

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

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

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

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

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

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

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

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

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

4 (iii) One of the following occurs:

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

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

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

19 (D) If the lease is not a consumer lease, the lessor, before the
20 lessee signs the lease contract, informs the lessee in writing (I) of
21 the identity of the person supplying the goods to the lessor, unless
22 the lessee has selected that person and directed the lessor to acquire
23 the goods or the right to possession and use of the goods from that
24 person, (II) that the lessee is entitled under this Article to the
25 promises and warranties, including those of any third party, provided
26 to the lessor by the person supplying the goods in connection with or
27 as part of the contract by which the lessor acquired the goods or the
28 right to possession and use of the goods, and (III) that the lessee may
29 communicate with the person supplying the goods to the lessor and
30 receive an accurate and complete statement of those promises and

1 warranties, including any disclaimers and limitations of them or of
2 remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (u) "Present value" means the amount as of a date certain of one or
29 more sums payable in the future, discounted to the date certain. The
30 discount is determined by the interest rate specified by the parties if

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

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

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

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

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

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

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

21 "Accessions." RCW 62A.2A-310(1).

22 "Construction mortgage." RCW 62A.2A-309(1)(d).

23 "Encumbrance." RCW 62A.2A-309(1)(e).

24 "Fixtures." RCW 62A.2A-309(1)(a).

25 "Fixture filing." RCW 62A.2A-309(1)(b).

26 "Purchase money lease." RCW 62A.2A-309(1)(c).

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

29 "Account." RCW 62A.9-106.

30 "Between merchants." RCW 62A.2-104(3).

1 "Buyer." RCW 62A.2-103(1)(a).
2 "Chattel paper." RCW 62A.9-105(1)(b).
3 "Consumer goods." RCW 62A.9-109(1).
4 "Document." RCW 62A.9-105(1)(f).
5 "Entrusting." RCW 62A.2-403(3).
6 "General intangibles." RCW 62A.9-106.
7 "Good faith." RCW 62A.2-103(1)(b).
8 "Instrument." RCW 62A.9-105(1)(i).
9 "Merchant." RCW 62A.2-104(1).
10 "Mortgage." RCW 62A.9-105(1)(j).
11 "Pursuant to commitment." RCW 62A.9-105(1)(k).
12 "Receipt." RCW 62A.2-103(1)(c).
13 "Sale." RCW 62A.2-106(1).
14 "Sale on approval." RCW 62A.2-326.
15 "Sale or return". RCW 62A.2-326.
16 "Seller". RCW 62A.2-103(1)(d).

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

20 NEW SECTION. **Sec. 2A-104.** LEASES SUBJECT TO OTHER LAW. (1) A
21 lease, although subject to this Article, is also subject to any
22 applicable:

23 (a) Certificate of title statute of this state (chapters 46.12 and
24 88.02 RCW);

25 (b) Certificate of title statute of another jurisdiction (RCW
26 62A.2A-105); or

27 (c) Consumer protection statute of this state.

1 (2) In case of conflict between this Article, other than RCW
2 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to
3 in subsection (1), the statute or decision controls.

4 (3) Failure to comply with an applicable law has only the effect
5 specified therein.

6 NEW SECTION. **Sec. 2A-105.** TERRITORIAL APPLICATION OF ARTICLE TO
7 GOODS COVERED BY CERTIFICATE OF TITLE. Subject to the provisions of
8 RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by
9 a certificate of title issued under a statute of this state or of
10 another jurisdiction, compliance and the effect of compliance or
11 noncompliance with a certificate of title statute are governed by the
12 law (including the conflict of laws rules) of the jurisdiction issuing
13 the certificate until the earlier of (1) surrender of the certificate,
14 or (2) four months after the goods are removed from that jurisdiction
15 and thereafter until a new certificate of title is issued by another
16 jurisdiction.

17 NEW SECTION. **Sec. 2A-106.** LIMITATION ON POWER OF PARTIES TO
18 CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (1) If the
19 law chosen by the parties to a consumer lease is that of a jurisdiction
20 other than a jurisdiction in which the lessee resides at the time the
21 lease agreement becomes enforceable or within 30 days thereafter or in
22 which the goods are to be used, the choice is not enforceable.

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

26 NEW SECTION. **Sec. 2A-107.** WAIVER OR RENUNCIATION OF CLAIM OR
27 RIGHT AFTER DEFAULT. Any claim or right arising out of an alleged

1 default or breach of warranty may be discharged in whole or in part
2 without consideration by a written waiver or renunciation signed and
3 delivered by the aggrieved party.

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

11 (2) With respect to a consumer lease, if the court as a matter of
12 law finds that a lease contract or any clause of a lease contract has
13 been induced by unconscionable conduct or that unconscionable conduct
14 has occurred in the collection of a claim arising from a lease
15 contract, the court may grant appropriate relief.

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

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

23 (a) If the court finds unconscionability under subsection (1) or
24 (2), the court shall award reasonable attorneys' fees to the lessee.

