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**SUBSTITUTE HOUSE BILL 1797**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representative Appelwick)

Read first time 02/07/92.

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.

1        NEW SECTION.    **Sec. 2A-103.**    DEFINITIONS AND INDEX OF DEFINITIONS.

2    (1) In this Article unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (a) Certificate of title statute of this state (chapters 46.12 and  
11 88.02 RCW);

12 (b) Certificate of title statute of another jurisdiction (RCW  
13 62A.2A-105); or

14 (c) Consumer protection statute of this state.

15 (2) In case of conflict between this Article, other than RCW  
16 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to  
17 in subsection (1), the statute or decision controls.

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

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

1 and thereafter until a new certificate of title is issued by another  
2 jurisdiction.

3 NEW SECTION. **Sec. 2A-106.** LIMITATION ON POWER OF PARTIES TO  
4 CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (1) If the  
5 law chosen by the parties to a consumer lease is that of a jurisdiction  
6 other than a jurisdiction (a) in which the lessee resides at the time  
7 the lease agreement becomes enforceable or within 30 days thereafter,  
8 (b) in which the goods are to be used, or (c) in which the lessee  
9 executes the lease, the choice is not enforceable.

10 (2) If the judicial forum or the forum for dispute resolution  
11 chosen by the parties to a consumer lease is a jurisdiction other than  
12 a jurisdiction (a) in which the lessee resides at the time the lease  
13 agreement becomes enforceable or within 30 days thereafter, (b) in  
14 which the goods are to be used, or (c) in which the lease is executed  
15 by the lessee, the choice is not enforceable.

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

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

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

6 PART 2

7 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

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

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

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

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

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

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

26 (a) If the goods are to be specially manufactured or obtained for  
27 the lessee and are not suitable for lease or sale to others in the  
28 ordinary course of the lessor's business, and the lessor, before notice

1 of repudiation is received and under circumstances that reasonably  
2 indicate that the goods are for the lessee, has made either a  
3 substantial beginning of their manufacture or commitments for their  
4 procurement;

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

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

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

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

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

19 (c) A reasonable lease term.

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

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

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

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

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

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

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

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

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

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

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

16        (2) The express terms of a lease agreement and any course of  
17 performance, as well as any course of dealing and usage of trade, must  
18 be construed whenever reasonable as consistent with each other; but if  
19 that construction is unreasonable, express terms control course of  
20 performance, course of performance controls both course of dealing and  
21 usage of trade, and course of dealing controls usage of trade.

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

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

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

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

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

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

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

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

27 (3) Any modification or rescission of the supply contract by the  
28 supplier and the lessor is effective between the supplier and the  
29 lessee unless, before the modification or rescission, the supplier has

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

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

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

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

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

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

25 (2) It is not necessary to the creation of an express warranty that  
26 the lessor use formal words, such as "warrant" or "guarantee," or that  
27 the lessor have a specific intention to make a warranty, but an  
28 affirmation merely of the value of the goods or a statement purporting

1 to be merely the lessor's opinion or commendation of the goods does not  
2 create a warranty.

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

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

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

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

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

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

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

23 (a) Pass without objection in the trade under the description in  
24 the lease agreement;

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

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

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

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

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

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

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

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

24 (2) Subject to subsection (3), to exclude or modify the implied  
25 warranty of merchantability or any part of it the language must mention  
26 "merchantability," be by a writing, and be conspicuous. Subject to  
27 subsection (3), to exclude or modify any implied warranty of fitness  
28 the exclusion must be by a writing and be conspicuous. Language to

1 exclude all implied warranties of fitness is sufficient if it is in  
2 writing, is conspicuous and states, for example, "There is no warranty  
3 that the goods will be fit for a particular purpose."

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) When the goods are shipped, marked, or otherwise designated by  
27 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), the lessor retains an insurable interest until an option  
15 to buy has been exercised by the lessee and risk of loss has passed to  
16 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

1 the lessee and the time of passage is not stated, the following rules  
2 apply:

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

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

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

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

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

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

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

27 (b) If the lessee rightfully revokes acceptance, he or she, to the  
28 extent of any deficiency in his or her effective insurance coverage,

1 may treat the risk of loss as having remained with the lessor from the  
2 beginning.

