, the
1533 original lease agreement may reduce the period of limitations to not
1534 less than one year.

1535 (b) Except as otherwise provided in subsection (c) of this section, a
1536 right of action accrues when the act or omission on which the default
1537 or breach of warranty is based is or should have been discovered by
1538 the aggrieved party. A right of action for indemnity accrues when the
1539 act or omission on which the claim for indemnity is based is or should
1540 have been discovered by the indemnified party.

1541 (c) If an action commenced within the applicable period of
1542 limitation is terminated but a remedy by another action for the same
1543 default or breach of warranty or indemnity is available, the other
1544 action may be commenced after the expiration of the time limitation
1545 and within six months after the termination of the first action unless
1546 the termination resulted from voluntary discontinuance or from
1547 dismissal for failure to prosecute.

1548 (d) This section does not alter the law on tolling of the statute of
1549 limitations and does not apply to a right of action that accrued before
1550 the effective date of sections 1 to 90, inclusive, of this act.

1551 Sec. 69. (NEW) (*Effective October 1, 2002*) (a) If the lessee wrongfully
1552 rejects or revokes acceptance of goods or fails to make a payment when
1553 due or repudiates with respect to a part or the whole, the lessee is in
1554 default under the lease contract with respect to any goods involved,
1555 and with respect to all of the goods if under an installment lease
1556 contract the value of the whole lease contract is substantially impaired,
1557 and the lessor may do one or more of the following:

1558 (1) Withhold delivery of the goods and take possession of goods
1559 previously delivered;

1560 (2) Stop delivery of the goods by any carrier or bailee under
1561 subsection (b) of section 72 of this act;

1562 (3) Proceed under section 71 of this act with respect to goods still
1563 unidentified to the lease contract or unfinished;

1564 (4) Obtain specific performance under section 61 of this act or

1565 recover the rent under section 75 of this act;

1566 (5) Dispose of the goods and recover damages under section 73 of
1567 this act or retain the goods and recover damages under section 74 of
1568 this act;

1569 (6) Recover incidental and consequential damages under sections 59
1570 and 60 of this act;

1571 (7) Cancel the lease contract under section 62 of this act;

1572 (8) Recover liquidated damages under section 63 of this act;

1573 (9) Enforce limited remedies under section 64 of this act;

1574 (10) Recover damages under section 58 of this act; or

1575 (11) Exercise any other rights or pursue any other remedies
1576 provided in the lease agreement.

1577 (b) If the lessor does not fully exercise a right or obtain a remedy to
1578 which the lessor is entitled under subsection (a) of this section, the
1579 lessor may recover the loss resulting in the ordinary course of events
1580 from the lessee's default as determined in any reasonable manner,
1581 together with incidental damages, less expenses avoided as a result of
1582 the lessee's default.

1583 (c) If the lessee is otherwise in default under a lease contract, the
1584 lessor may exercise the rights and pursue the remedies provided in the
1585 lease agreement, which may include a right to cancel the lease. In
1586 addition, except as otherwise provided in the lease agreement:

1587 (1) If the default substantially impairs the value of the lease contract
1588 to the lessor, the lessor may exercise the rights and pursue the
1589 remedies under subsection (a) or (b) of this section; or

1590 (2) If the default does not substantially impair the value of the lease
1591 contract to the lessor, the lessor may recover under subsection (b).

1592 Sec. 70. (NEW) (*Effective October 1, 2002*) (a) Upon a default by the
1593 lessee under a lease contract of the type described in subsection (a) or
1594 subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1595 upon other default by the lessee, the lessor may take possession of the
1596 goods. If the lease agreement so provides, the lessor may require the
1597 lessee to assemble the goods and make them available to the lessor at a
1598 place to be designated by the lessor which is reasonably convenient to
1599 both parties. Without removal, the lessor may render unusable any
1600 goods employed in trade or business and may dispose of goods on the
1601 lessee's premises.

1602 (b) A lessor may proceed under subsection (a) of this section without
1603 judicial process if it can be done without breach of the peace, or the
1604 lessor may proceed by judicial process.

1605 Sec. 71. (NEW) (*Effective October 1, 2002*) (a) Upon default by the
1606 lessee under the lease contract of the type described in subsection (a)
1607 or subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1608 after other default by the lessee, the lessor may:

1609 (1) Identify to the lease contract conforming goods not already
1610 identified if they are in the lessor's or supplier's possession or control
1611 at the time the lessor learned of the default; and

1612 (2) Dispose of goods that are shown to have been intended for the
1613 particular lease contract even if such goods are unfinished.

1614 (b) If goods are unfinished at the time of default, an aggrieved lessor
1615 or the supplier, in the exercise of reasonable commercial judgment for
1616 the purposes of minimizing loss and of effective realization, may
1617 complete the manufacture and wholly identify the goods to the lease
1618 contract, cease manufacture and lease, sell or otherwise dispose of the
1619 goods for scrap or salvage value, or proceed in any other reasonable
1620 manner.

1621 Sec. 72. (NEW) (*Effective October 1, 2002*) (a) A lessor that discovers

1622 that the lessee is insolvent may refuse to deliver the goods.

1623 (b) Subject to subsection (d) of this section, the lessor may stop
1624 delivery of goods in the possession of a carrier or other bailee if the
1625 lessee is insolvent or repudiates or fails to make a payment due before
1626 delivery, whether for rent, security or otherwise under the lease
1627 contract or if, for any other reason, the lessor has a right to withhold or
1628 reclaim the goods.

1629 (c) As against a lessee under subsection (b) of this section, the lessor
1630 may stop delivery until:

1631 (1) Receipt of the goods by the lessee;

1632 (2) Acknowledgment to the lessee by any bailee of the goods, other
1633 than a carrier, or a carrier by reshipment or as a warehouseman, that
1634 the bailee holds the goods for the lessee; or

1635 (3) Acknowledgment to the lessee by a carrier by reshipment or as
1636 warehouseman that the carrier holds the goods for the lessee.

1637 (d) If notice to stop delivery has been given, the following rules
1638 apply:

1639 (1) The notice must afford the carrier or bailee a reasonable
1640 opportunity to prevent delivery of the goods.

