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HOUSE BILL 1015

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State of Washington

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By Representatives Appelwick and Riley

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Judiciary.

1 AN ACT Relating to the Uniform Commercial Code; amending RCW  
2 62A.1-105, 62A.1-201, and 62A.9-113; adding a new Article to Title 62A  
3 RCW; and providing an effective date.

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

5 PART 1  
6 GENERAL PROVISIONS

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

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

11 NEW SECTION. **Sec. 2A-103.** DEFINITIONS AND INDEX OF DEFINITIONS.  
12 (1) In this Article unless the context otherwise requires:  
13 (a) "Buyer in ordinary course of business" means a person who in  
14 good faith and without knowledge that the sale to him or her is in  
15 violation of the ownership rights or security interest or leasehold  
16 interest of a third party in the goods buys in ordinary course from a

1 person in the business of selling goods of that kind but does not  
2 include a pawnbroker. "Buying" may be for cash, or by exchange of  
3 other property, or on secured or unsecured credit, and includes  
4 receiving goods or documents of title under a preexisting contract for  
5 sale but does not include a transfer in bulk or as security for or in  
6 total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

37 (C) The lessee, before signing the lease contract, receives an  
38 accurate and complete statement designating the promises and  
39 warranties, and any disclaimers of warranties, limitations or

1 modifications of remedies, or liquidated damages, including those of a  
2 third party, such as the manufacturer of the goods, provided to the  
3 lessor by the person supplying the goods in connection with or as part  
4 of the contract by which the lessor acquired the goods or the right to  
5 possession and use of the goods.

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

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

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

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

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

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

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

36 (o) "Lessee in ordinary course of business" means a person who in  
37 good faith and without knowledge that the lease to him or her is in  
38 violation of the ownership rights or security interest or leasehold  
39 interest of a third party in the goods, leases in ordinary course from

1 a person in the business of selling or leasing goods of that kind, but  
2 does not include a pawnbroker. "Leasing" may be for cash, or by  
3 exchange of other property, or on secured or unsecured credit and  
4 includes receiving goods or documents of title under a preexisting  
5 lease contract but does not include a transfer in bulk or as security  
6 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 "Buyer." RCW 62A.2-103(1)(a).

17 "Chattel paper." RCW 62A.9-105(1)(b).

18 "Consumer goods." RCW 62A.9-109(1).

19 "Document." RCW 62A.9-105(1)(f).

20 "Entrusting." RCW 62A.2-403(3).

21 "General intangibles." RCW 62A.9-106.

22 "Good faith." RCW 62A.2-103(1)(b).

23 "Instrument." RCW 62A.9-105(1)(i).

24 "Merchant." RCW 62A.2-104(1).

25 "Mortgage." RCW 62A.9-105(1)(j).

26 "Pursuant to commitment." RCW 62A.9-105(1)(k).

27 "Receipt." RCW 62A.2-103(1)(c).

28 "Sale." RCW 62A.2-106(1).

29 "Sale on approval." RCW 62A.2-326.

30 "Sale or return." RCW 62A.2-326.

31 "Seller." RCW 62A.2-103(1)(d).

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

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

1 (a) Certificate of title statute of this state (chapters 46.12 and  
2 88.02 RCW);

3 (b) Certificate of title statute of another jurisdiction (RCW  
4 62A.2A-105); or

5 (c) Consumer protection statute of this state.

6 (2) In case of conflict between this Article, other than RCW  
7 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to  
8 in subsection (1) of this section, the statute or decision controls.

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

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

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

29 (2) If the judicial forum or the forum for dispute resolution  
30 chosen by the parties to a consumer lease is a jurisdiction other than  
31 a jurisdiction (a) in which the lessee resides at the time the lease  
32 agreement becomes enforceable or within thirty days thereafter, (b) in  
33 which the goods are to be used, or (c) in which the lease is executed  
34 by the lessee, the choice is not enforceable.

35 NEW SECTION. **Sec. 2A-107.** WAIVER OR RENUNCIATION OF CLAIM OR  
36 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) If a party claims that, or it appears to the court that, the  
12 lease contract or a clause within the contract may be unconscionable,  
13 the court shall allow a reasonable opportunity to present evidence as  
14 to the lease or clause's commercial setting, purpose, and effect to aid  
15 the court in making the determination.