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

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

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

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

24 PART 3

25 EFFECT OF LEASE CONTRACT

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

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

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

5 Except as otherwise provided in this Article, each provision of this  
6 Article applies whether the lessor or a third party has title to the  
7 goods, and whether the lessor, the lessee, or a third party has  
8 possession of the goods, notwithstanding any statute or rule of law  
9 that possession or the absence of possession is fraudulent.

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

11 LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF  
12 PERFORMANCE; TRANSFER OF RIGHTS. (1) As used in this section,  
13 "creation of a security interest" includes the sale of a lease contract  
14 that is subject to Article 9, Secured Transactions, by reason of RCW  
15 62A.9-102(1)(b).

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

25 (3) A provision in a lease agreement which (a) prohibits the  
26 creation or enforcement of a security interest in an interest of a  
27 party under the lease contract or in the lessor's residual interest in  
28 the goods, or (b) makes such a transfer an event of default, is not

1 enforceable unless, and then only to the extent that, there is an  
2 actual transfer by the lessee of the lessee's right of possession or  
3 use of the goods in violation of the provision or an actual delegation  
4 of a material performance of either party to the lease contract in  
5 violation of the provision. Neither the granting nor the enforcement  
6 of a security interest in (i) the lessor's interest under the lease  
7 contract or (ii) the lessor's residual interest in the goods is a  
8 transfer that materially impairs the prospect of obtaining return  
9 performance by, materially changes the duty of, or materially increases  
10 the burden or risk imposed on, the lessee within the purview of  
11 subsection (5) unless, and then only to the extent that, there is an  
12 actual delegation of a material performance of the lessor.

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

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

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

27 (b) If subsection (5)(a) is not applicable and if a transfer is  
28 made that (i) is prohibited under a lease agreement or (ii) materially  
29 impairs the prospect of obtaining return performance by, materially  
30 changes the duty of, or materially increases the burden or risk imposed

1 on, the other party to the lease contract, unless the party not making  
2 the transfer agrees at any time to the transfer in the lease contract  
3 or otherwise, then, except as limited by contract, (A) the transferor  
4 is liable to the party not making the transfer for damages caused by  
5 the transfer to the extent that the damages could not reasonably be  
6 prevented by the party not making the transfer and (B) a court having  
7 jurisdiction may grant other appropriate relief, including cancellation  
8 of the lease contract or an injunction against the transfer.

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

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

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

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

24 (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of  
25 goods under an existing lease contract obtains, to the extent of the  
26 leasehold interest transferred, the leasehold interest in the goods  
27 that the lessor had or had power to transfer, and except as provided in  
28 subsection (2) and RCW 62A.2A-527(4), takes subject to the existing  
29 lease contract. A lessor with voidable title has power to transfer a

1 good leasehold interest to a good faith subsequent lessee for value,  
2 but only to the extent set forth in the preceding sentence. If goods  
3 have been delivered under a transaction of purchase, the lessor has  
4 that power even though:

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

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

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

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

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

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

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

25 (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee  
26 from the lessee of goods under an existing lease contract obtains, to  
27 the extent of the interest transferred, the leasehold interest in the  
28 goods that the lessee had or had power to transfer, and except as  
29 provided in subsection (2) and RCW 62A.2A-511(4), takes subject to the

1 existing lease contract. A lessee with a voidable leasehold interest  
2 has power to transfer a good leasehold interest to a good faith buyer  
3 for value or a good faith sublessee for value, but only to the extent  
4 set forth in the preceding sentence. When goods have been delivered  
5 under a transaction of lease the lessee has that power even though:

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

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

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

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

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

22 NEW SECTION. **Sec. 2A-306.** PRIORITY OF CERTAIN LIENS ARISING BY  
23 OPERATION OF LAW. If a person in the ordinary course of his or her  
24 business furnishes services or materials with respect to goods subject  
25 to a lease contract, a lien upon those goods in the possession of that  
26 person given by statute or rule of law for those materials or services  
27 takes priority over any interest of the lessor or lessee under the  
28 lease contract or this Article unless the lien is created by statute

1 and the statute provides otherwise or unless the lien is created by  
2 rule of law and the rule of law provides otherwise.