1641 (2) After notice, the carrier or bailee shall hold and deliver the goods
1642 according to the directions of the lessor. The lessor is liable to the bailee
1643 or carrier for any resulting charges or damages. A carrier or bailee need
1644 not stop delivery if the lessor does not provide indemnity for charges
1645 or damages upon the carrier's or bailee's demand.

1646 (3) A carrier or bailee that has issued a nonnegotiable document
1647 need not obey a notice to stop received from a person other than the
1648 person named in the document as the person from which the goods
1649 have been received for shipment or storage.

1650 Sec. 73. (NEW) (*Effective October 1, 2002*) (a) Upon a default by a
1651 lessee under the lease contract of the type described in subsection (a)
1652 or subdivision (1) of subsection (c) of section 69 of this act, or upon the
1653 lessor's refusal to deliver or taking possession of goods under section
1654 70 or 72 of this act, or, if agreed, upon other default by a lessee, the
1655 lessor may dispose of the goods concerned or the undelivered balance
1656 thereof by lease, sale or otherwise.

1657 (b) Except as otherwise provided with respect to damages
1658 liquidated in the lease agreement or otherwise determined by
1659 agreement of the parties, if the disposition is by lease agreement
1660 substantially similar to the original lease agreement and the new lease
1661 agreement is made in good faith and in a commercially reasonable
1662 manner, the lessor may recover from the lessee as damages
1663 compensation for:

1664 (1) Accrued and unpaid rent as of the date of the commencement of
1665 the period of the new lease agreement;

1666 (2) The present value, as of the same date, of the total rent for the
1667 then remaining lease period of the original lease agreement, minus the
1668 present value, as of the same date, of the rent under the new lease
1669 agreement applicable to that part of the new lease period which is
1670 comparable to the then remaining period of the original lease
1671 agreement; and

1672 (3) Any incidental damages allowed under section 59 of this act, less
1673 expenses avoided as a result of the lessee's default.

1674 (c) If the lessor's disposition is by a lease agreement that for any
1675 reason does not qualify for treatment under subsection (b) of this
1676 section, or is by sale or otherwise, the lessor may recover from the
1677 lessee as if the lessor had elected not to dispose of the goods, and
1678 section 74 of this act governs.

1679 (d) A person that subsequently buys or leases from the lessor in

1680 good faith for value as a result of a disposition under this section takes
1681 the goods free of the original lease contract and any rights of the
1682 original lessee even if the lessor fails to comply with one or more of the
1683 requirements of sections 1 to 90, inclusive, of this act.

1684 (e) A lessor is not accountable to the lessee for any profit made on
1685 any disposition. A lessee that has rightfully rejected or justifiably
1686 revoked acceptance shall account to the lessor for any excess over the
1687 amount of the lessee's security interest.

1688 Sec. 74. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
1689 provided with respect to damages liquidated in the lease agreement
1690 under section 63 of this act or otherwise determined by agreement of
1691 the parties under subdivision (3) of section 42a-1-102 of the general
1692 statutes and section 64 of this act, if a lessor elects to retain the goods
1693 or elects to dispose of the goods and the disposition is by lease
1694 agreement that for any reason does not qualify for treatment under
1695 subsection (b) of section 73 of this act or is by sale or otherwise, the
1696 lessor may recover from the lessee as damages for a default of the type
1697 described in subsection (a) or subdivision (1) of subsection (c) of
1698 section 69 of this act, or if agreed for other default of the lessee:

1699 (1) Accrued and unpaid rent as of the date of default if the lessee has
1700 never taken possession of the goods, or, if the lessee has taken
1701 possession of the goods, as of the date the lessor repossesses the goods
1702 or an earlier date on which the lessee makes a tender of the goods to
1703 the lessor;

1704 (2) The present value, as of the date determined under subdivision
1705 (1), of the total rent for the then remaining period of the original lease
1706 agreement, minus the present value as of the same date of the market
1707 rent at the place where the goods are located computed for the same
1708 lease term; and

1709 (3) Any incidental or consequential damages allowed under section
1710 59 or 60 of this act, less expenses saved in consequence of the lessee's

1711 default.

1712 (b) If the measure of damages provided in subsection (a) or section
1713 73 of this act is inadequate under subsection (a) of section 57 of this act,
1714 a lessor may recover damages measured by other than the market
1715 price or the amount received on a disposition of the goods, together
1716 with incidental and consequential damages, including:

1717 (1) The present value of lost profits, including reasonable overhead,
1718 resulting from the default of the lessee determined in any reasonable
1719 manner; and

1720 (2) Reasonable expenditures made in preparing for or performing
1721 the contract.

1722 Sec. 75. (NEW) (*Effective October 1, 2002*) (a) Upon a default by the
1723 lessee under the lease contract of the type described in subsection (a)
1724 or subdivision (1) of subsection (c) of section 69 of this act or, if agreed,
1725 upon another default by the lessee, if the lessor complies with
1726 subsection (c) of this section, the lessor may recover from the lessee the
1727 damages specified in subsection (b) of this section for:

1728 (1) Goods accepted by the lessee and not repossessed by or tendered
1729 to the lessor;

1730 (2) Goods identified to the lease contract if the lessor is unable after
1731 reasonable effort to dispose of them at a reasonable price or the
1732 circumstances reasonably indicate such effort will be unavailing; and

1733 (3) Conforming goods lost or damaged after risk of loss passes to
1734 the lessee, but if the lessor has retained or regained control of the
1735 goods, the loss or damage must occur within a commercially
1736 reasonable time after the risk of loss has passed to the lessee.

1737 (b) The damages available under the circumstances described in
1738 subsection (a) of this section are:

1739 (1) Accrued and unpaid rent as of the date of entry of judgment in
1740 favor of the lessor;

1741 (2) The present value as of the same date of the rent for the then
1742 remaining lease term of the lease agreement; and

1743 (3) Any incidental or consequential damages allowed under section
1744 59 or 60 of this act, less expenses avoided as a result of the lessee's
1745 default.

1746 (c) Except as otherwise provided in subsection (d) of this section, a
1747 lessor shall hold for the lessee for the remaining period of the lease
1748 agreement any goods that have been identified to the lease contract
1749 and are in the lessor's control.