16 PART 2

17 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

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

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

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

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

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

34 (4) A lease contract that does not satisfy the requirements of  
35 subsection (1) of this section, but which is valid in other respects,  
36 is enforceable:

1 (a) If the goods are to be specially manufactured or obtained for  
2 the lessee and are not suitable for lease or sale to others in the  
3 ordinary course of the lessor's business, and the lessor, before notice  
4 of repudiation is received and under circumstances that reasonably  
5 indicate that the goods are for the lessee, has made either a  
6 substantial beginning of their manufacture or commitments for their  
7 procurement;

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

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

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

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

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

22 (c) A reasonable lease term.

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

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

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

35 NEW SECTION. **Sec. 2A-203.** SEALS INOPERATIVE. The affixing of a  
36 seal to a writing evidencing a lease contract or an offer to enter into  
37 a lease contract does not render the writing a sealed instrument and



1 the law with respect to sealed instruments does not apply to the lease  
2 contract or offer.

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

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

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

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

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

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

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

1 (2) The express terms of a lease agreement and any course of  
2 performance, as well as any course of dealing and usage of trade, must  
3 be construed whenever reasonable as consistent with each other; but if  
4 that construction is unreasonable, express terms control course of  
5 performance, course of performance controls both course of dealing and  
6 usage of trade, and course of dealing controls usage of trade.

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

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

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

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

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

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

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

27 BENEFICIARY OF SUPPLY CONTRACT. (1) The benefit of a supplier's  
28 promises to the lessor under the supply contract and of all warranties,  
29 whether express or implied, including those of any third party provided  
30 in connection with or as part of the supply contract, extends to the  
31 lessee to the extent of the lessee's leasehold interest under a finance  
32 lease related to the supply contract, but is subject to the terms of  
33 the warranty and of the supply contract and all defenses or claims  
34 arising therefrom.

35 (2) The extension of the benefit of a supplier's promises and of  
36 warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the  
37 rights and obligations of the parties to the supply contract, whether

1 arising therefrom or otherwise, or (ii) impose any duty or liability  
2 under the supply contract on the lessee.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 2A-211.** WARRANTIES AGAINST INTERFERENCE AND  
37 AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT. (1)

1 There is in a lease contract a warranty that for the lease term no  
2 person holds a claim to or interest in the goods that arose from an act  
3 or omission of the lessor, other than a claim by way of infringement or  
4 the like, which will interfere with the lessee's enjoyment of its  
5 leasehold interest.

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

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

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

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

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

19 (a) Pass without objection in the trade under the description in  
20 the lease agreement;

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

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

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

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

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

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

34 NEW SECTION. **Sec. 2A-213.** IMPLIED WARRANTY OF FITNESS FOR  
35 PARTICULAR PURPOSE. Except in a finance lease, if the lessor at the  
36 time the lease contract is made has reason to know of any particular  
37 purpose for which the goods are required and that the lessee is relying

1 on the lessor's skill or judgment to select or furnish suitable goods,  
2 there is in the lease contract an implied warranty that the goods will  
3 be fit for that purpose.

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

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

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

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

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

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

34 (4) To exclude or modify a warranty against interference or against  
35 infringement (RCW 62A.2A-211) or any part of it, the language must be  
36 specific, be by a writing, and be conspicuous, unless the  
37 circumstances, including course of performance, course of dealing, or

1 usage of trade, give the lessee reason to know that the goods are being  
2 leased subject to a claim or interest of any person.

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

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

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

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

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

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

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

34 (b) When the goods are shipped, marked, or otherwise designated by  
35 the lessor as goods to which the lease contract refers, if the lease

1 contract is for a lease of goods that are not existing and identified;  
2 or

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

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

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

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

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

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

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

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

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

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

36 (ii) If it does require delivery at a particular destination and  
37 the goods are there duly tendered while in the possession of the

1 carrier, the risk of loss passes to the lessee when the goods are there  
2 duly so tendered as to enable the lessee to take delivery.