25 (b) If the court does not find unconscionability and the lessee
26 claiming unconscionability has brought or maintained an action he or
27 she knew to be groundless, the court shall award reasonable attorneys'
28 fees to the party against whom the claim is made.

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

4 NEW SECTION. **Sec. 2A-109.** OPTION TO ACCELERATE AT WILL. (1) A
5 term providing that one party or his or her successor in interest may
6 accelerate payment or performance or require collateral or additional
7 collateral "at will" or "when he or she deems himself or herself
8 insecure" or in words of similar import must be construed to mean that
9 he or she has power to do so only if he or she in good faith believes
10 that the prospect of payment or performance is impaired.

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

15 PART 2

16 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) A reasonable lease term.

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

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

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

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

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

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

25 (3) Although one or more terms are left open, a lease contract does
26 not fail for indefiniteness if the parties have intended to make a

1 lease contract and there is a reasonably certain basis for giving an
2 appropriate remedy.

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

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

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

19 NEW SECTION. **Sec. 2A-207.** COURSE OF PERFORMANCE OR PRACTICAL
20 CONSTRUCTION. (1) If a lease contract involves repeated occasions for
21 performance by either party with knowledge of the nature of the
22 performance and opportunity for objection to it by the other, any
23 course of performance accepted or acquiesced in without objection is
24 relevant to determine the meaning of the lease agreement.

25 (2) The express terms of a lease agreement and any course of
26 performance, as well as any course of dealing and usage of trade, must
27 be construed whenever reasonable as consistent with each other; but if

1 that construction is unreasonable, express terms control course of
2 performance, course of performance controls both course of dealing and
3 usage of trade, and course of dealing controls usage of trade.

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

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

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

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

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

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

22 NEW SECTION. **Sec. 2A-209.** LESSEE UNDER FINANCE LEASE AS

23 BENEFCIARY OF SUPPLY CONTRACT. (1) The benefit of a supplier's
24 promises to the lessor under the supply contract and of all warranties,
25 whether express or implied, including those of any third party provided
26 in connection with or as part of the supply contract, extends to the
27 lessee to the extent of the lessee's leasehold interest under a finance
28 lease related to the supply contract, but is subject to the terms of

1 the warranty and of the supply contract and all defenses or claims
2 arising therefrom.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Pass without objection in the trade under the description in
7 the lease agreement;

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 2A-214.** EXCLUSION OR MODIFICATION OF

2 WARRANTIES. (1) Words or conduct relevant to the creation of an
3 express warranty and words or conduct tending to negate or limit a
4 warranty must be construed wherever reasonable as consistent with each
5 other; but, subject to the provisions of RCW 62A.2A-202 on parol or
6 extrinsic evidence, negation or limitation is inoperative to the extent
7 that the construction is unreasonable.

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

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

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

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

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

29 (4) To exclude or modify a warranty against interference or against
30 infringement (RCW 62A.2A-211) or any part of it, the language must be

1 specific, be by a writing, and be conspicuous, unless the
2 circumstances, including course of performance, course of dealing, or
3 usage of trade, give the lessee reason to know that the goods are being
4 leased subject to a claim or interest of any person.

5 NEW SECTION. **Sec. 2A-215.** CUMULATION AND CONFLICT OF WARRANTIES
6 EXPRESS OR IMPLIED. Warranties, whether express or implied, must be
7 construed as consistent with each other and as cumulative, but if that
8 construction is unreasonable, the intention of the parties determines
9 which warranty is dominant. In ascertaining that intention the
10 following rules apply:

11 (1) Exact or technical specifications displace an inconsistent
12 sample or model or general language of description.

13 (2) A sample from an existing bulk displaces inconsistent general
14 language of description.

15 (3) Express warranties displace inconsistent implied warranties
16 other than an implied warranty of fitness for a particular purpose.

17 NEW SECTION. **Sec. 2A-216.** THIRD PARTY BENEFICIARIES OF EXPRESS
18 AND IMPLIED WARRANTIES.

19 ALTERNATIVE A

20 A warranty to or for the benefit of a lessee under this Article,
21 whether express or implied, extends to any natural person who is in the
22 family or household of the lessee or who is a guest in the lessee's
23 home if it is reasonable to expect that such person may use, consume,
24 or be affected by the goods and who is injured in person by breach of
25 the warranty. This section does not displace principles of law and
26 equity that extend a warranty to or for the benefit of a lessee to
27 other persons. The operation of this section may not be excluded,
28 modified, or limited, but an exclusion, modification, or limitation of

1 the warranty, including any with respect to rights and remedies,
2 effective against the lessee is also effective against any beneficiary
3 designated under this section.

4 ALTERNATIVE B

5 A warranty to or for the benefit of a lessee under this Article,
6 whether express or implied, extends to any natural person who may
7 reasonably be expected to use, consume, or be affected by the goods and
8 who is injured in person by breach of the warranty. This section does
9 not displace principles of law and equity that extend a warranty to or
10 for the benefit of a lessee to other persons. The operation of this
11 section may not be excluded, modified, or limited, but an exclusion,
12 modification, or limitation of the warranty, including any with respect
13 to rights and remedies, effective against the lessee is also effective
14 against the beneficiary designated under this section.

