CERTIFICATION OF ENROLLMENT

HOUSE BILL 1015

Chapter 230, Laws of 1993

53rd Legislature
1993 Regular Session

UNIFORM COMMERCIAL CODE--LEASES

EFFECTIVE DATE: 7/1/94

Passed by the House April 20, 1993
Yeas 97  Nays 0

BRIAN EBERSOLE
Speaker of the House of Representatives

Passed by the Senate April 16, 1993
Yeas 46  Nays 0

JOEL PRITCHARD
President of the Senate

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 1015 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

Approved May 7, 1993

MIKE LOWRY
Governor of the State of Washington

FILED

May 7, 1993 - 11:14 a.m.

Secretary of State
State of Washington
AN ACT Relating to the Uniform Commercial Code; amending RCW 62A.1-105, 62A.1-201, and 62A.9-113; adding a new Article to Title 62A RCW; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART 1
GENERAL PROVISIONS

NEW SECTION. Sec. 2A-101. SHORT TITLE. This Article shall be known and may be cited as the Uniform Commercial Code - Leases.

NEW SECTION. Sec. 2A-102. SCOPE. This Article applies to any transaction, regardless of form, that creates a lease.

NEW SECTION. Sec. 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:
   (a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a
person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

(iii) Only in the case of a consumer lease, either:

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

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

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or
modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) "Supply contract" means a contract under which a lessor buys or
leases goods to be leased.
"Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:


(3) The following definitions in other Articles apply to this Article:

"Between merchants." RCW 62A.2-104(3).
"Buyer." RCW 62A.2-103(1)(a).
"Entrusting." RCW 62A.2-403(3).
"General intangibles." RCW 62A.9-106.
"Good faith." RCW 62A.2-103(1)(b).
"Merchant." RCW 62A.2-104(1).
"Pursuant to commitment." RCW 62A.9-105(1)(k).
"Receipt." RCW 62A.2-103(1)(c).
"Sale." RCW 62A.2-106(1).
"Sale on approval." RCW 62A.2-326.
"Sale or return." RCW 62A.2-326.

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article.

NEW SECTION. Sec. 2A-104. LEASES SUBJECT TO OTHER LAW. (1) A lease, although subject to this Article, is also subject to any applicable:
(a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);
(b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or
(c) Consumer protection statute of this state.
(2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.
(3) Failure to comply with an applicable law has only the effect specified therein.

NEW SECTION. Sec. 2A-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE. Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

NEW SECTION. Sec. 2A-106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.
(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable.

NEW SECTION. Sec. 2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT. Any claim or right arising out of an alleged
default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

NEW SECTION. Sec. 2A-108. UNCONSCIONABILITY. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause’s commercial setting, purpose, and effect to aid the court in making the determination.

PART 2
FORMATION AND CONSTRUCTION OF LEASE CONTRACT

NEW SECTION. Sec. 2A-201. STATUTE OF FRAUDS. (1) A lease contract is not enforceable by way of action or defense unless:

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

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

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

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

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:
(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor’s business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

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

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

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

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

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

(c) A reasonable lease term.

NEW SECTION. Sec. 2A-202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

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

NEW SECTION. Sec. 2A-203. SEALS INOPERATIVE. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and
the law with respect to sealed instruments does not apply to the lease contract or offer.

NEW SECTION. Sec. 2A-204. FORMATION IN GENERAL. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

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

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

NEW SECTION. Sec. 2A-205. FIRM OFFERS. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

NEW SECTION. Sec. 2A-206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

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

NEW SECTION. Sec. 2A-207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.
The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

NEW SECTION. Sec. 2A-208. MODIFICATION, RESCISSION, AND WAIVER.

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

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

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

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

NEW SECTION. Sec. 2A-209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT. (1) The benefit of a supplier’s promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee’s leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier’s promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether
arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

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

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

NEW SECTION. Sec. 2A-210. EXPRESS WARRANTIES. (1) Express warranties by the lessor are created as follows:

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

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

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

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

NEW SECTION. Sec. 2A-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE’S OBLIGATION AGAINST INFRINGEMENT. (1)
There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee’s enjoyment of its leasehold interest.

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

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

NEW SECTION. Sec. 2A-212. IMPLIED WARRANTY OF MERCHANTABILITY.