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

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

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

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

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

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

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

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

36 (b) If the loss is partial or the goods have so deteriorated as to  
37 no longer conform to the lease contract, the lessee may nevertheless



1 demand inspection and at his or her option either treat the lease  
2 contract as avoided or, except in a finance lease, accept the goods  
3 with due allowance from the rent payable for the balance of the lease  
4 term for the deterioration or the deficiency in quantity but without  
5 further right against the lessor.

6 PART 3

7 EFFECT OF LEASE CONTRACT

8 NEW SECTION. **Sec. 2A-301.** ENFORCEABILITY OF LEASE CONTRACT.

9 Except as otherwise provided in this Article, a lease contract is  
10 effective and enforceable according to its terms between the parties,  
11 against purchasers of the goods and against creditors of the parties.

12 NEW SECTION. **Sec. 2A-302.** TITLE TO AND POSSESSION OF GOODS.

13 Except as otherwise provided in this Article, each provision of this  
14 Article applies whether the lessor or a third party has title to the  
15 goods, and whether the lessor, the lessee, or a third party has  
16 possession of the goods, notwithstanding any statute or rule of law  
17 that possession or the absence of possession is fraudulent.

18 NEW SECTION. **Sec. 2A-303.** ALIENABILITY OF PARTY'S INTEREST UNDER

19 LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF  
20 PERFORMANCE; TRANSFER OF RIGHTS. (1) As used in this section,  
21 "creation of a security interest" includes the sale of a lease contract  
22 that is subject to Article 9, Secured Transactions, by reason of RCW  
23 62A.9-102(1)(b).

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

34 (3) A provision in a lease agreement which (a) prohibits the  
35 creation or enforcement of a security interest in an interest of a

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

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

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

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

30 (b) If subsection (5)(a) of this section is not applicable and if  
31 a transfer is made that (i) is prohibited under a lease agreement or  
32 (ii) materially impairs the prospect of obtaining return performance  
33 by, materially changes the duty of, or materially increases the burden  
34 or risk imposed on, the other party to the lease contract, unless the  
35 party not making the transfer agrees at any time to the transfer in the  
36 lease contract or otherwise, then, except as limited by contract, (A)  
37 the transferor is liable to the party not making the transfer for  
38 damages caused by the transfer to the extent that the damages could not  
39 reasonably be prevented by the party not making the transfer and (B) a

1 court having jurisdiction may grant other appropriate relief, including  
2 cancellation of the lease contract or an injunction against the  
3 transfer.

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

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

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

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

19 (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of  
20 goods under an existing lease contract obtains, to the extent of the  
21 leasehold interest transferred, the leasehold interest in the goods  
22 that the lessor had or had power to transfer, and except as provided in  
23 subsection (2) of this section and RCW 62A.2A-527(4), takes subject to  
24 the existing lease contract. A lessor with voidable title has power to  
25 transfer a good leasehold interest to a good faith subsequent lessee  
26 for value, but only to the extent set forth in the preceding sentence.  
27 If goods have been delivered under a transaction of purchase, the  
28 lessor has that power even though:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 2A-306.**    PRIORITY OF CERTAIN LIENS ARISING BY  
2 OPERATION OF LAW.    If a person in the ordinary course of his or her  
3 business furnishes services or materials with respect to goods subject  
4 to a lease contract, a lien upon those goods in the possession of that  
5 person given by statute or rule of law for those materials or services  
6 takes priority over any interest of the lessor or lessee under the  
7 lease contract or this Article unless the lien is created by statute  
8 and the statute provides otherwise or unless the lien is created by  
9 rule of law and the rule of law provides otherwise.

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

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

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

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

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

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

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

36        NEW SECTION.    **Sec. 2A-308.**    SPECIAL RIGHTS OF CREDITORS.    (1) A  
37 creditor of a lessor in possession of goods subject to a lease contract

1 may treat the lease contract as void if as against the creditor  
2 retention of possession by the lessor is fraudulent under any statute  
3 or rule of law, but retention of possession in good faith and current  
4 course of trade by the lessor for a commercially reasonable time after  
5 the lease contract becomes enforceable is not fraudulent.

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

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

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

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

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

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

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

35 (e) "Encumbrance" includes real estate mortgages and other liens on  
36 real estate and all other rights in real estate that are not ownership  
37 interests.