15 ALTERNATIVE C

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

25 NEW SECTION. **Sec. 2A-217.** IDENTIFICATION. Identification of
26 goods as goods to which a lease contract refers may be made at any time
27 and in any manner explicitly agreed to by the parties. In the absence
28 of explicit agreement, identification occurs:

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

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

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

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

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

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

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

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

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

1 pass to the lessee. In the case of a finance lease, risk of loss
2 passes to the lessee.

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

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

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

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

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

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

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

27 (a) If a tender or delivery of goods so fails to conform to the
28 lease contract as to give a right of rejection, the risk of their loss

1 remains with the lessor, or, in the case of a finance lease, the
2 supplier, until cure or acceptance.

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

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

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

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

21 (2) If the loss is partial or the goods have so deteriorated as to
22 no longer conform to the lease contract, the lessee may nevertheless
23 demand inspection and at his or her option either treat the lease
24 contract as avoided or, except in a finance lease that is not a
25 consumer lease, accept the goods with due allowance from the rent
26 payable for the balance of the lease term for the deterioration or the
27 deficiency in quantity but without further right against the lessor.

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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.** ALIENABILITY 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), 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), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

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

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

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

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

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

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

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

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

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

28 (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of
29 goods under an existing lease contract obtains, to the extent of the

1 leasehold interest transferred, the leasehold interest in the goods
2 that the lessor had or had power to transfer, and except as provided in
3 subsection (2) and RCW 62A.2A-527(4), takes subject to the existing
4 lease contract. A lessor with voidable title has power to transfer a
5 good leasehold interest to a good faith subsequent lessee for value,
6 but only to the extent set forth in the preceding sentence. If goods
7 have been delivered under a transaction of purchase, the lessor has
8 that power even though:

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

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

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

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

16 (2) A subsequent lessee in the ordinary course of business from a
17 lessor who is a merchant dealing in goods of that kind to whom the
18 goods were entrusted by the existing lessee of that lessor before the
19 interest of the subsequent lessee became enforceable against that
20 lessor obtains, to the extent of the leasehold interest transferred,
21 all of that lessor's and the existing lessee's rights to the goods, and
22 takes free of the existing lease contract.

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

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

29 (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee

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

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

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

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

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

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

26 NEW SECTION. **Sec. 2A-306.** PRIORITY OF CERTAIN LIENS ARISING BY
27 OPERATION OF LAW. If a person in the ordinary course of his or her
28 business furnishes services or materials with respect to goods subject
29 to a lease contract, a lien upon those goods in the possession of that

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

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

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

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

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

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

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

24 (4) A lessee other than a lessee in the ordinary course of business
25 takes the leasehold interest free of a security interest to the extent
26 that it secures future advances made after the secured party acquires
27 knowledge of the lease or more than 45 days after the lease contract
28 becomes enforceable, whichever first occurs, unless the future advances

1 are made pursuant to a commitment entered into without knowledge of the
2 lease and before the expiration of the 45-day period.

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

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

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

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

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

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

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

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

12 (e) "Encumbrance" includes real estate mortgages and other liens on
13 real estate and all other rights in real estate that are not ownership
14 interests.

15 (2) Under this Article a lease may be of goods that are fixtures or
16 may continue in goods that become fixtures, but no lease exists under
17 this Article of ordinary building materials incorporated into an
18 improvement on land.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (9) Even though the lease agreement does not create a security
26 interest, the interest of a lessor of fixtures, including the lessor's
27 residual interest, is perfected by filing a financing statement as a
28 fixture filing for leased goods that are or are to become fixtures in
29 accordance with the relevant provisions of the Article on Secured
30 Transactions, Article 62A.9 RCW.

1 NEW SECTION. **Sec. 2A-310.** LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS

2 BECOME ACCESSIONS. (1) Goods are "accessions" when they are installed
3 in or affixed to other goods.

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

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

14 (4) The interest of a lessor or a lessee under a lease contract
15 described in subsection (2) or (3) is subordinate to the interest of:

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

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

22 (5) When under subsections (2) or (3) and (4) a lessor or a lessee
23 of accessions holds an interest that is superior to all interests in
24 the whole, the lessor or the lessee may (a) on default, expiration,
25 termination, or cancellation of the lease contract by the other party
26 but subject to the provisions of the lease contract and this Article,
27 or (b) if necessary to enforce his or her other rights and remedies
28 under this Article, remove the goods from the whole, free and clear of
29 all interests in the whole, but he or she must reimburse any holder of
30 an interest in the whole who is not the lessee and who has not

1 otherwise agreed for the cost of repair of any physical injury but not
2 for any diminution in value of the whole caused by the absence of the
3 goods removed or by any necessity for replacing them. A person
4 entitled to reimbursement may refuse permission to remove until the
5 party seeking removal gives adequate security for the performance of
6 this obligation.