1750 (d) A lessor may dispose of the goods at any time before collection
1751 of the judgment for damages obtained pursuant to subsection (a) of
1752 this section. If the disposition is before the end of the remaining period
1753 of the lease agreement, the lessor's recovery against the lessee for
1754 damages is governed by section 73 or 74 of this act, and the lessor shall
1755 provide an appropriate credit against a judgment for damages to the
1756 extent that the amount of the judgment exceeds the recovery available
1757 under section 73 or 74 of this act.

1758 (e) Payment of the judgment for damages obtained under
1759 subsection (a) of this section entitles the lessee to the use and
1760 possession of the goods not then disposed of for the remaining period
1761 of, and in accordance with, the lease agreement.

1762 (f) Upon default by the lessee under the lease contract of the type
1763 described in subsection (a) or subdivision (1) of subsection (c) of
1764 section 69 of this act or, if agreed, upon other default by the lessee, a
1765 lessor that is not entitled to rent under this section is still entitled to
1766 damages for nonacceptance under section 73 or 74 of this act.

1767 Sec. 76. (NEW) (*Effective October 1, 2002*) In addition to any other
1768 recovery permitted by sections 1 to 90, inclusive, of this act or other

1769 law, a lessor may recover from a lessee an amount that will fully
1770 compensate the lessor for any loss of or damage to the lessor's residual
1771 interest in the goods caused by the lessee's default.

1772 Sec. 77. (NEW) (*Effective October 1, 2002*) (a) If the lessor fails to
1773 deliver the goods in conformity to the lease contract or repudiates the
1774 contract, or a lessee rightfully rejects the goods or justifiably revokes
1775 acceptance of the goods, with respect to any goods involved and with
1776 respect to all of the goods if under an installment lease contract the
1777 value of the whole lease contract is substantially impaired, the lessor is
1778 in default under the lease contract, and the lessee may do one or more
1779 of the following:

1780 (1) Cancel the lease contract under section 62 of this act;

1781 (2) Recover so much of the rent and security as has been paid and is
1782 just under the circumstances;

1783 (3) Cover and obtain damages under section 87 of this act;

1784 (4) Recover damages for nondelivery under section 88 of this act;

1785 (5) If an acceptance of goods has not been justifiably revoked,
1786 recover damages for default with regard to accepted goods under
1787 section 89 of this act;

1788 (6) Enforce a security interest under subsection (d) of this section;

1789 (7) Recover identified goods under section 90 of this act;

1790 (8) Obtain specific performance under section 61 of this act;

1791 (9) Recover incidental and consequential damages under sections 59
1792 and 60 of this act;

1793 (10) Recover liquidated damages under section 63 of this act;

1794 (11) Enforce limited remedies under section 64 of this act;

1795 (12) Recover damages under section 58 of this act; or

1796 (13) Exercise any other rights or pursue any other remedy provided
1797 in the lease contract.

1798 (b) If the lessor is otherwise in default under a lease contract, the
1799 lessee may exercise the rights and pursue the remedies provided in the
1800 lease agreement, which may include a right to cancel the lease, and the
1801 rights and remedies under subsection (a) of section 89 of this act.

1802 (c) If a lessor has breached a warranty, whether express or implied,
1803 the lessee may recover damages under subsection (b) of section 89 of
1804 this act.

1805 (d) On rightful rejection or justifiable revocation of acceptance, a
1806 lessee has a security interest in goods in the lessee's possession or
1807 control for any rent and security that has been paid and any expenses
1808 reasonably incurred in their inspection, receipt, transportation, care
1809 and custody. In such case, the lessee may hold the goods and dispose
1810 of them in good faith and in a commercially reasonable manner. The
1811 disposition is subject to subsections (d) and (e) of section 73 of this act.

1812 (e) Subject to section 53 of this act, a lessee, on so notifying the
1813 lessor, may deduct all or any part of the damages resulting from any
1814 default under the lease contract from any part of the rent still due
1815 under the same contract.

1816 Sec. 78. (NEW) (*Effective October 1, 2002*) (a) Subject to sections 63, 64
1817 and 79 of this act, if the goods or the tender or delivery fail in any
1818 respect to conform to the lease contract, the lessee may:

1819 (1) Reject the whole;

1820 (2) Accept the whole; or

1821 (3) Accept any commercial unit or units and reject the rest.

1822 (b) Rejection of goods must be within a reasonable time after their

1823 delivery or tender and is not effective unless the lessee notifies the
1824 lessor within a reasonable time.

1825 Sec. 79. (NEW) (*Effective October 1, 2002*) (a) In this section,
1826 "installment lease contract" means a lease contract in which the terms
1827 require or the circumstances permit the delivery of goods in separate
1828 lots to be separately accepted, even if the lease agreement requires
1829 payment other than in installments or contains a term stating "Each
1830 delivery is a separate lease", or words of similar import.

1831 (b) In an installment lease contract, the lessee may reject any
1832 nonconforming installment of delivery of goods if the nonconformity
1833 of the goods substantially impairs the value of such installment to the
1834 buyer.

1835 (c) If a nonconformity or default with respect to one or more
1836 installments in an installment lease contract is a substantial
1837 impairment of the value to the aggrieved party of the whole lease
1838 contract, there is a breach of the whole lease contract and the aggrieved
1839 party may reject any nonconforming unaccepted installment and
1840 cancel the installment lease contract. If the aggrieved party accepts a
1841 nonconforming installment without seasonably giving notice of
1842 cancellation, brings an action with respect only to past installments or
1843 demands performance as to future installments, the installment lease
1844 contract has not been canceled.

1845 Sec. 80. (NEW) (*Effective October 1, 2002*) (a) Subject to a lessee's
1846 security interest under subsection (e) of section 77 of this act, if the
1847 lessor or supplier does not have an agent or place of business at the
1848 market where the goods were rejected or acceptance was revoked, a
1849 merchant lessee, after an effective rejection or justifiable revocation of
1850 acceptance of goods in the lessee's possession or control, shall follow
1851 any reasonable instructions received from the lessor or supplier with
1852 respect to the goods. In the absence of such instructions, a merchant
1853 lessee shall make a reasonable effort to sell, lease or otherwise dispose
1854 of the goods for the lessor's account if the goods threaten to decline

1855 speedily in value. In the case of a rightful rejection or justifiable
1856 revocation of acceptance, instructions are not reasonable if, on
1857 demand, indemnity for expenses is not forthcoming.