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

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

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

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

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

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

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

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

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

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

1 (6) Notwithstanding subsection (4)(a) of this section but otherwise  
2 subject to subsections (4) and (5) of this section, the interest of a  
3 lessor of fixtures, including the lessor's residual interest, is  
4 subordinate to the conflicting interest of an encumbrancer of the real  
5 estate under a construction mortgage recorded before the goods become  
6 fixtures if the goods become fixtures before the completion of the  
7 construction. To the extent given to refinance a construction  
8 mortgage, the conflicting interest of an encumbrancer of the real  
9 estate under a mortgage has this priority to the same extent as the  
10 encumbrancer of the real estate under the construction mortgage.

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

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

32 (9) Even though the lease agreement does not create a security  
33 interest, the interest of a lessor of fixtures, including the lessor's  
34 residual interest, is perfected by filing a financing statement as a  
35 fixture filing for leased goods that are or are to become fixtures in  
36 accordance with the relevant provisions of the Article on Secured  
37 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) of this  
7 section.

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

16        (4) The interest of a lessor or a lessee under a lease contract  
17 described in subsection (2) or (3) of this section is subordinate to  
18 the interest of:

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

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

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



1 (c) Resort to any right or remedy upon default under the lease  
2 contract or this Article, even though the aggrieved party has notified  
3 the repudiating party that the aggrieved party would await the  
4 repudiating party's performance and assurance and has urged retraction.  
5 In addition, whether or not the aggrieved party is pursuing one of the  
6 foregoing remedies, the aggrieved party may suspend performance or, if  
7 the aggrieved party is the lessor, proceed in accordance with the  
8 provisions of this Article on the lessor's right to identify goods to  
9 the lease contract notwithstanding default or to salvage unfinished  
10 goods (RCW 62A.2A-524).

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

12 (1) Until the repudiating party's next performance is due, the  
13 repudiating party can retract the repudiation unless, since the  
14 repudiation, the aggrieved party has canceled the lease contract or  
15 materially changed the aggrieved party's position or otherwise  
16 indicated that the aggrieved party considers the repudiation final.

17 (2) Retraction may be by any method that clearly indicates to the  
18 aggrieved party that the repudiating party intends to perform under the  
19 lease contract and includes any assurance demanded under RCW 62A.2A-  
20 401.

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

24 NEW SECTION. **Sec. 2A-404.** SUBSTITUTED PERFORMANCE. (1) If

25 without fault of the lessee, the lessor and the supplier, the agreed  
26 berthing, loading, or unloading facilities fail or the agreed type of  
27 carrier becomes unavailable or the agreed manner of delivery otherwise  
28 becomes commercially impracticable, but a commercially reasonable  
29 substitute is available, the substitute performance must be tendered  
30 and accepted.

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

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

36 (b) If delivery has already been taken, payment by the means or in  
37 the manner provided by the regulation discharges the lessee's

1 obligation unless the regulation is discriminatory, oppressive, or  
2 predatory.

3 NEW SECTION. **Sec. 2A-405.** EXCUSED PERFORMANCE. Subject to RCW  
4 62A.2A-404 on substituted performance, the following rules apply:

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

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

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

25 NEW SECTION. **Sec. 2A-406.** PROCEDURE ON EXCUSED PERFORMANCE. (1)  
26 If the lessee receives notification of a material or indefinite delay  
27 or an allocation justified under RCW 62A.2A-405, the lessee may by  
28 written notification to the lessor as to any goods involved, and with  
29 respect to all of the goods if under an installment lease contract the  
30 value of the whole lease contract is substantially impaired (RCW  
31 62A.2A-510):

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

33 (b) Except in a finance lease, modify the lease contract by  
34 accepting the available quota in substitution, with due allowance from  
35 the rent payable for the balance of the lease term for the deficiency  
36 but without further right against the lessor.

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

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

6 (1) In the case of a finance lease, the lessee's promises under the  
7 lease contract become irrevocable and independent upon the lessee's  
8 acceptance of the goods.

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

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

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

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

19 PART 5  
20 DEFAULT

21 A. IN GENERAL

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 2A-504.** LIQUIDATION OF DAMAGES. (1) Damages  
35 payable by either party for default, or any other act or omission,  
36 including indemnity for loss or diminution of anticipated tax benefits

1 or loss or damage to lessor's residual interest, may be liquidated in  
2 the lease agreement but only at an amount or by a formula that is  
3 reasonable in light of the then anticipated harm caused by the default  
4 or other act or omission.