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

10 PART 4

11 PERFORMANCE OF LEASE CONTRACT:

12 REPUDIATED, SUBSTITUTED, AND EXCUSED

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

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

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

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

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

7 NEW SECTION. **Sec. 2A-402.** ANTICIPATORY REPUDIATION. If either
8 party repudiates a lease contract with respect to a performance not yet
9 due under the lease contract, the loss of which performance will
10 substantially impair the value of the lease contract to the other, the
11 aggrieved party may:

12 (1) For a commercially reasonable time, await retraction of
13 repudiation and performance by the repudiating party;

14 (2) Make demand pursuant to RCW 62A.2A-401 and await assurance of
15 future performance adequate under the circumstances of the particular
16 case; or

17 (3) Resort to any right or remedy upon default under the lease
18 contract or this Article, even though the aggrieved party has notified
19 the repudiating party that the aggrieved party would await the
20 repudiating party's performance and assurance and has urged retraction.
21 In addition, whether or not the aggrieved party is pursuing one of the
22 foregoing remedies, the aggrieved party may suspend performance or, if
23 the aggrieved party is the lessor, proceed in accordance with the
24 provisions of this Article on the lessor's right to identify goods to
25 the lease contract notwithstanding default or to salvage unfinished
26 goods (RCW 62A.2A-524).

27 NEW SECTION. **Sec. 2A-403.** RETRACTION OF ANTICIPATORY REPUDIATION.

28 (1) Until the repudiating party's next performance is due, the

1 repudiating party can retract the repudiation unless, since the
2 repudiation, the aggrieved party has canceled the lease contract or
3 materially changed the aggrieved party's position or otherwise
4 indicated that the aggrieved party considers the repudiation final.

5 (2) Retraction may be by any method that clearly indicates to the
6 aggrieved party that the repudiating party intends to perform under the
7 lease contract and includes any assurance demanded under RCW 62A.2A-
8 401.

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

12 NEW SECTION. **Sec. 2A-404.** SUBSTITUTED PERFORMANCE. (1) If
13 without fault of the lessee, the lessor and the supplier, the agreed
14 berthing, loading, or unloading facilities fail or the agreed type of
15 carrier becomes unavailable or the agreed manner of delivery otherwise
16 becomes commercially impracticable, but a commercially reasonable
17 substitute is available, the substitute performance must be tendered
18 and accepted.

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

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

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

1 NEW SECTION. **Sec. 2A-405.** EXCUSED PERFORMANCE. Subject to RCW

2 62A.2A-404 on substituted performance, the following rules apply:

3 (1) Delay in delivery or nondelivery in whole or in part by a
4 lessor or a supplier who complies with subsections (2) and (3) is not
5 a default under the lease contract if performance as agreed has been
6 made impracticable by the occurrence of a contingency the nonoccurrence
7 of which was a basic assumption on which the lease contract was made or
8 by compliance in good faith with any applicable foreign or domestic
9 governmental regulation or order, whether or not the regulation or
10 order later proves to be invalid.

11 (2) If the causes mentioned in subsection (1) affect only part of
12 the lessor's or the supplier's capacity to perform, he or she shall
13 allocate production and deliveries among his or her customers but at
14 his or her option may include regular customers not then under contract
15 for sale or lease as well as his or her own requirements for further
16 manufacture. He or she may so allocate in any manner that is fair and
17 reasonable.

18 (3) The lessor seasonably shall notify the lessee and in the case
19 of a finance lease the supplier seasonably shall notify the lessor and
20 the lessee, if known, that there will be delay or nondelivery and, if
21 allocation is required under subsection (2), of the estimated quota
22 thus made available for the lessee.

23 NEW SECTION. **Sec. 2A-406.** PROCEDURE ON EXCUSED PERFORMANCE. (1)

24 If the lessee receives notification of a material or indefinite delay
25 or an allocation justified under RCW 62A.2A-405, the lessee may by
26 written notification to the lessor as to any goods involved, and with
27 respect to all of the goods if under an installment lease contract the
28 value of the whole lease contract is substantially impaired (RCW
29 62A.2A-510):

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

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

6 (2) If, after receipt of a notification from the lessor under RCW
7 62A.2A-405, the lessee fails so to modify the lease agreement within a
8 reasonable time not exceeding 30 days, the lease contract lapses with
9 respect to any deliveries affected.

10 NEW SECTION. **Sec. 2A-407.** IRREVOCABLE PROMISES: FINANCE LEASES.

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

14 (2) A promise that has become irrevocable and independent under
15 subsection (1):

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

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

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

24 PART 5

25 DEFAULT

26 A. IN GENERAL

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

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

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

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

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

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

27 NEW SECTION. **Sec. 2A-503.** MODIFICATION OR IMPAIRMENT OF RIGHTS
28 AND REMEDIES. (1) Except as otherwise provided in this Article, the

1 lease agreement may include rights and remedies for default in addition
2 to or in substitution for those provided in this Article and may limit
3 or alter the measure of damages recoverable under this Article.