1858 (b) In the case of a rightful rejection or justifiable revocation of
1859 acceptance:

1860 (1) A merchant lessee that sells or leases goods under subsection (a)
1861 of this section is entitled to reimbursement from the lessor or supplier,
1862 or out of the proceeds, for the reasonable expenses of caring for and
1863 disposing of the goods.

1864 (2) If the expenses under subdivision (1) of this subsection do not
1865 include a disposition commission, the lessee is entitled to a
1866 commission usual in the trade or, if there is none, to a reasonable sum
1867 not exceeding ten per cent of the gross proceeds.

1868 (c) Except as otherwise provided in subsection (a) of this section,
1869 after an effective rejection or a justifiable revocation of acceptance, a
1870 lessee may store the rejected goods for the account of the lessor or
1871 supplier, reship them to the lessor or supplier, or resell them for the
1872 account of the lessor or supplier, with reimbursement in the case of a
1873 rightful rejection or a justifiable revocation of acceptance as provided
1874 in subsection (b) of this section.

1875 (d) In complying with this section or section 81 of this act, the lessee
1876 shall act in good faith. Conduct in good faith under this section does
1877 not constitute acceptance or conversion and may not be the basis of a
1878 claim for damages.

1879 (e) A person that purchases in good faith from a lessee under this
1880 section or section 81 of this act takes the goods free of any rights of the
1881 lessor and the supplier, even if the lessee fails to comply with the
1882 requirements of sections 1 to 90, inclusive, of this act.

1883 Sec. 81. (NEW) (*Effective October 1, 2002*) (a) Subject to subsection (e)
1884 of section 77 and section 80 of this act, after an effective rejection or

1885 justifiable revocation of acceptance, a lessee in physical possession of
1886 the goods shall hold the goods with reasonable care at the lessor's or
1887 supplier's disposition for a sufficient time to permit the lessor or
1888 supplier to remove them. However, the lessee has no further obligation
1889 with regard to goods rightfully rejected or to which an acceptance has
1890 been justifiably revoked.

1891 (b) An action by the lessee under subsection (a) of this section is not
1892 acceptance or conversion.

1893 Sec. 82. (NEW) (*Effective October 1, 2002*) (a) If a lessee rightfully
1894 rejects goods or a tender of delivery under section 78 of this act or
1895 justifiably revokes an acceptance under section 86 of this act and the
1896 agreed time for performance has not expired, the lessor or supplier,
1897 upon seasonable notice to the buyer and at the lessor's or supplier's
1898 own expense, may cure any default by making a conforming tender of
1899 delivery within the agreed time. The lessor is obligated to compensate
1900 the lessee for all of the lessee's reasonable and necessary expenses
1901 caused by the nonconforming tender and subsequent cure.

1902 (b) If a lessee rightfully rejects goods or a tender of delivery under
1903 section 78 of this act or justifiably revokes acceptance under section 86
1904 of this act and the agreed time for performance has expired, the lessor
1905 or supplier, upon seasonable notice to the lessee and at the lessor's or
1906 supplier's own expense, may cure a default, if the cure is appropriate
1907 and timely under the circumstances, by making a tender of conforming
1908 goods. The lessor or supplier is obligated to compensate the lessee for
1909 all of the lessee's reasonable and necessary expenses caused by the
1910 nonconforming tender and subsequent cure.

1911 Sec. 83. (NEW) (*Effective October 1, 2002*) (a) Goods are accepted
1912 when the lessee:

1913 (1) After a reasonable opportunity to inspect the goods, signifies to
1914 the lessor or the supplier that the goods conform or will be taken or
1915 retained in spite of their nonconformity;

1916 (2) After a reasonable opportunity to inspect the goods, fails to make
1917 an effective rejection; or

1918 (3) Does any act inconsistent with the interest of the lessor or
1919 supplier in the goods or inconsistent with the lessor's claim of rejection
1920 or revocation of acceptance and the act is ratified by the lessor or
1921 supplier as an acceptance.

1922 (b) Acceptance of a part of a commercial unit is acceptance of the
1923 entire unit.

1924 Sec. 84. (NEW) (*Effective October 1, 2002*) A lessee is precluded from
1925 relying on a nonconforming performance as follows:

1926 (1) The lessee's failure to state, in connection with a rejection under
1927 section 78 of this act, a particular nonconformity that is ascertainable
1928 by reasonable inspection precludes reliance on the unstated
1929 nonconformity to justify rejection or to establish default if:

1930 (A) The lessor, upon a seasonable particularization, had a right to
1931 cure under section 82 of this act and would have cured the
1932 nonconformity; or

1933 (B) Between merchants, the lessor or the supplier after rejection has
1934 made a request in a record for a full and final statement in a record of
1935 all nonconformities on which the lessee proposes to rely.

1936 (2) The lessee's failure to state, in connection with a revocation of
1937 acceptance under section 86 of this act, the nonconformity that justifies
1938 the revocation precludes the lessee from relying on the nonconformity
1939 to justify the revocation or to establish default if the lessor had a right
1940 to cure the default under section 82 of this act and could have cured
1941 the breach.

1942 Sec. 85. (NEW) (*Effective October 1, 2002*) (a) A lessee shall pay rent in
1943 accordance with the lease contract for any goods accepted.

1944 (b) Acceptance of goods by a lessee precludes rejection of the goods
1945 accepted but does not by itself impair any other remedy provided by
1946 sections 1 to 90, inclusive, of this act or the lease agreement for
1947 nonconformity.

1948 (c) If a tender of delivery has been accepted, the following rules
1949 apply:

1950 (1) The lessee, or a person entitled to enforce a warranty or warranty
1951 obligation, shall notify the party claimed against within a reasonable
1952 time after the default or breach of warranty was discovered or should
1953 have been discovered. However, a failure to give timely notice bars the
1954 lessee from a remedy only to the extent that the party entitled to notice
1955 establishes that the party was prejudiced by the failure.