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

(2) Goods to be merchantable must be at least such as:
   (a) Pass without objection in the trade under the description in the lease agreement;
   (b) In the case of fungible goods, are of fair average quality within the description;
   (c) Are fit for the ordinary purposes for which goods of that type are used;
   (d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
   (e) Are adequately contained, packaged, and labeled as the lease agreement may require; and
   (f) Conform to any promises or affirmations of fact made on the container or label.

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

NEW SECTION. Sec. 2A-213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying
on the lessor’s skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**NEW SECTION. Sec. 2A-214.** EXCLUSION OR MODIFICATION OF WARRANTIES. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

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

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

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

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

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

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or
usage of trade, give the lessee reason to know that the goods are being
leased subject to a claim or interest of any person.

NEW SECTION. Sec. 2A-215. CUMULATION AND CONFLICT OF WARRANTIES
EXPRESS OR IMPLIED. Warranties, whether express or implied, must be
construed as consistent with each other and as cumulative, but if that
construction is unreasonable, the intention of the parties determines
which warranty is dominant. In ascertaining that intention the
following rules apply:
(a) Exact or technical specifications displace an inconsistent
sample or model or general language of description.
(b) A sample from an existing bulk displaces inconsistent general
language of description.
(c) Express warranties displace inconsistent implied warranties
other than an implied warranty of fitness for a particular purpose.

NEW SECTION. Sec. 2A-216. THIRD PARTY BENEFICIARIES OF EXPRESS
AND IMPLIED WARRANTIES. A warranty to or for the benefit of a lessee
under this Article, whether express or implied, extends to any natural
person who is in the family or household of the lessee or who is a
guest in the lessee’s home if it is reasonable to expect that such
person may use, consume, or be affected by the goods and who is injured
in person by breach of the warranty. This section does not displace
principles of law and equity that extend a warranty to or for the
benefit of a lessee to other persons. The operation of this section
may not be excluded, modified, or limited, but an exclusion,
modification, or limitation of the warranty, including any with respect
to rights and remedies, effective against the lessee is also effective
against any beneficiary designated under this section.

NEW SECTION. Sec. 2A-217. IDENTIFICATION. Identification of
goods as goods to which a lease contract refers may be made at any time
and in any manner explicitly agreed to by the parties. In the absence
of explicit agreement, identification occurs:
(a) When the lease contract is made if the lease contract is for a
lease of goods that are existing and identified;
(b) When the goods are shipped, marked, or otherwise designated by
the lessor as goods to which the lease contract refers, if the lease
contract is for a lease of goods that are not existing and identified;

or

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

NEW SECTION. Sec. 2A-218. INSURANCE AND PROCEEDS. (1) A lessee
obtains an insurable interest when existing goods are identified to the
lease contract even though the goods identified are nonconforming and
the lessee has an option to reject them.

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

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

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

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

NEW SECTION. Sec. 2A-219. RISK OF LOSS. (1) Except in the case
of a finance lease, risk of loss is retained by the lessor and does not
pass to the lessee. In the case of a finance lease, risk of loss
passes to the lessee.

(2) Subject to the provisions of this Article on the effect of
default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to
the lessee and the time of passage is not stated, the following rules
apply:

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

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

(ii) If it does require delivery at a particular destination and
the goods are there duly tendered while in the possession of the
carrier, the risk of loss passes to the lessee when the goods are there
duly so tendered as to enable the lessee to take delivery.

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

(c) In any case not within subsection (2) (a) or (b) of this
section, the risk of loss passes to the lessee on the lessee’s receipt
of the goods if the lessor, or, in the case of a finance lease, the
supplier, is a merchant; otherwise the risk passes to the lessee on
tender of delivery.

NEW SECTION. Sec. 2A-220. EFFECT OF DEFAULT ON RISK OF LOSS. (1)
Where risk of loss is to pass to the lessee and the time of passage is
not stated:

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

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

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

NEW SECTION. Sec. 2A-221. CASUALTY TO IDENTIFIED GOODS. If a
lease contract requires goods identified when the lease contract is
made, and the goods suffer casualty without fault of the lessee, the
lessor or the supplier, before delivery, or the goods suffer casualty
before risk of loss passes to the lessee pursuant to the lease
agreement or RCW 62A.2A-219, then:

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

(b) If the loss is partial or the goods have so deteriorated as to
no longer conform to the lease contract, the lessee may nevertheless
demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3

EFFECT OF LEASE CONTRACT

NEW SECTION. Sec. 2A-301. ENFORCEABILITY OF LEASE CONTRACT. Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

NEW SECTION. Sec. 2A-302. TITLE TO AND POSSESSION OF GOODS. Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

NEW SECTION. Sec. 2A-303. ALIENABLEITY OF PARTY’S INTEREST UNDER LEASE CONTRACT OR OF LESSOR’S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of RCW 62A.9-102(1)(b).