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

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

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

19 NEW SECTION. **Sec. 2A-504.** LIQUIDATION OF DAMAGES. (1) Damages
20 payable by either party for default, or any other act or omission,
21 including indemnity for loss or diminution of anticipated tax benefits
22 or loss or damage to lessor's residual interest, may be liquidated in
23 the lease agreement but only at an amount or by a formula that is
24 reasonable in light of the then anticipated harm caused by the default
25 or other act or omission.

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

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

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

7 (b) In the absence of those terms, 20 percent of the then present
8 value of the total rent the lessee was obligated to pay for the balance
9 of the lease term, or, in the case of a consumer lease, the lesser of
10 such amount or five hundred dollars.

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

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

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

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

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

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

1 be construed as a renunciation or discharge of any claim in damages for
2 an antecedent default.

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

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

9 NEW SECTION. **Sec. 2A-506.** STATUTE OF LIMITATIONS. (1) An action
10 for default under a lease contract, including breach of warranty or
11 indemnity, must be commenced within 4 years after the cause of action
12 accrued. By the original lease contract the parties may reduce the
13 period of limitation to not less than one year.

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

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

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

1 NEW SECTION. **Sec. 2A-508.** LESSEE'S REMEDIES. (1) If a lessor
2 fails to deliver the goods in conformity to the lease contract (RCW
3 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a
4 lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably
5 revokes acceptance of the goods (RCW 62A.2A-517), then with respect to
6 any goods involved, and with respect to all of the goods if under an
7 installment lease contract the value of the whole lease contract is
8 substantially impaired (RCW 62A.2A-510), the lessor is in default under
9 the lease contract and the lessee may:

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

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

13 (c) Cover and recover damages as to all goods affected whether or
14 not they have been identified to the lease contract (RCW 62A.2A-518 and
15 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and
16 62A.2A-520);

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

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

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

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

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

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

1 (5) On rightful rejection or justifiable revocation of acceptance,
2 a lessee has a security interest in goods in the lessee's possession or
3 control for any rent and security that has been paid and any expenses
4 reasonably incurred in their inspection, receipt, transportation, and
5 care and custody and may hold those goods and dispose of them in good
6 faith and in a commercially reasonable manner, subject to RCW 62A.2A-
7 527(5).

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

13 NEW SECTION. **Sec. 2A-509.** LESSEE'S RIGHTS ON IMPROPER DELIVERY;
14 RIGHTFUL REJECTION. (1) Subject to the provisions of RCW 62A.2A-510 on
15 default in installment lease contracts, if the goods or the tender or
16 delivery fail in any respect to conform to the lease contract, the
17 lessee may reject or accept the goods or accept any commercial unit or
18 units and reject the rest of the goods.

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

22 NEW SECTION. **Sec. 2A-510.** INSTALLMENT LEASE CONTRACTS: REJECTION
23 AND DEFAULT. (1) Under an installment lease contract a lessee may
24 reject any delivery that is nonconforming if the nonconformity
25 substantially impairs the value of that delivery and cannot be cured or
26 the nonconformity is a defect in the required documents; but if the
27 nonconformity does not fall within subsection (2) and the lessor or the

1 supplier gives adequate assurance of its cure, the lessee must accept
2 that delivery.

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

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

21 (2) If a merchant lessee, under subsection (1), or any other lessee
22 (RCW 62A.2A-512) disposes of goods, he or she is entitled to
23 reimbursement either from the lessor or the supplier or out of the
24 proceeds for reasonable expenses of caring for and disposing of the
25 goods and, if the expenses include no disposition commission, to such
26 commission as is usual in the trade, or if there is none, to a
27 reasonable sum not exceeding 10 percent of the gross proceeds.

1 (3) In complying with this section or RCW 62A.2A-512, the lessee is
2 held only to good faith. Good faith conduct hereunder is neither
3 acceptance or conversion nor the basis of an action for damages.

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

8 NEW SECTION. **Sec. 2A-512.** LESSEE'S DUTIES AS TO RIGHTFULLY
9 REJECTED GOODS. (1) Except as otherwise provided with respect to goods
10 that threaten to decline in value speedily (RCW 62A.2A-511) and subject
11 to any security interest of a lessee (RCW 62A.2A-508(5)):

12 (a) The lessee, after rejection of goods in the lessee's
13 possession, shall hold them with reasonable care at the lessor's or the
14 supplier's disposition for a reasonable time after the lessee's
15 seasonable notification of rejection;

16 (b) If the lessor or the supplier gives no instructions within a
17 reasonable time after notification of rejection, the lessee may store
18 the rejected goods for the lessor's or the supplier's account or ship
19 them to the lessor or the supplier or dispose of them for the lessor's
20 or the supplier's account with reimbursement in the manner provided in
21 RCW 62A.2A-511; but

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

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

26 NEW SECTION. **Sec. 2A-513.** CURE BY LESSOR OF IMPROPER TENDER OR
27 DELIVERY; REPLACEMENT. (1) If any tender or delivery by the lessor or
28 the supplier is rejected because nonconforming and the time for

1 performance has not yet expired, the lessor or the supplier may
2 seasonably notify the lessee of the lessor's or the supplier's
3 intention to cure and may then make a conforming delivery within the
4 time provided in the lease contract.