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

10 (3) If the lessor justifiably withholds or stops delivery of goods  
11 because of the lessee's default or insolvency (RCW 62A.2A-525 or  
12 62A.2A-526), the lessee is entitled to restitution of any amount by  
13 which the sum of his or her payments exceeds:

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

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

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

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

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

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

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

37 (3) Unless the contrary intention clearly appears, expressions of  
38 "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 four years after the cause of  
12 action accrued. By the original lease contract the parties may reduce  
13 the 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) of this section is so terminated as to leave available a remedy by  
22 another action for the same default or breach of warranty or indemnity,  
23 the other action may be commenced after the expiration of the time  
24 limited and within six months after the termination of the first action  
25 unless the termination resulted from voluntary discontinuance or from  
26 dismissal 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.

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

36 (2) If evidence of rent for the use of the goods concerned for a  
37 lease term identical to the remaining lease term of the original lease



1 agreement and prevailing at the times or places described in this  
2 Article is not readily available, the rent prevailing within any  
3 reasonable time before or after the time described or at any other  
4 place or for a different lease term which in commercial judgment or  
5 under usage of trade would serve as a reasonable substitute for the one  
6 described may be used, making any proper allowance for the difference,  
7 including the cost of transporting the goods to or from the other  
8 place.

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

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

20 B. DEFAULT BY LESSOR

21 NEW SECTION. **Sec. 2A-508.** LESSEE'S REMEDIES. (1) If a lessor  
22 fails to deliver the goods in conformity to the lease contract (RCW  
23 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a  
24 lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably  
25 revokes acceptance of the goods (RCW 62A.2A-517), then with respect to  
26 any goods involved, and with respect to all of the goods if under an  
27 installment lease contract the value of the whole lease contract is  
28 substantially impaired (RCW 62A.2A-510), the lessor is in default under  
29 the lease contract and the lessee may:

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

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

33 (c) Cover and recover damages as to all goods affected whether or  
34 not they have been identified to the lease contract (RCW 62A.2A-518 and  
35 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and  
36 62A.2A-520);

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

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

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

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

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

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

15 (5) On rightful rejection or justifiable revocation of acceptance,  
16 a lessee has a security interest in goods in the lessee's possession or  
17 control for any rent and security that has been paid and any expenses  
18 reasonably incurred in their inspection, receipt, transportation, and  
19 care and custody and may hold those goods and dispose of them in good  
20 faith and in a commercially reasonable manner, subject to RCW 62A.2A-  
21 527(5).

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

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

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

36 NEW SECTION. **Sec. 2A-510.** INSTALLMENT LEASE CONTRACTS: REJECTION  
37 AND DEFAULT. (1) Under an installment lease contract a lessee may

1 reject any delivery that is nonconforming if the nonconformity  
2 substantially impairs the value of that delivery and cannot be cured or  
3 the nonconformity is a defect in the required documents; but if the  
4 nonconformity does not fall within subsection (2) of this section and  
5 the lessor or the supplier gives adequate assurance of its cure, the  
6 lessee must accept that delivery.

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

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

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

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

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

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

5        (a) The lessee, after rejection of goods in the lessee's  
6 possession, shall hold them with reasonable care at the lessor's or the  
7 supplier's disposition for a reasonable time after the lessee's  
8 seasonable notification of rejection;

9        (b) If the lessor or the supplier gives no instructions within a  
10 reasonable time after notification of rejection, the lessee may store  
11 the rejected goods for the lessor's or the supplier's account or ship  
12 them to the lessor or the supplier or dispose of them for the lessor's  
13 or the supplier's account with reimbursement in the manner provided in  
14 RCW 62A.2A-511; but

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

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

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

26        (2) If the lessee rejects a nonconforming tender that the lessor or  
27 the supplier had reasonable grounds to believe would be acceptable with  
28 or without money allowance, the lessor or the supplier may have a  
29 further reasonable time to substitute a conforming tender if he or she  
30 seasonably notifies the lessee.