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

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

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

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

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

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

21 (4) A lessee other than a lessee in the ordinary course of business  
22 takes the leasehold interest free of a security interest to the extent  
23 that it secures future advances made after the secured party acquires  
24 knowledge of the lease or more than 45 days after the lease contract  
25 becomes enforceable, whichever first occurs, unless the future advances  
26 are made pursuant to a commitment entered into without knowledge of the  
27 lease and before the expiration of the 45 day period.

1        NEW SECTION.    **Sec. 2A-308.**    SPECIAL RIGHTS OF CREDITORS.    (1) A

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

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

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

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

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

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

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

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

8 (e) "Encumbrance" includes real estate mortgages and other liens on  
9 real estate and all other rights in real estate that are not ownership  
10 interests.

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

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

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

20 (a) The lease is a purchase money lease, the conflicting interest  
21 of the encumbrancer or owner arises before the goods become fixtures,  
22 the interest of the lessor is perfected by a fixture filing before the  
23 goods become fixtures or within 20 days thereafter, and the lessee has  
24 an interest of record in the real estate or is in possession of the  
25 real estate; or

26 (b) The interest of the lessor is perfected by a fixture filing  
27 before the interest of the encumbrancer or owner is of record, the  
28 lessor's interest has priority over any conflicting interest of a  
29 predecessor in title of the encumbrancer or owner, and the lessee has

1 an interest of record in the real estate or is in possession of the  
2 real estate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 PART 4

11 PERFORMANCE OF LEASE CONTRACT:

12 REPUDIATED, SUBSTITUTED, AND EXCUSED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 PART 5

25 DEFAULT

26 A. IN GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 NEW SECTION. Sec. 2A-506. STATUTE OF LIMITATIONS. (1) An action  
10 for default under a lease contract, including breach of warranty or  
11 indemnity, must be commenced within 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) is so terminated as to leave available a remedy by another action  
22 for the same default or breach of warranty or indemnity, the other  
23 action may be commenced after the expiration of the time limited and  
24 within six months after the termination of the first action unless the  
25 termination resulted from voluntary discontinuance or from dismissal  
26 for failure or neglect to prosecute.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) If a tender has been accepted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28        (4) A subsequent buyer or lessee who buys or leases from the lessor  
29   in good faith for value as a result of a disposition under this section  
30   takes the goods free of the original lease contract and any rights of

1 the original lessee even though the lessor fails to comply with one or  
2 more of the requirements of this Article.

3 (5) The lessor is not accountable to the lessee for any profit made  
4 on any disposition. A lessee who has rightfully rejected or  
5 justifiably revoked acceptance shall account to the lessor for any  
6 excess over the amount of the lessee's security interest (RCW 62A.2A-  
7 508(5)).

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

1 (2) If the measure of damages provided in subsection (1) is  
2 inadequate to put a lessor in as good a position as performance would  
3 have, the measure of damages is the present value of the profit,  
4 including reasonable overhead, the lessor would have made from full  
5 performance by the lessee, together with any incidental damages allowed  
6 under RCW 62A.2A-530, due allowance for costs reasonably incurred and  
7 due credit for payments or proceeds of disposition.

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

13 (a) For goods accepted by the lessee and not repossessed by or  
14 tendered to the lessor, and for conforming goods lost or damaged within  
15 a commercially reasonable time after risk of loss passes to the lessee  
16 (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry  
17 of judgment in favor of the lessor, (ii) the present value as of the  
18 same date of the rent for the then remaining lease term of the lease  
19 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-  
20 530, less expenses saved in consequence of the lessee's default; and

21 (b) For goods identified to the lease contract if the lessor is  
22 unable after reasonable effort to dispose of them at a reasonable price  
23 or the circumstances reasonably indicate that effort will be  
24 unavailing, (i) accrued and unpaid rent as of the date of entry of  
25 judgment in favor of the lessor, (ii) the present value as of the same  
26 date of the rent for the then remaining lease term of the lease  
27 agreement, and (iii) any incidental damages allowed under RCW 62A.2A-  
28 530, less expenses saved in consequence of the lessee's default.

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

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

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

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

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



1 as follows:

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

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

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

14 Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-  
15 106.