1956 (2) Except in the case of a consumer lease, if a claim for infringement
1957 or the like is made against a lessee for which a lessor or supplier is
1958 answerable over and the lessee is sued as a result of such claim, the
1959 lessee shall notify the lessor or supplier within a reasonable time after
1960 receiving notice of the litigation or be barred from any remedy over for
1961 liability established by the litigation.

1962 (d) A lessee has the burden of establishing a default with respect to
1963 goods accepted. A person entitled to enforce a warranty obligation
1964 under section 46 of this act has the burden of establishing that the
1965 warranty was breached.

1966 (e) In a claim for breach of a warranty, indemnity or other obligation
1967 against the lessee for which another party is answerable over, the
1968 following rules apply:

1969 (1) The lessee may give notice of the litigation to the other party in a
1970 record, and the person notified may then give similar notice of the
1971 litigation to any other person that is answerable over. If the notice
1972 invites the person notified to intervene in the litigation and defend and
1973 states that failure to do so will bind the person notified in any action

1974 later brought by the lessor as to any determination of fact common to
1975 the two actions, the person notified is so bound, unless, after
1976 seasonable receipt of the notice, the person notified intervenes in the
1977 litigation and defends.

1978 (2) If the claim is one for infringement or the like, the original lessor
1979 or supplier may demand in a record that its lessee turn over control of
1980 the litigation, including settlement, or otherwise be barred from any
1981 remedy over. If the lessor or supplier also agrees to bear all expense
1982 and to satisfy any adverse judgment, the lessee is so barred unless,
1983 after seasonable receipt of the demand, control is turned over to the
1984 lessor or supplier.

1985 (f) Subsections (c), (d) and (e) of this section apply to an obligation
1986 of a lessee to hold the lessor or the supplier harmless against
1987 infringement or the like.

1988 Sec. 86. (NEW) (*Effective October 1, 2002*) (a) A lessee may revoke
1989 acceptance of a lot or commercial unit whose nonconformity
1990 substantially impairs its value to the lessee if the lot or unit was
1991 accepted:

1992 (1) Except in the case of a finance lease, on the reasonable
1993 assumption that its nonconformity would be cured and the
1994 nonconformity has not been seasonably cured; or

1995 (2) Without discovery of its nonconformity if acceptance was
1996 reasonably induced either by the lessor's assurances or, except in the
1997 case of a finance lease, by the difficulty of discovery before acceptance.

1998 (b) Except in the case of a finance lease that is not a consumer lease,
1999 a lessee may revoke acceptance of a lot or commercial unit if the lessor
2000 defaults under the lease contract and the default substantially impairs
2001 the value of such lot or commercial unit to the lessee.

2002 (c) If the lease agreement so provides, the lessee may revoke
2003 acceptance of a lot or commercial unit because of other defaults by the

2004 lessor.

2005 (d) A lessee's acceptance must be revoked under subsections (a) and
2006 (b) of this section within a reasonable time after the lessee discovers or
2007 should have discovered the grounds for it and before any substantial
2008 change in condition of the goods which is not caused by their own
2009 defects. The revocation is not effective until the lessee notifies the
2010 lessor of the revocation.

2011 (e) A lessee that justifiably revokes acceptance has the same rights
2012 and duties under sections 80 and 81 of this act with regard to the goods
2013 involved as if the goods had been rejected.

2014 Sec. 87. (NEW) (*Effective October 1, 2002*) (a) Upon a default by a
2015 lessor under the lease contract of the type described in subsection (a) of
2016 section 77, or if agreed, upon other default by the lessor, the lessee may
2017 cover by making in good faith and without unreasonable delay any
2018 purchase or lease of, or contract to purchase or lease, comparable
2019 goods to substitute for those due from the lessor.

2020 (b) Except as otherwise provided with respect to damages
2021 liquidated in the lease agreement or determined by agreement of the
2022 parties, if a lessee's cover is by a lease contract substantially similar to
2023 the original lease contract and the new lease contract is made in good
2024 faith and in a commercially reasonable manner, a lessee that covers in
2025 the manner required by subsection (a) of this section may recover
2026 damages measured by the present value, as of the date of the
2027 commencement of the period of the new lease contract, of the rent
2028 under the new lease contract applicable to that part of the new lease
2029 period which is comparable to the then remaining period of the
2030 original lease contract minus the present value as of the same date of
2031 the total rent for the then remaining lease period of the original lease
2032 contract together with any incidental or consequential damages, less
2033 expenses avoided as a result of the lessor's default.

2034 (c) If a lessee's cover is by a lease agreement that for any reason does

2035 not qualify for treatment under subsection (b) of this section, or is by
2036 purchase or otherwise, the lessee may recover from the lessor as if the
2037 lessee had elected not to cover, and section 88 of this act governs.

2038 Sec. 88. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
2039 provided with respect to damages liquidated in the lease agreement or
2040 otherwise determined by agreement of the parties, if a lessee elects not
2041 to cover or a lessee elects to cover and the cover is by lease agreement
2042 that for any reason does not qualify for treatment under section 87 of
2043 this act, or is by purchase or otherwise, the measure of damages for
2044 nondelivery or repudiation by the lessor or for rejection or revocation
2045 of acceptance by the lessee is the present value, as of the date of the
2046 default, of the then market rent minus the present value as of the same
2047 date of the original rent, computed for the remaining period of the
2048 original lease agreement, together with incidental and consequential
2049 damages, less expenses saved in consequence of the lessor's default.

2050 (b) Market rent is determined as of the place for tender or, in cases
2051 of rejection after arrival or revocation of acceptance, as of the place of
2052 arrival.

2053 Sec. 89. (NEW) (*Effective October 1, 2002*) (a) Except as otherwise
2054 agreed, a lessee that has accepted goods and not justifiably revoked
2055 acceptance and has given notice pursuant to subsection (c) of section
2056 85 of this act may recover as damages for any nonconforming tender or
2057 other default by a lessor the loss resulting in the ordinary course of
2058 events from the lessor's default as determined in any reasonable
2059 manner.

2060 (b) Except as otherwise agreed, a measure of damages for breach of
2061 a warranty of quality is the present value at the time and place of
2062 acceptance of the difference between the value of the use of the goods
2063 accepted and the value if the goods had been as warranted for the
2064 lease period, unless special circumstances show proximate damages of
2065 a different amount.

2066 (c) A lessee may also recover incidental and consequential damages.