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

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

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

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

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

10 (a) The lessee signifies or acts with respect to the goods in a  
11 manner that signifies to the lessor or the supplier that the goods are  
12 conforming or that the lessee will take or retain them in spite of  
13 their nonconformity; or

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

16 (2) Acceptance of a part of any commercial unit is acceptance of  
17 that entire unit.

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

23 (2) A lessee's acceptance of goods precludes rejection of the goods  
24 accepted. In the case of a finance lease, if made with knowledge of a  
25 nonconformity, acceptance cannot be revoked because of it. In any  
26 other case, if made with knowledge of a nonconformity, acceptance  
27 cannot be revoked because of it unless the acceptance was on the  
28 reasonable assumption that the nonconformity would be seasonably cured.  
29 Acceptance does not of itself impair any other remedy provided by this  
30 Article or the lease agreement for nonconformity.

31 (3) If a tender has been accepted:

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

36 (b) Except in the case of a consumer lease, within a reasonable  
37 time after the lessee receives notice of litigation for infringement or

1 the like (RCW 62A.2A-211) the lessee shall notify the lessor or be  
2 barred from any remedy over for liability established by the  
3 litigation; and

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

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

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

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

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

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

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

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

36 (2) Except in the case of a finance lease, a lessee may revoke  
37 acceptance of a lot or commercial unit if the lessor defaults under the

1 lease contract and the default substantially impairs the value of that  
2 lot or commercial unit to the lessee.

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

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

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

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

18 (2) Except as otherwise provided with respect to damages liquidated  
19 in the lease agreement (RCW 62A.2A-504) or otherwise determined  
20 pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503),  
21 if a lessee's cover is by a lease agreement substantially similar to  
22 the original lease agreement and the new lease agreement is made in  
23 good faith and in a commercially reasonable manner, the lessee may  
24 recover from the lessor as damages (i) the present value, as of the  
25 date of the commencement of the term of the new lease agreement, of the  
26 rent under the new lease applicable to that period of the new lease  
27 term which is comparable to the then remaining term of the original  
28 lease agreement minus the present value as of the same date of the  
29 total rent for the then remaining lease term of the original lease  
30 agreement, and (ii) any incidental or consequential damages, less  
31 expenses saved in consequence of the lessor's default.

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

36 NEW SECTION. **Sec. 2A-519.** LESSEE'S DAMAGES FOR NONDELIVERY,  
37 REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED

1 GOODS. (1) Except as otherwise provided with respect to damages  
2 liquidated in the lease agreement (RCW 62A.2A-504) or otherwise  
3 determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if  
4 a lessee elects not to cover or a lessee elects to cover and the cover  
5 is by lease agreement that for any reason does not qualify for  
6 treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the  
7 measure of damages for nondelivery or repudiation by the lessor or for  
8 rejection or revocation of acceptance by the lessee is the present  
9 value, as of the date of the default, of the then market rent minus the  
10 present value as of the same date of the original rent, computed for  
11 the remaining lease term of the original lease agreement, together with  
12 incidental and consequential damages, less expenses saved in  
13 consequence of the lessor's default.

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

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

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

31 NEW SECTION. **Sec. 2A-520.** LESSEE'S INCIDENTAL AND CONSEQUENTIAL  
32 DAMAGES. (1) Incidental damages resulting from a lessor's default  
33 include expenses reasonably incurred in inspection, receipt,  
34 transportation, and care and custody of goods rightfully rejected or  
35 goods the acceptance of which is justifiably revoked, any commercially  
36 reasonable charges, expenses or commissions in connection with  
37 effecting cover, and any other reasonable expense incident to the  
38 default.



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

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

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

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

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

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

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

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

30 C. DEFAULT BY LESSEE

31 NEW SECTION. Sec. 2A-523. LESSOR'S REMEDIES. (1) If a lessee  
32 wrongfully rejects or revokes acceptance of goods or fails to make a  
33 payment when due or repudiates with respect to a part or the whole,  
34 then, with respect to any goods involved, and with respect to all of  
35 the goods if under an installment lease contract the value of the whole

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) of this section,  
16 the lessor may recover the loss resulting in the ordinary course of  
17 events from the lessee's default as determined in any reasonable  
18 manner, together with incidental damages, less expenses saved in  
19 consequence of the lessee's 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) of this section; 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) of this section.