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

10 NEW SECTION. Sec. 2A-514. WAIVER OF LESSEE'S OBJECTIONS. (1) In
11 rejecting goods, a lessee's failure to state a particular defect that
12 is ascertainable by reasonable inspection precludes the lessee from
13 relying on the defect to justify rejection or to establish default:

14 (a) If, stated seasonably, the lessor or the supplier could have
15 cured it (RCW 62A.2A-513); or

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

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

22 NEW SECTION. Sec. 2A-515. ACCEPTANCE OF GOODS. (1) Acceptance of
23 goods occurs after the lessee has had a reasonable opportunity to
24 inspect the goods and:

25 (a) The lessee signifies or acts with respect to the goods in a
26 manner that signifies to the lessor or the supplier that the goods are
27 conforming or that the lessee will take or retain them in spite of
28 their nonconformity; or

1 (b) The lessee fails to make an effective rejection of the goods
2 (RCW 62A.2A-509(2)).

3 (2) Acceptance of a part of any commercial unit is acceptance of
4 that entire unit.

5 NEW SECTION. **Sec. 2A-516.** EFFECT OF ACCEPTANCE OF GOODS; NOTICE
6 OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF
7 CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (1) A lessee must pay
8 rent for any goods accepted in accordance with the lease contract, with
9 due allowance for goods rightfully rejected or not delivered.

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

18 (3) If a tender has been accepted:

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

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

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

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

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

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

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

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

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

28 (b) Without discovery of the nonconformity if the lessee's
29 acceptance was reasonably induced either by the lessor's assurances or,

1 except in the case of a finance lease, by the difficulty of discovery
2 before acceptance.

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

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

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

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

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

23 (2) Except as otherwise provided with respect to damages liquidated
24 in the lease agreement (RCW 62A.2A-504) or otherwise determined
25 pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503),
26 if a lessee's cover is by a lease agreement substantially similar to
27 the original lease agreement and the new lease agreement is made in
28 good faith and in a commercially reasonable manner, the lessee may
29 recover from the lessor as damages (a) the present value, as of the

1 date of the commencement of the term of the new lease agreement, of the
2 rent under the new lease applicable to that period of the new lease
3 term which is comparable to the then remaining term of the original
4 lease agreement minus the present value as of the same date of the
5 total rent for the then remaining lease term of the original lease
6 agreement, and (b) any incidental or consequential damages, less
7 expenses saved in consequence of the lessor's default.

8 (3) If a lessee's cover is by lease agreement that for any reason
9 does not qualify for treatment under subsection (2), or is by purchase
10 or otherwise, the lessee may recover from the lessor as if the lessee
11 had elected not to cover and RCW 62A.2A-519 governs.

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

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

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

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

15 NEW SECTION. **Sec. 2A-520.** LESSEE'S INCIDENTAL AND CONSEQUENTIAL
16 DAMAGES. (1) Incidental damages resulting from a lessor's default
17 include expenses reasonably incurred in inspection, receipt,
18 transportation, and care and custody of goods rightfully rejected or
19 goods the acceptance of which is justifiably revoked, any commercially
20 reasonable charges, expenses or commissions in connection with
21 effecting cover, and any other reasonable expense incident to the
22 default.

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

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

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

1 lease contract is substantially impaired (RCW 62A.2A-510), the lessee
2 is in default under the lease contract and the lessor may:

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

4 (b) Proceed respecting goods not identified to the lease contract
5 (RCW 62A.2A-524);

6 (c) Withhold delivery of the goods and take possession of goods
7 previously delivered (RCW 62A.2A-525);

8 (d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);

9 (e) Dispose of the goods and recover damages (RCW 62A.2A-527), or
10 retain the goods and recover damages (RCW 62A.2A-528), or in a proper
11 case recover rent (RCW 62A.2A-529);

12 (f) Exercise any other rights or pursue any other remedies provided
13 in the lease contract.

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

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

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

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

1 NEW SECTION. **Sec. 2A-524.** LESSOR'S RIGHT TO IDENTIFY GOODS TO
2 LEASE CONTRACT. (1) A lessor aggrieved under RCW 62A.2A-523(1) may:

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

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

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

15 NEW SECTION. **Sec. 2A-525.** LESSOR'S RIGHT TO POSSESSION OF GOODS.

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

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 2A-527.** LESSOR'S RIGHTS TO DISPOSE OF GOODS.

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

1 of the goods concerned or the undelivered balance thereof by lease,
2 sale, or otherwise.

3 (2) Except as otherwise provided with respect to damages liquidated
4 in the lease agreement (RCW 62A.2A-504) or otherwise determined
5 pursuant to agreement of the parties (RCW 62A.1-102(3) and RCW 62A.2A-
6 503), if the disposition is by lease agreement substantially similar to
7 the original lease agreement and the new lease agreement is made in
8 good faith and in a commercially reasonable manner, the lessor may
9 recover from the lessee as damages (a) accrued and unpaid rent as of
10 the date of the commencement of the term of the new lease agreement,
11 (b) the present value, as of the same date, of the total rent for the
12 then remaining lease term of the original lease agreement minus the
13 present value, as of the same date, of the rent under the new lease
14 agreement applicable to that period of the new lease term which is
15 comparable to the then remaining term of the original lease agreement,
16 and (c) any incidental damages allowed under RCW 62A.2A-530, less
17 expenses saved in consequence of the lessee's default.