(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor’s residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits the creation or enforcement of a security interest in an interest of a
party under the lease contract or in the lessor’s residual interest in the goods, or (b) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee’s right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor’s interest under the lease contract or (ii) the lessor’s residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

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

(5) Subject to subsections (3) and (4) of this section:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (5)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a
court having jurisdiction may grant other appropriate relief, including
cancellation of the lease contract or an injunction against the
transfer.

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

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

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

NEW SECTION. Sec. 2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.

(1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of
goods under an existing lease contract obtains, to the extent of the
leasehold interest transferred, the leasehold interest in the goods
that the lessor had or had power to transfer, and except as provided in
subsection (2) of this section and RCW 62A.2A-527(4), takes subject to
the existing lease contract. A lessor with voidable title has power to
transfer a good leasehold interest to a good faith subsequent lessee
for value, but only to the extent set forth in the preceding sentence.

If goods have been delivered under a transaction of purchase, the
lessee has that power even though:

(a) The lessor’s transferor was deceived as to the identity of the
lessee;

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

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

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

(2) A subsequent lessee in the ordinary course of business from a
lessor who is a merchant dealing in goods of that kind to whom the
goods were entrusted by the existing lessee of that lessor before the

interest of the subsequent lessee became enforceable against that
lessor obtains, to the extent of the leasehold interest transferred,
all of that lessor’s and the existing lessee’s rights to the goods, and
takes free of the existing lease contract.

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

NEW SECTION. Sec. 2A-305. SALE OR SUBLEASE OF GOODS BY LESSEE.

(1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee
from the lessee of goods under an existing lease contract obtains, to
the extent of the interest transferred, the leasehold interest in the
goods that the lessee had or had power to transfer, and except as
provided in subsection (2) of this section and RCW 62A.2A-511(4), takes
subject to the existing lease contract. A lessee with a voidable
leasehold interest has power to transfer a good leasehold interest to
a good faith buyer for value or a good faith sublessee for value, but
only to the extent set forth in the preceding sentence. When goods
have been delivered under a transaction of lease the lessee has that
power even though:

(a) The lessor was deceived as to the identity of the lessee;
(b) The delivery was in exchange for a check which is later
dishonored; or
(c) The delivery was procured through fraud punishable as larcenous
under the criminal law.

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

(3) A buyer or sublessee from the lessee of goods that are subject
to an existing lease contract and are covered by a certificate of title
issued under a statute of this state or of another jurisdiction takes
no greater rights than those provided both by this section and by the
certificate of title statute.
NEW SECTION. Sec. 2A-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

NEW SECTION. Sec. 2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS. (1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless:

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

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

(c) The creditor holds a security interest in the goods which was perfected (RCW 62A.9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (RCW 62A.9-303) and the lessee knows of its existence.

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

NEW SECTION. Sec. 2A-308. SPECIAL RIGHTS OF CREDITORS. (1) A creditor of a lessor in possession of goods subject to a lease contract
may treat the lease contract as void if as against the creditor
retention of possession by the lessor is fraudulent under any statute
or rule of law, but retention of possession in good faith and current
course of trade by the lessor for a commercially reasonable time after
the lease contract becomes enforceable is not fraudulent.

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

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

NEW SECTION.  Sec. 2A-309.  LESSOR’S AND LESSEE’S RIGHTS WHEN GOODS
BECOME FIXTURES. (1) In this section:

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

(b) A "fixture filing" is the filing, in the office where a
mortgage on the real estate would be filed or recorded, of a financing
statement covering goods that are or are to become fixtures and
conforming to the requirements of RCW 62A.9-402(5);

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

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

(e) "Encumbrance" includes real estate mortgages and other liens on
real estate and all other rights in real estate that are not ownership
interests.
(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

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

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

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

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

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

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

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

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

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee’s right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor’s residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

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

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

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor’s residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9 RCW.
NEW SECTION. Sec. 2A-310. LESSOR’S AND LESSEE’S RIGHTS WHEN GOODS BECOME ACCESSIONS. (1) Goods are "accessions" when they are installed in or affixed to other goods.