2067 Sec. 90. (NEW) (*Effective October 1, 2002*) (a) A lessee that pays all or
2068 a part of the rent or security for goods identified to the lease contract,
2069 whether or not the goods have been shipped, on making and keeping
2070 good a tender of any unpaid portion of the rent and security due under
2071 the lease contract, has a right to recover the goods from the lessor if the
2072 lessor repudiates or fails to deliver as required by the lease contract.

2073 (b) A lessee may recover from the lessor by replevin, detinue,
2074 sequestration, claim and delivery, or the like, goods identified to the
2075 lease contract if, after reasonable efforts, the lessee is unable to effect
2076 cover for the goods or the circumstances reasonably indicate that an
2077 effort to obtain cover would be unavailing.

2078 (c) If the requirements of subsection (a) or (b) of this section are
2079 satisfied, the lessor's right vests upon identification of the goods to the
2080 lease contract even if the lessor has not then repudiated the lease
2081 contract or failed to deliver as required by the lease contract.

2082 Sec. 91. Section 42a-1-105 of the general statutes, as amended by
2083 section 134 of public act 01-195, is repealed and the following is
2084 substituted in lieu thereof (*Effective October 1, 2002*):

2085 (1) Except as provided hereafter in this section, when a transaction
2086 bears a reasonable relation to this state and also to another state or
2087 nation the parties may agree that the law either of this state or of such
2088 other state or nation shall govern their rights and duties. Failing such
2089 agreement this title applies to transactions bearing an appropriate
2090 relation to this state.

2091 (2) Where one of the following provisions of this title specifies the
2092 applicable law, that provision governs and a contrary agreement is
2093 effective only to the extent permitted by the law, including the conflict
2094 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.

2095 Sec. 92. Subdivision (37) of section 42a-1-201 of the general statutes,
2096 as amended by section 137 of public act 01-132, is repealed and the
2097 following is substituted in lieu thereof (*Effective October 1, 2002*):

2098 (37) "Security interest" means an interest in personal property or
2099 fixtures which secures payment or performance of an obligation. The
2100 term also includes any interest of a consignor and a buyer of accounts,
2101 chattel paper, a payment intangible or a promissory note in a
2102 transaction that is subject to article 9. The special property interest of a
2103 buyer of goods on identification of such goods to a contract for sale
2104 under section 42a-2-401 is not a "security interest", but a buyer may
2105 also acquire a "security interest" by complying with article 9. [Whether
2106 a lease is intended as security is to be determined by the facts of each
2107 case; however, (a) the inclusion of an option to purchase does not of
2108 itself make the lease one intended for security, and (b) an agreement
2109 that upon compliance with the terms of the lease the lessee shall
2110 become or has the option to become the owner of the property for no
2111 additional consideration or for a nominal consideration does make the
2112 lease one intended for security. Except as otherwise provided in
2113 section 42a-5-505, the right of a seller or lessor of goods under article 2

2114 to retain or acquire possession of the goods is not a "security interest",
2115 but a seller or lessor may also acquire a "security interest" by
2116 complying with article 9. The retention or reservation of title by a seller
2117 of goods notwithstanding shipment or delivery to the buyer, as
2118 provided by section 42a-2-401, is limited in effect to a reservation of a
2119 "security interest". For purposes of this section, "security interest" does
2120 not include a rent-to-own agreement, as defined in section 42-240.]
2121 Except as otherwise provided in section 42a-2-505, the right of a seller
2122 or lessor of goods under article 2 or sections 1 to 90, inclusive, of this
2123 act to retain or acquire possession of the goods is not a "security
2124 interest", but a seller or lessor may also acquire a "security interest" by
2125 complying with article 9. The retention or reservation of title by a seller
2126 of goods, notwithstanding shipment or delivery to the buyer pursuant
2127 to section 42a-2-401, is limited in effect to a reservation of a "security
2128 interest". Whether a transaction creates lease or a "security interest" is
2129 determined by the facts of each case; however, a transaction creates a
2130 "security interest" if the consideration the lessee is to pay the lessor for
2131 the right to possession and use of the goods is an obligation for the
2132 term of the lease not subject to termination by the lessee, and (a) the
2133 original term of the lease is equal to or greater than the remaining
2134 economic life of the goods, (b) the lessee is bound to renew the lease
2135 for the remaining economic life of the goods or is bound to become
2136 owner of the goods, (c) the lessee has an option to renew the lease for
2137 the remaining economic life of the goods for no additional
2138 consideration or nominal additional consideration upon compliance
2139 with the lease agreement, or (d) the lessee has an option to become the
2140 owner of the goods for no additional consideration or nominal
2141 additional consideration upon compliance with the lease agreement. A
2142 transaction does not create a "security interest" merely because it
2143 provides that (A) the present value of the consideration the lessee is
2144 obligated to pay the lessor for the right to possession and use of the
2145 goods is substantially equal to or is greater than the fair market value
2146 of the goods at the time the lease is entered into, (B) the lessee assumes
2147 risk of loss of the goods, or agrees to pay taxes, insurance, filing,

2148 recording or registration fees, or service or maintenance costs with
2149 respect to the goods, (C) the lessee has an option to renew the lease or
2150 to become the owner of the goods, (D) the lessee has an option to
2151 renew the lease for a fixed rent that is equal to or greater than the
2152 reasonably predictable fair market rent for the use of the goods for the
2153 term of the renewal at the time the option is to be performed, or (E) the
2154 lessee has an option to become the owner of the goods for a fixed price
2155 that is equal to or greater than the reasonably predictable fair market
2156 value of the goods at the time the option is to be performed. For the
2157 purposes of this subdivision: (i) Additional consideration is not
2158 nominal if (I) when the option to renew the lease is granted to the
2159 lessee, the rent is stated to be the fair market rent for the use of the
2160 goods for the term of the renewal determined at the time the option is
2161 to be performed, or (II) when the option to become the owner of the
2162 goods is granted to the lessee, the price is stated to be the fair market
2163 value of the goods determined at the time the option is to be
2164 performed; (ii) additional consideration is nominal if it is less than the
2165 lessee's reasonably predictable cost of performing under the lease
2166 agreement if the option is not exercised; (iii) "reasonably predictable"
2167 and "remaining economic life of the goods" are to be determined with
2168 reference to the facts and circumstances at the time the transaction is
2169 entered into; and (iv) "present value" means the amount as of a date
2170 certain of one or more sums payable in the future, discounted to the
2171 date certain. The discount is determined by the interest rate specified
2172 by the parties if the rate is not manifestly unreasonable at the time the
2173 transaction is entered into; otherwise, the discount is determined by a
2174 commercially reasonable rate that takes into account the facts and
2175 circumstances of each case at the time the transaction was entered into.