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

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

28 (5) The lessor is not accountable to the lessee for any profit made
29 on any disposition. A lessee who has rightfully rejected or
30 justifiably revoked acceptance shall account to the lessor for any

1 excess over the amount of the lessee's security interest (RCW 62A.2A-
2 508(5)).

3 NEW SECTION. **Sec. 2A-528.** LESSOR'S DAMAGES FOR NONACCEPTANCE,
4 FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (1) Except as otherwise
5 provided with respect to damages liquidated in the lease agreement (RCW
6 62A.2A-504) or otherwise determined pursuant to agreement of the
7 parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain
8 the goods or a lessor elects to dispose of the goods and the
9 disposition is by lease agreement that for any reason does not qualify
10 for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the
11 lessor may recover from the lessee as damages for a default of the type
12 described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other
13 default of the lessee, (a) accrued and unpaid rent as of the date of
14 default if the lessee has never taken possession of the goods, or, if
15 the lessee has taken possession of the goods, as of the date the lessor
16 repossesses the goods or an earlier date on which the lessee makes a
17 tender of the goods to the lessor, (b) the present value as of the date
18 determined under subsection (1)(a) of the total rent for the then
19 remaining lease term of the original lease agreement minus the present
20 value as of the same date of the market rent at the place where the
21 goods are located computed for the same lease term, and (c) any
22 incidental damages allowed under RCW 62A.2A-530, less expenses saved in
23 consequence of the lessee's default.

24 (2) If the measure of damages provided in subsection (1) is
25 inadequate to put a lessor in as good a position as performance would
26 have, the measure of damages is the present value of the profit,
27 including reasonable overhead, the lessor would have made from full
28 performance by the lessee, together with any incidental damages allowed

1 under RCW 62A.2A-530, due allowance for costs reasonably incurred and
2 due credit for payments or proceeds of disposition.

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

8 (a) For goods accepted by the lessee and not repossessed by or
9 tendered to the lessor, and for conforming goods lost or damaged within
10 a commercially reasonable time after risk of loss passes to the lessee
11 (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry
12 of judgment in favor of the lessor, (ii) the present value as of the
13 same date of the rent for the then remaining lease term of the lease
14 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-
15 530, less expenses saved in consequence of the lessee's default; and

16 (b) For goods identified to the lease contract if the lessor is
17 unable after reasonable effort to dispose of them at a reasonable price
18 or the circumstances reasonably indicate that effort will be
19 unavailing, (i) accrued and unpaid rent as of the date of entry of
20 judgment in favor of the lessor, (ii) the present value as of the same
21 date of the rent for the then remaining lease term of the lease
22 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-
23 530, less expenses saved in consequence of the lessee's default.

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

28 (3) The lessor may dispose of the goods at any time before
29 collection of the judgment for damages obtained pursuant to subsection

1 (1). If the disposition is before the end of the remaining lease term
2 of the lease agreement, the lessor's recovery against the lessee for
3 damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor
4 will cause an appropriate credit to be provided against a judgment for
5 damages to the extent that the amount of the judgment exceeds the
6 recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

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

11 (5) After a lessee has wrongfully rejected or revoked acceptance of
12 goods, has failed to pay rent then due, or has repudiated (RCW 62A.2A-
13 402), a lessor who is held not entitled to rent under this section must
14 nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527
15 and 62A.2A-528.

16 NEW SECTION. **Sec. 2A-530.** LESSOR'S INCIDENTAL DAMAGES.
17 Incidental damages to an aggrieved lessor include any commercially
18 reasonable charges, expenses, or commissions incurred in stopping
19 delivery, in the transportation, care and custody of goods after the
20 lessee's default, in connection with return or disposition of the
21 goods, or otherwise resulting from the default.

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

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

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

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

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

12 NEW SECTION. **Sec. 2A-532.** LESSOR'S RIGHTS TO RESIDUAL INTEREST.
13 In addition to any other recovery permitted by this Article or other
14 law, the lessor may recover from the lessee an amount that will fully
15 compensate the lessor for any loss of or damage to the lessor's
16 residual interest in the goods caused by the default of the lessee.

17 PART 6
18 AMENDATORY SECTIONS

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

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

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

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

6 Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-
7 106.