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

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

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

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

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

NEW SECTION. Sec. 2A-311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in this Article prevents subordination by agreement by any person entitled to priority.

PART 4
PERFORMANCE OF LEASE CONTRACT:
REPUDIATED, SUBSTITUTED, AND EXCUSED

NEW SECTION. Sec. 2A-401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE. (1) A lease contract imposes an obligation on each party that the other’s expectation of receiving due performance will not be impaired.

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

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

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

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

NEW SECTION. Sec. 2A-402. ANTICIPATORY REPUDIATION. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:
(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;
(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or
(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party’s performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor’s right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524).

NEW SECTION. Sec. 2A-403. RETRACTION OF ANTICIPATORY REPUDIATION. (1) Until the repudiating party’s next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party’s position or otherwise indicated that the aggrieved party considers the repudiation final. (2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401. (3) Retraction reinstates a repudiating party’s rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

NEW SECTION. Sec. 2A-404. SUBSTITUTED PERFORMANCE. (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted. (2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and (b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee’s obligation unless the regulation is discriminatory, oppressive, or predatory.

NEW SECTION. Sec. 2A-405. EXCUSED PERFORMANCE. Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:
(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor’s or the supplier’s capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.
(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee.

NEW SECTION. Sec. 2A-406. PROCEDURE ON EXCUSED PERFORMANCE. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):
(a) Terminate the lease contract (RCW 62A.2A-505(2)); or
(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

NEW SECTION. Sec. 2A-407. IRREVOCABLE PROMISES: FINANCE LEASES. (1) In the case of a finance lease, the lessee’s promises under the lease contract become irrevocable and independent upon the lessee’s acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

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

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

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

PART 5
DEFAULT

A. IN GENERAL

NEW SECTION. Sec. 2A-501. DEFAULT: PROCEDURE. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

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

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

(4) Except as otherwise provided in RCW 62A.1-106(1) or this
Article or the lease agreement, the rights and remedies referred to in
 subsections (2) and (3) of this section are cumulative.

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

NEW SECTION. Sec. 2A-502. NOTICE AFTER DEFAULT. Except as
otherwise provided in this Article or the lease agreement, the lessor
or lessee in default under the lease contract is not entitled to notice
of default or notice of enforcement from the other party to the lease
agreement.

NEW SECTION. Sec. 2A-503. MODIFICATION OR IMPAIRMENT OF RIGHTS
AND REMEDIES. (1) Except as otherwise provided in this Article, the
lease agreement may include rights and remedies for default in addition
to or in substitution for those provided in this Article and may limit
or alter the measure of damages recoverable under this Article.

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

(3) Consequential damages may be liquidated under RCW 62A.2A-504,
or may otherwise be limited, altered, or excluded unless the
limitation, alteration, or exclusion is unconscionable. Limitation,
alteration, or exclusion of consequential damages for injury to the
person in the case of consumer goods is prima facie unconscionable but
limitation, alternation, or exclusion of damages where the loss is
commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with
respect to any obligation or promise collateral or ancillary to the
lease contract are not impaired by this Article.
NEW SECTION. Sec. 2A-504. LIQUIDATION OF DAMAGES. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor’s residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

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

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee’s default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

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

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

(4) A lessee’s right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

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

NEW SECTION. Sec. 2A-505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.
(2) On termination of the lease contract, all obligations that are 
still executory on both sides are discharged but any right based on 
prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of 
"cancellation," "rescission," or the like of the lease contract may not 
be construed as a renunciation or discharge of any claim in damages for 
an antecedent default.

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

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

NEW SECTION. Sec. 2A-506. STATUTE OF LIMITATIONS. (1) An action 
for default under a lease contract, including breach of warranty or 
indemnity, must be commenced within four years after the cause of 
action accrued. By the original lease contract the parties may reduce 
the period of limitation to not less than one year.