2176 Sec. 93. Subdivision (72) of subsection (a) of section 42a-9-102 of the
2177 general statutes, as amended by section 2 of public act 01-132, is
2178 repealed and the following is substituted in lieu thereof (*Effective*
2179 *October 1, 2002*):

2180 (72) "Secured party" means:

2181 (A) A person in whose favor a security interest is created or
2182 provided for under a security agreement, whether or not any
2183 obligation to be secured is outstanding;

2184 (B) A person that holds an agricultural lien;

2185 (C) A consignor;

2186 (D) A person to which accounts, chattel paper, payment intangibles
2187 or promissory notes have been sold;

2188 (E) A trustee, indenture trustee, agent, collateral agent or other
2189 representative in whose favor a security interest or agricultural lien is
2190 created or provided for; or

2191 (F) A person that holds a security interest arising under section 42a-
2192 2-401, section 42a-2-505, subsection (3) of section 42a-2-711, subsection
2193 (e) of section 77 of this act, section 42a-4-210 or section 42a-5-118, as
2194 amended by [this act] public act 01-132.

2195 Sec. 94. Subsection (b) of section 42a-9-102 of the general statutes, as
2196 amended by section 2 of public act 01-132, is repealed and the
2197 following is substituted in lieu thereof (*Effective October 1, 2002*):

2198 (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 "Leasehold interest". Section 2 of this act.
- T32 "Lessee". Section 2 of this act.
- T33 "Lessee in ordinary course of business". Section 2 of this act.
- T34 "Lessor". Section 2 of this act.
- T35 "Lessor's residual interest". Section 2 of this act.
- 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.

2199 Sec. 95. Subsection (a) of section 42a-9-109 of the general statutes, as
2200 amended by section 9 of public act 01-132, is repealed and the
2201 following is substituted in lieu thereof (*Effective October 1, 2002*):

2202 (a) Except as otherwise provided in subsections (c) and (d), this
2203 article applies to:

2204 (1) A transaction, regardless of its form, that creates a security

2205 interest in personal property or fixtures by contract;

2206 (2) An agricultural lien;

2207 (3) A sale of accounts, chattel paper, payment intangibles or
2208 promissory notes;

2209 (4) A consignment;

2210 (5) A security interest arising under section 42a-2-401, section 42a-2-
2211 505, [or] subsection (3) of section 42a-2-711 or subsection (e) of section
2212 77 of this act, as provided in section 42a-9-110, as amended by [this act]
2213 public act 01-132 and this act; and

2214 (6) A security interest arising under section 42a-4-210 or 42a-5-118,
2215 as amended by [this act] public act 01-132.

2216 Sec. 96. Section 42a-9-110 of the general statutes, as amended by
2217 section 10 of public act 01-132, is repealed and the following is
2218 substituted in lieu thereof (*Effective October 1, 2002*):

2219 A security interest arising under section 42a-2-401, section 42a-2-
2220 505, [or] subsection (3) of section 42a-2-711 or subsection (e) of section
2221 77 of this act is subject to this article. However, until the debtor obtains
2222 possession of the goods:

2223 (1) The security interest is enforceable, even if subdivision (3) of
2224 subsection (b) of section 42a-9-203, as amended, has not been satisfied;

2225 (2) Filing is not required to perfect the security interest;

2226 (3) The rights of the secured party after default by the debtor are
2227 governed by article 2 or sections 1 to 90, inclusive, of this act; and

2228 (4) The security interest has priority over a conflicting security
2229 interest created by the debtor.

2230 Sec. 97. Subsection (c) of section 42a-9-203 of the general statutes, as

2231 amended by section 13 of public act 01-132, is repealed and the
2232 following is substituted in lieu thereof (*Effective October 1, 2002*):

2233 (c) Subsection (b) is subject to section 42a-4-210, as amended, on the
2234 security interest of a collecting bank, section 42a-5-118, as amended, on
2235 the security interest of a letter-of-credit issuer or nominated person,
2236 section 42a-9-110, as amended by this act, on a security interest arising
2237 under article 2 or sections 1 to 90, inclusive, of this act, and section 42a-
2238 9-206, as amended, on security interests in investment property.

2239 Sec. 98. Section 42a-9-309 of the general statutes, as amended by
2240 section 29 of public act 01-132, is repealed and the following is
2241 substituted in lieu thereof (*Effective October 1, 2002*):

2242 The following security interests are perfected when they attach:

2243 (1) A purchase-money security interest in consumer goods, except as
2244 otherwise provided in subsection (b) of section 42a-9-311, as amended,
2245 with respect to consumer goods that are subject to a statute or treaty
2246 described in subsection (a) of section 42a-9-311, as amended;

2247 (2) An assignment of accounts or payment intangibles which does
2248 not by itself or in conjunction with other assignments to the same
2249 assignee transfer a significant part of the assignor's outstanding
2250 accounts or payment intangibles;

2251 (3) A sale of a payment intangible;

2252 (4) A sale of a promissory note;

2253 (5) A security interest created by the assignment of a health-care-
2254 insurance receivable to the provider of the health-care goods or
2255 services;

2256 (6) A security interest arising under section 42a-2-401, section 42a-2-
2257 505, [or] subsection (3) of section 42a-2-711 or subsection (e) of section
2258 77 of this act, until the debtor obtains possession of the collateral;

2259 (7) A security interest of a collecting bank arising under section 42a-
2260 4-210, as amended;

2261 (8) A security interest of an issuer or nominated person arising
2262 under section 42a-5-118, as amended;

2263 (9) A security interest arising in the delivery of a financial asset
2264 under subsection (c) of section 42a-9-206, as amended;

2265 (10) A security interest in investment property created by a broker
2266 or securities intermediary;

2267 (11) A security interest in a commodity contract or a commodity
2268 account created by a commodity intermediary;

2269 (12) An assignment for the benefit of all creditors of the transferor
2270 and subsequent transfers by the assignee thereunder; and

2271 (13) A security interest created by an assignment of a beneficial
2272 interest in a decedent's estate.