8 Applicability of the Article on Bank Deposits and Collections. RCW
9 62A.4-102.

10 Bulk transfers subject to the Article on Bulk Transfers. RCW
11 62A.6-102.

12 Applicability of the Article on Investment Securities. RCW 62A.8-
13 106.

14 Perfection provisions of the Article on Secured Transactions. RCW
15 62A.9-103.

16 **Sec. 602.** RCW 62A.1-201 and 1990 c 228 s 1 are each amended to
17 read as follows:

18 GENERAL DEFINITIONS. Subject to additional definitions contained
19 in the subsequent Articles of this Title which are applicable to
20 specific Articles or Parts thereof, and unless the context otherwise
21 requires, in this Title:

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

25 (2) "Aggrieved party" means a party entitled to resort to a remedy.

26 (3) "Agreement" means the bargain of the parties in fact as found
27 in their language or by implication from other circumstances including
28 course of dealing or usage of trade or course of performance as
29 provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an

1 agreement has legal consequences is determined by the provisions of
2 this Title, if applicable; otherwise by the law of contracts (RCW
3 62A.1-103). (Compare "Contract".)

4 (4) "Bank" means any person engaged in the business of banking.

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

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

14 (7) "Branch" includes a separately incorporated foreign branch of
15 a bank.

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

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

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

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

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

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

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

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

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

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

7 (18) "Genuine" means free of forgery or counterfeiting.

8 (19) "Good faith" means honesty in fact in the conduct or
9 transaction concerned.

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

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

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

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

28 (24) "Money" means a medium of exchange authorized or adopted by a
29 domestic or foreign government or intergovernmental organization.

1 (25) A person has "notice" of a fact when (a) he has actual
2 knowledge of it; or

3 (b) he has received a notice or notification of it; or

4 (c) from all the facts and circumstances known to him at the time
5 in question he has reason to know that it exists.

6 A person "knows" or has "knowledge" of a fact when he has actual
7 knowledge of it. "Discover" or "learn" or a word or phrase of similar
8 import refers to knowledge rather than to reason to know. The time and
9 circumstances under which a notice or notification may cease to be
10 effective are not determined by this Title.

11 (26) A person "notifies" or "gives" a notice or notification to
12 another by taking such steps as may be reasonably required to inform
13 the other in ordinary course whether or not such other actually comes
14 to know of it. A person "receives" a notice or notification when

15 (a) it comes to his attention; or

16 (b) it is duly delivered at the place of business through which the
17 contract was made or at any other place held out by him as the place
18 for receipt of such communications.

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

1 know of the transaction and that the transaction would be materially
2 affected by the information.

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

7 (29) "Party", as distinct from "third party", means a person who
8 has engaged in a transaction or made an agreement within this Title.

9 (30) "Person" includes an individual or an organization (See RCW
10 62A.1-102).

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

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

17 (33) "Purchaser" means a person who takes by purchase.

18 (34) "Remedy" means any remedial right to which an aggrieved party
19 is entitled with or without resort to a tribunal.

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

23 (36) "Rights" includes remedies.

24 (37) "Security interest" means an interest in personal property or
25 fixtures which secures payment or performance of an obligation. The
26 retention or reservation of title by a seller of goods notwithstanding
27 shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect
28 to a reservation of a "security interest". The term also includes any
29 interest of a buyer of accounts or chattel paper which is subject to
30 Article 9. The special property interest of a buyer of goods on

1 identification of such goods to a contract for sale under RCW 62A.2-401
2 is not a "security interest", but a buyer may also acquire a "security
3 interest" by complying with Article 9. Unless a ~~((lease or))~~
4 consignment is intended as security, reservation of title thereunder is
5 not a "security interest" but a consignment ~~((is))~~ in any event is
6 subject to the provisions on consignment sales (RCW 62A.2-326).
7 ~~((Whether a lease is intended as security is to be determined by the
8 facts of each case; however, (a) the inclusion of an option to purchase
9 does not of itself make the lease one intended for security, and (b) an
10 agreement that upon compliance with the terms of the lease the lessee
11 shall become or has the option to become the owner of the property for
12 no additional consideration or for a nominal consideration does make
13 the lease one intended for security.))~~ Whether a transaction creates
14 a lease or security interest is determined by the facts of each case;
15 however, a transaction creates a security interest if the consideration
16 the lessee is to pay the lessor for the right to possession and use of
17 the goods is an obligation for the term of the lease not subject to
18 termination by the lessee, and

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

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

24 (c) the lessee has an option to renew the lease for the remaining
25 economic life of the goods for no additional consideration or nominal
26 additional consideration upon compliance with the lease agreement, or

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

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

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

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

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

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

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

20 For purposes of this subsection (37):

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

1 (b) "Reasonably predictable" and "remaining economic life of the
2 goods" are to be determined with reference to the facts and
3 circumstances at the time the transaction is entered into; and

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

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

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

21 (40) "Surety" includes guarantor.

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

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

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

28 (44) "Value". Except as otherwise provided with respect to
29 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-

1 208 and RCW 62A.4-209) a person gives "value" for rights if he acquires
2 them

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

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

9 (c) by accepting delivery pursuant to a pre-existing contract for
10 purchase; or

11 (d) generally, in return for any consideration sufficient to
12 support a simple contract.

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

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

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

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

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

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

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

1 Article on Leases (Article 2A) in the case of a security interest
2 arising solely under such Article.

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