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

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

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

NEW SECTION. Sec. 2A-507. PROOF OF MARKET RENT: TIME AND PLACE. 
(1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are 
determined according to the rent for the use of the goods concerned for
a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

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

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

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

B. DEFAULT BY LESSOR

NEW SECTION. Sec. 2A-508. LESSEE’S REMEDIES. (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods (RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Recover so much of the rent and security as has been paid and which is just under the circumstances;
(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);

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

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

(a) If the goods have been identified, recover them (RCW 62A.2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee’s possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee’s intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

NEW SECTION. Sec. 2A-509. LESSEE’S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION. (1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.
(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

NEW SECTION. Sec. 2A-510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

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

NEW SECTION. Sec. 2A-511. MERCHANT LESSEE’S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (1) Subject to any security interest of a lessee (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor’s account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.
In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

NEW SECTION. Sec. 2A-512. LESSEE’S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)): (a) The lessee, after rejection of goods in the lessee’s possession, shall hold them with reasonable care at the lessor’s or the supplier’s disposition for a reasonable time after the lessee’s seasonable notification of rejection; (b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor’s or the supplier’s account or ship them to the lessor or the supplier or dispose of them for the lessor’s or the supplier’s account with reimbursement in the manner provided in RCW 62A.2A-511; but (c) The lessee has no further obligations with regard to goods rightfully rejected.

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

NEW SECTION. Sec. 2A-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT. (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor’s or the supplier’s intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.
NEW SECTION. Sec. 2A-514. WAIVER OF LESSEE’S OBJECTIONS. (1) In rejecting goods, a lessee’s failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
   (a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or
   (b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
(2) A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

NEW SECTION. Sec. 2A-515. ACCEPTANCE OF GOODS. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:
   (a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or
   (b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).
(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

NEW SECTION. Sec. 2A-516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.
(2) A lessee’s acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.
(3) If a tender has been accepted:
(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

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

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

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

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211).

NEW SECTION. Sec. 2A-517. REVOCATION OF ACCEPTANCE OF GOODS. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
(b) Without discovery of the nonconformity if the lessee’s acceptance was reasonably induced either by the lessor’s assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

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

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

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

NEW SECTION. Sec. 2A-518. COVER; SUBSTITUTE GOODS. (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor’s default.
(3) If a lessee’s cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs.

NEW SECTION. Sec. 2A-519. LESSEE’S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.

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

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor’s default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default or breach of warranty.
NEW SECTION. Sec. 2A-520. LESSEE’S INCIDENTAL AND CONSEQUENTIAL DAMAGES. (1) Incidental damages resulting from a lessor’s default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

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

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

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

NEW SECTION. Sec. 2A-521. LESSEE’S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

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

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

NEW SECTION. Sec. 2A-522. LESSEE’S RIGHT TO GOODS ON LESSOR’S INSOLVENCY. (1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.
NEW SECTION.  Sec. 2A-523.  LESSOR’S REMEDIES. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:
(a) Cancel the lease contract (RCW 62A.2A-505(1));
(b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);
(c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);
(d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);
(e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);
(f) Exercise any other rights or pursue any other remedies provided in the lease contract.
(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee’s default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee’s default.
(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:
(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or
(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

NEW SECTION.  Sec. 2A-524.  LESSOR’S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT. (1) After default by the lessee under the lease
contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor may:

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

(b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

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

NEW SECTION. Sec. 2A-525. LESSOR’S RIGHT TO POSSESSION OF GOODS.

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

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee’s premises (RCW 62A.2A-527).

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

NEW SECTION. Sec. 2A-526. LESSOR’S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other
reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:
   
   (a) Receipt of the goods by the lessee;
   
   (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
   
   (c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
   
   (b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
   
   (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

NEW SECTION.  Sec. 2A-527.  LESSOR’S RIGHTS TO DISPOSE OF GOODS.

(1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any
incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee’s default.

(3) If the lessor’s disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

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

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee’s security interest (RCW 62A.2A-508(5)).

NEW SECTION. Sec. 2A-528. LESSOR’S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee’s default.
(2) If the measure of damages provided in subsection (1) of this
section is inadequate to put a lessor in as good a position as
performance would have, the measure of damages is the present value of
the profit, including reasonable overhead, the lessor would have made
from full performance by the lessee, together with any incidental
damages allowed under RCW 62A.2A-530, due allowance for costs
reasonably incurred and due credit for payments or proceeds of
disposition.