2273 Sec. 99. Subsection (d) of section 42a-9-311 of the general statutes, as
2274 amended by section 31 of public act 01-132, is repealed and the
2275 following is substituted in lieu thereof (*Effective October 1, 2002*):

2276 (d) During any period in which collateral subject to a statute
2277 specified in subdivision (2) of subsection (a) of this section is inventory
2278 held for sale or lease by a person or leased by that person as lessor and
2279 that person is in the business of selling or leasing goods of that kind,
2280 this section does not apply to a security interest in that collateral
2281 created by that person.

2282 Sec. 100. Subsection (f) of section 42 of public act 01-132 is repealed
2283 and the following is substituted in lieu thereof (*Effective October 1,*
2284 *2002*):

2285 (f) Subsections (a) to (e), inclusive, of this section are subject to:

2286 (1) Subsection (g) of this section and the other provisions of sections
2287 42a-9-301 to 42a-9-318, inclusive, of the general statutes, as amended
2288 by [this act] public act 01-132, and sections 39 to 62, inclusive, of [this
2289 act] public act 01-132;

2290 (2) Section 42a-4-210 of the general statutes, as amended, with
2291 respect to a security interest of a collecting bank;

2292 (3) Section 42a-5-118 of the general statutes, as amended by [this act]
2293 public act 01-132, with respect to a security interest of an issuer or
2294 nominated person; and

2295 (4) Section 42a-9-110 of the general statutes, as amended by [this act]
2296 public act 01-132 and this act, with respect to a security interest arising
2297 under article 2 of sections 1 to 90, inclusive, of this act.

2298 Sec. 101. Subsection (b) of section 45 of public act 01-132 is repealed
2299 and the following is substituted in lieu thereof (*Effective October 1,*
2300 *2002*):

2301 (b) Subsection (a) subordinates a security interest only if the security
2302 interest:

2303 (1) Otherwise would have priority solely under subsection (a) of
2304 section 42 of [this act] public act 01-132 or section 44 of [this act] public
2305 act 01-132; or

2306 (2) Arose solely under subdivision (3) of section 42a-2-711 of the
2307 general statutes or subsection (e) of section 77 of this act.

2308 Sec. 102. Subsection (f) of section 42a-9-406 of the general statutes, as
2309 amended by section 68 of public act 01-132, is repealed and the
2310 following is substituted in lieu thereof (*Effective October 1, 2002*):

2311 (f) Except as otherwise provided in section 30 of this act and section
2312 42a-9-407, as amended by [this act] public act 01-132 and this act, and
2313 subject to subsections (h) and (i), a rule of law, statute or regulation

2314 that prohibits, restricts or requires the consent of a government,
2315 governmental body or official or account debtor to the assignment or
2316 transfer of, or creation of a security interest in, an account or chattel
2317 paper is ineffective to the extent that the rule of law, statute or
2318 regulation:

2319 (1) Prohibits, restricts or requires the consent of the government,
2320 governmental body or official or account debtor to the assignment or
2321 transfer of, or the creation, attachment, perfection or enforcement of a
2322 security interest in the account or chattel paper; 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 or
2327 chattel paper.

2328 Sec. 103. Section 42a-9-407 of the general statutes, as amended by
2329 section 69 of public act 01-132, is repealed and the following is
2330 substituted in lieu thereof (*Effective October 1, 2002*):

2331 (a) Except as otherwise provided in subsection (b), a term in a lease
2332 agreement is ineffective to the extent that it:

2333 (1) Prohibits, restricts or requires the consent of a party to the lease
2334 to the assignment or transfer of, or the creation, attachment, perfection
2335 or enforcement of a security interest in, an interest of a party under the
2336 lease contract or in the lessor's residual interest in the goods; or

2337 (2) Provides that the assignment or transfer or the creation,
2338 attachment, perfection or enforcement of the security interest may give
2339 rise to a default, breach, right of recoupment, claim, defense,
2340 termination, right of termination or remedy under the lease.

2341 (b) [A] Except as otherwise provided in subsection (g) of section 30
2342 of this act, a term described in subdivision (2) of subsection (a) is
2343 effective to the extent that there is:

2344 (1) A transfer by the lessee of the lessee's right of possession or use
 2345 of the goods in violation of the term; or

2346 (2) A delegation of a material performance of either party to the
 2347 lease contract in violation of the term.

2348 (c) The creation, attachment, perfection or enforcement of a security
 2349 interest in the lessor's interest under the lease contract or the lessor's
 2350 residual interest in the goods is not a transfer that materially impairs
 2351 the lessee's prospect of obtaining return performance or materially
 2352 changes the duty of or materially increases the burden or risk imposed
 2353 on the lessee within the purview of subsection (d) of section 30 of this
 2354 act unless, and then only to the extent that, enforcement actually
 2355 results in a delegation of material performance of the lessor.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>
Sec. 9	<i>October 1, 2002</i>
Sec. 10	<i>October 1, 2002</i>
Sec. 11	<i>October 1, 2002</i>
Sec. 12	<i>October 1, 2002</i>
Sec. 13	<i>October 1, 2002</i>
Sec. 14	<i>October 1, 2002</i>
Sec. 15	<i>October 1, 2002</i>
Sec. 16	<i>October 1, 2002</i>
Sec. 17	<i>October 1, 2002</i>
Sec. 18	<i>October 1, 2002</i>
Sec. 19	<i>October 1, 2002</i>
Sec. 20	<i>October 1, 2002</i>
Sec. 21	<i>October 1, 2002</i>

Sec. 22	<i>October 1, 2002</i>
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Sec. 101	<i>October 1, 2002</i>

Sec. 102	<i>October 1, 2002</i>
Sec. 103	<i>October 1, 2002</i>

Statement of Purpose:

To implement the recommendations of the Connecticut Law Revision Commission concerning the adoption of article 2A of the Uniform Commercial Code concerning leases.

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