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 2A-526.** LESSOR'S STOPPAGE OF DELIVERY IN

26 TRANSIT OR OTHERWISE. (1) A lessor may stop delivery of goods in the  
27 possession of a carrier or other bailee if the lessor discovers the  
28 lessee to be insolvent and may stop delivery of carload, truckload,  
29 planeload, or larger shipments of express or freight if the lessee  
30 repudiates or fails to make a payment due before delivery, whether for  
31 rent, security, or otherwise under the lease contract, or for any other  
32 reason the lessor has a right to withhold or take possession of the  
33 goods.

34 (2) In pursuing its remedies under subsection (1) of this section,  
35 the lessor may stop delivery until:

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

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

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

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

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

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

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

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

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

35 (3) If the lessor's disposition is by lease agreement that for any  
36 reason does not qualify for treatment under subsection (2) of this  
37 section, or is by sale or otherwise, the lessor may recover from the

1 lessee as if the lessor had elected not to dispose of the goods and RCW  
2 62A.2A-528 governs.

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

8 (5) The lessor is not accountable to the lessee for any profit made  
9 on any disposition. A lessee who has rightfully rejected or  
10 justifiably revoked acceptance shall account to the lessor for any  
11 excess over the amount of the lessee's security interest (RCW 62A.2A-  
12 508(5)).

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

34 (2) If the measure of damages provided in subsection (1) of this  
35 section is inadequate to put a lessor in as good a position as  
36 performance would have, the measure of damages is the present value of  
37 the profit, including reasonable overhead, the lessor would have made  
38 from full performance by the lessee, together with any incidental

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

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

9 (a) For goods accepted by the lessee and not repossessed by or  
10 tendered to the lessor, and for conforming goods lost or damaged within  
11 a commercially reasonable time after risk of loss passes to the lessee  
12 (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry  
13 of judgment in favor of the lessor, (ii) the present value as of the  
14 same date of the rent for the then remaining lease term of the lease  
15 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-  
16 530, less expenses saved in consequence of the lessee's default; and

17 (b) For goods identified to the lease contract if the lessor is  
18 unable after reasonable effort to dispose of them at a reasonable price  
19 or the circumstances reasonably indicate that effort will be  
20 unavailing, (i) accrued and unpaid rent as of the date of entry of  
21 judgment in favor of the lessor, (ii) the present value as of the same  
22 date of the rent for the then remaining lease term of the lease  
23 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-  
24 530, less expenses saved in consequence of the lessee's default.

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

29 (3) The lessor may dispose of the goods at any time before  
30 collection of the judgment for damages obtained pursuant to subsection  
31 (1) of this section. If the disposition is before the end of the  
32 remaining lease term of the lease agreement, the lessor's recovery  
33 against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-  
34 528, and the lessor will cause an appropriate credit to be provided  
35 against a judgment for damages to the extent that the amount of the  
36 judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or  
37 62A.2A-528.

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 2A-532.** LESSOR'S RIGHTS TO RESIDUAL INTEREST.  
35 In addition to any other recovery permitted by this Article or other  
36 law, the lessor may recover from the lessee an amount that will fully

1 compensate the lessor for any loss of or damage to the lessor's  
2 residual interest in the goods caused by the default of the lessee.

3 PART 6  
4 AMENDATORY SECTIONS

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

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

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

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

19 Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-  
20 106.

21 Applicability of the Article on Bank Deposits and Collections. RCW  
22 62A.4-102.

23 Bulk transfers subject to the Article on Bulk Transfers. RCW  
24 62A.6-102.

25 Applicability of the Article on Investment Securities. RCW 62A.8-  
26 106.

27 Perfection provisions of the Article on Secured Transactions. RCW  
28 62A.9-103.

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

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



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

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

5 (3) "Agreement" means the bargain of the parties in fact as found  
6 in their language or by implication from other circumstances including  
7 course of dealing or usage of trade or course of performance as  
8 provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an  
9 agreement has legal consequences is determined by the provisions of  
10 this Title, if applicable; otherwise by the law of contracts (RCW  
11 62A.1-103). (Compare "Contract".)