16 Applicability of the Article on Bank Deposits and Collections. RCW  
17 62A.4-102.

18 Bulk transfers subject to the Article on Bulk Transfers. RCW  
19 62A.6-102.

20 Applicability of the Article on Investment Securities. RCW 62A.8-  
21 106.

22 Perfection provisions of the Article on Secured Transactions. RCW  
23 62A.9-103.

24 **Sec. 2A-602.** RCW 62A.1-201 and 1990 c 228 s 1 are each amended to  
25 read as follows:

26 GENERAL DEFINITIONS. Subject to additional definitions contained  
27 in the subsequent Articles of this Title which are applicable to  
28 specific Articles or Parts thereof, and unless the context otherwise  
29 requires, in this 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 is in violation  
29 of the ownership rights or security interest of a third party in the  
30 goods buys in ordinary course from a person in the business of selling

1 goods of that kind but does not include a pawnbroker. All persons who  
2 sell minerals or the like (including oil and gas) at wellhead or  
3 minehead shall be deemed to be persons in the business of selling goods  
4 of that kind. "Buying" may be for cash or by exchange of other  
5 property or on secured or unsecured credit and includes receiving goods  
6 or documents of title under a pre-existing contract for sale but does  
7 not include a transfer in bulk or as security for or in total or  
8 partial satisfaction of a money debt.

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

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

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

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

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

29 (15) "Document of title" includes bill of lading, dock warrant,  
30 dock receipt, warehouse receipt or order for the delivery of goods, and

1 also any other document which in the regular course of business or  
2 financing is treated as adequately evidencing that the person in  
3 possession of it is entitled to receive, hold and dispose of the  
4 document and the goods it covers. To be a document of title a document  
5 must purport to be issued by or addressed to a bailee and purport to  
6 cover goods in the bailee's possession which are either identified or  
7 are fungible portions of an identified mass.

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

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

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

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

18 (20) "Holder" with respect to ~~((an instrument, certificated~~  
19 ~~security, or document of title means the person in possession if (a) in~~  
20 ~~the case of an instrument, it is payable to bearer or to the order of~~  
21 ~~the person in possession, (b) in the case of a security, the person in~~  
22 ~~possession is the registered owner, or the security has been indorsed~~  
23 ~~to the person in possession by the registered owner, or the security is~~  
24 ~~in bearer form, or (c) in the case of a document of title, the goods~~  
25 ~~are deliverable to bearer or to the order of the person in possession))~~  
26 a negotiable instrument, means the person in possession if the  
27 instrument is payable to bearer or, in the case of an instrument  
28 payable to an identified person, if the identified person is in  
29 possession. "Holder" with respect to a document of title means the

1 person in possession if the goods are deliverable to bearer or to the  
2 order of the person in possession.

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

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

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

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

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

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

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

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

28 (26) A person "notifies" or "gives" a notice or notification to  
29 another by taking such steps as may be reasonably required to inform

1 the other in ordinary course whether or not such other actually comes  
2 to know of it. A person "receives" a notice or notification when

3 (a) it comes to his attention; or

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

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

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

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

26 (30) "Person" includes an individual or an organization (See RCW  
27 62A.1-102).

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

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

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

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

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

10 (36) "Rights" includes remedies.

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

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

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

9 (b) The lessee is bound to renew the lease for the remaining  
10 economic life of the goods or is bound to become the owner of the  
11 goods;

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

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

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

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

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

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

29 (d) The lessee has an option to renew the lease for a fixed rent  
30 that is equal to or greater than the reasonably predictable fair market

1 rent for the use of the goods for the term of the renewal at the time  
2 the option is to be performed;

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

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

10 For purposes of this subsection (37):

11 (a) Additional consideration is not nominal if (i) when the option  
12 to renew the lease is granted to the lessee the rent is stated to be  
13 the fair market rent for the use of the goods for the term of the  
14 renewal determined at the time the option is to be performed, or (ii)  
15 when the option to become the owner of the goods is granted to the  
16 lessee the price is stated to be the fair market value of the goods  
17 determined at the time the option is to be performed. Additional  
18 consideration is nominal if it is less than the lessee's reasonably  
19 predictable cost of performing under the lease agreement if the option  
20 is not exercised;

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

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

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

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

11 (40) "Surety" includes guarantor.

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

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

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

18 (44) "Value". Except as otherwise provided with respect to  
19 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-  
20 208 and RCW 62A.4-209) a person gives "value" for rights if he acquires  
21 them

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

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

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 2A-605.** This act shall take effect July 1,  
25 1993.