NEW SECTION.  Sec. 2A-529.  LESSOR’S ACTION FOR THE RENT.  (1)
After default by the lessee under the lease contract of the type
described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other
default by the lessee, if the lessor complies with subsection (2) of
this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or
tendered to the lessor, and for conforming goods lost or damaged within
a commercially reasonable time after risk of loss passes to the lessee
(RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry
of judgment in favor of the lessor, (ii) the present value as of the
same date of the rent for the then remaining lease term of the lease
agreement, and (iii) any incidental damages allowed under RCW 62A.2A-
530, less expenses saved in consequence of the lessee’s default; and

(b) For goods identified to the lease contract if the lessor is
unable after reasonable effort to dispose of them at a reasonable price
or the circumstances reasonably indicate that effort will be
unavailing, (i) accrued and unpaid rent as of the date of entry of
judgment in favor of the lessor, (ii) the present value as of the same
date of the rent for the then remaining lease term of the lease
agreement, and (iii) any incidental damages allowed under RCW 62A.2A-
530, less expenses saved in consequence of the lessee’s default.

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

(3) The lessor may dispose of the goods at any time before
collection of the judgment for damages obtained pursuant to subsection
(1) of this section.  If the disposition is before the end of the
remaining lease term of the lease agreement, the lessor’s recovery
against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-
The lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

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

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528.

NEW SECTION. Sec. 2A-530. LESSOR’S INCIDENTAL DAMAGES.

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

NEW SECTION. Sec. 2A-531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

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

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

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.
NEW SECTION. Sec. 2A-532. LESSOR’S RIGHTS TO RESIDUAL INTEREST.

In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor’s residual interest in the goods caused by the default of the lessee.

PART 6
AMENDATORY SECTIONS

Sec. 2A-601. RCW 62A.1-105 and 1981 c 41 s 1 are each amended to read as follows:

TERRITORIAL APPLICATION OF THE TITLE; PARTIES’ POWER TO CHOOSE APPLICABLE LAW. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

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

Rights of creditors against sold goods. RCW 62A.2-402.


Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-102.

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103.

Sec. 2A-602. RCW 62A.1-201 and 1992 c 134 s 14 are each amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or
Parts thereof, and unless the context otherwise requires, in this Title:

1. "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

2. "Aggrieved party" means a party entitled to resort to a remedy.

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)


5. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

6. "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

7. "Branch" includes a separately incorporated foreign branch of a bank.

8. "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

9. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but...
does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties’ agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor’s estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.
(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to ((an instrument, certificated security, or document of title means the person in possession if (a) in the case of an instrument, it is payable to bearer or to the order of the person in possession, (b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form, or (c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession)) a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government ((or intergovernmental organization)) and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when ((a) he or she has actual knowledge of it; or (b) he or she has received a notice or notification of it; or (c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and
circumstances under which a notice or notification may cease to be
effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to
another by taking such steps as may be reasonably required to inform
the other in ordinary course whether or not such other actually comes
to know of it. A person "receives" a notice or notification when
(a) it comes to his or her attention; or
(b) it is duly delivered at the place of business through which the
contract was made or at any other place held out by him or her as the
place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an
organization is effective for a particular transaction from the time
when it is brought to the attention of the individual conducting that
transaction, and in any event from the time when it would have been
brought to his or her attention if the organization had exercised due
diligence. An organization exercises due diligence if it maintains
reasonable routines for communicating significant information to the
person conducting the transaction and there is reasonable compliance
with the routines. Due diligence does not require an individual acting
for the organization to communicate information unless such
communication is part of his or her regular duties or unless he or she
has reason to know of the transaction and that the transaction would be
materially affected by the information.

(28) "Organization" includes a corporation, government or
governmental subdivision or agency, business trust, estate, trust,
partnership or association, two or more persons having a joint or
common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who
has engaged in a transaction or made an agreement within this Title.
(30) "Person" includes an individual or an organization (See RCW
62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must
find the existence of the fact presumed unless and until evidence is
introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation,
mortgage, pledge, lien, issue or re-issue, gift or any other voluntary
transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.
"Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

"Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

"Rights" includes remedies.

"Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (RCW 62A.2-326).

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

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

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

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

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

(c) The lessee has an option to renew the lease or to become the owner of the goods;

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

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

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;
(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

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

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or
(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 2A-603. RCW 62A.9-113 and 1965 ex.s. c 157 s 9-113 are each amended to read as follows:

SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES. A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

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

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

(c) the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under such Article.

NEW SECTION. Sec. 2A-604. Sections 2A-101 through 2A-532 of this act shall constitute a new Article in Title 62A RCW.

NEW SECTION. Sec. 2A-605. This act shall take effect July 1, 1994.

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