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

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

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

22 (7) "Branch" includes a separately incorporated foreign branch of  
23 a bank.

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

27 (9) "Buyer in ordinary course of business" means a person who in  
28 good faith and without knowledge that the sale to him or her is in  
29 violation of the ownership rights or security interest of a third party  
30 in the goods buys in ordinary course from a person in the business of  
31 selling goods of that kind but does not include a pawnbroker. All  
32 persons who sell minerals or the like (including oil and gas) at  
33 wellhead or minehead shall be deemed to be persons in the business of  
34 selling goods of that kind. "Buying" may be for cash or by exchange of  
35 other property or on secured or unsecured credit and includes receiving  
36 goods or documents of title under a pre-existing contract for sale but  
37 does not include a transfer in bulk or as security for or in total or  
38 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.

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

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

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

1 (20) "Holder" with respect to ~~((an instrument, certificated~~  
2 ~~security, or document of title means the person in possession if (a) in~~  
3 ~~the case of an instrument, it is payable to bearer or to the order of~~  
4 ~~the person in possession, (b) in the case of a security, the person in~~  
5 ~~possession is the registered owner, or the security has been indorsed~~  
6 ~~to the person in possession by the registered owner, or the security is~~  
7 ~~in bearer form, or (c) in the case of a document of title, the goods~~  
8 ~~are deliverable to bearer or to the order of the person in possession))~~  
9 a negotiable instrument, means the person in possession if the  
10 instrument is payable to bearer or, in the case of an instrument  
11 payable to an identified person, if the identified person is in  
12 possession. "Holder" with respect to a document of title means the  
13 person in possession if the goods are deliverable to bearer or to the  
14 order of the person in possession.

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

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

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

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

30 (25) A person has "notice" of a fact when

31 (a) he or she has actual knowledge of it; or

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

33 (c) from all the facts and circumstances known to him or her at the  
34 time in question he or she has reason to know that it exists.

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

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

5 (a) it comes to his or her attention; or

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

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

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

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

28 (30) "Person" includes an individual or an organization (See RCW  
29 62A.1-102).

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

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

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

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

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

4 (36) "Rights" includes remedies.

5 (37) "Security interest" means an interest in personal property or  
6 fixtures which secures payment or performance of an obligation, except  
7 for lease-purchase agreements under chapter 63.19 RCW. The retention  
8 or reservation of title by a seller of goods notwithstanding shipment  
9 or delivery to the buyer (RCW 62A.2-401) is limited in effect to a  
10 reservation of a "security interest". The term also includes any  
11 interest of a buyer of accounts or chattel paper which is subject to  
12 Article 9. The special property interest of a buyer of goods on  
13 identification of such goods to a contract for sale under RCW 62A.2-401  
14 is not a "security interest", but a buyer may also acquire a "security  
15 interest" by complying with Article 9. Unless a ~~((lease or))~~  
16 consignment is intended as security, reservation of title thereunder is  
17 not a "security interest" but a consignment ~~((is))~~ in any event is  
18 subject to the provisions on consignment sales (RCW 62A.2-326).  
19 ~~((Whether a lease is intended as security is to be determined by the  
20 facts of each case; however, (a) the inclusion of an option to purchase  
21 does not of itself make the lease one intended for security, and (b) an  
22 agreement that upon compliance with the terms of the lease the lessee  
23 shall become or has the option to become the owner of the property for  
24 no additional consideration or for a nominal consideration does make  
25 the lease one intended for security.))~~

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

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

34 (b) The lessee is bound to renew the lease for the remaining  
35 economic life of the goods or is bound to become the owner of the  
36 goods;

37 (c) The lessee has an option to renew the lease for the remaining  
38 economic life of the goods for no additional consideration or nominal  
39 additional consideration upon compliance with the lease agreement; or

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

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

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

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

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

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

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

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

26       For purposes of this subsection (37):

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

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

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

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

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

18       (40) "Surety" includes guarantor.

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

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

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

25       (44) "Value". Except as otherwise provided with respect to  
26 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-  
27 208 and RCW 62A.4-209) a person gives "value" for rights if he or she  
28 acquires them

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

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

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

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 2A-605.** This act shall take effect July 1,  
23 1994.

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