

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1802

S.P. 680

In Senate, May 6, 1991

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland
Cosponsored by Senator GAUVREAU of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Adopt a New Article for the Uniform Commercial Code.

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 11 MRSA §1-105, sub-§(2),** as amended by PL 1977, c.
4 696, §117, is further amended to read:

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

10 Rights of creditors against sold goods. Section 2-402.

12 Applicability of the Article on Leases. Sections 2-1105 and
14 2-1106.

16 Applicability of the Article on Bank Deposits and
17 Collections. Section 4-102.

18 Bulk transfers subject to the Article on Bulk Transfers.
20 Section 6-102.

22 Applicability of the Article on Investment Securities.
23 Section 8-106.

24 Perfection provisions of the Article on Secured
26 Transactions. Section 9-103.

28 **Sec. 2. 11 MRSA §1-201, sub-§(37),** as amended by PL 1977, c.
30 526, §3, is further amended to read:

32 **(37) Security interest.** "Security interest" means an
33 interest in personal property or fixtures which secures payment
34 or performance of an obligation. The retention or reservation of
35 title by a seller of goods notwithstanding shipment or delivery
36 to the buyer (section 2-401) is limited in effect to a
37 reservation of a "security interest." The term also includes any
38 interest of a buyer of accounts or chattel paper, which is
39 subject to Article 9. The special property interest of a buyer of
40 goods on identification of such goods to a contract for sale
41 under section 2-401 is not a "security interest", but a buyer may
42 also acquire a "security interest" by complying with Article 9.
43 Unless a lease or consignment is intended as security,
44 reservation of title thereunder is not a "security interest" but
45 a consignment is in any event subject to the provisions on
46 consignment sales (section 2-326). ~~Whether a lease is intended~~
47 ~~as security is to be determined by the facts of each case;~~
48 ~~however, (a) the inclusion of an option to purchase does not of~~
49 ~~itself make the lease one intended for security, and (b) an~~
50 ~~agreement that upon compliance with the terms of the lease the~~
~~lessee shall become or has the option to become the owner of the~~

2 ~~property--for--no--additional--consideration--or--for--a--nominal~~
3 ~~consideration--does--make--the--lease--one--intended--for--security.~~

4 Whether a transaction creates a lease or security interest
5 is determined by the fact of each case; however, a transaction
6 creates a security interest if the consideration the lessee is to
7 pay the lessor for the right to possession and use of the goods
8 is an obligation for the term of the lease not subject to
9 termination by the lessee, and:

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

14 (b) The lessee is bound to renew the lease for the
15 remaining economic life of the goods or is bound to become
16 the owner of the goods;

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

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

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

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

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

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

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

50 (e) The lessee has an option to become the owner of the
goods for a fixed price that is equal to or greater than the

2 reasonably predictable fair market value of the goods at the
3 time the option is to be performed.

4 For purposes of this subsection:

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

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

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

32 Sec. 3. 11 MRSA art. 2A is enacted to read:

34 Article 2A

36 LEASES

38 PART 1

40 GENERAL PROVISIONS

42 §2-1101. Short title

44 This Article may be known and cited as the "Uniform
45 Commercial Code -- Leases."

46 §2-1102. Scope

48 This Article applies to any transaction, regardless of form,
49 that creates a lease.

§2-1103. Definitions

2

(1) In this Article, unless the context otherwise requires, the following terms have the following meaning:

4

6

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

8

10

12

14

16

18

20

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

22

24

26

28

30

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

32

34

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

36

38

40

42

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

44

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

46

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

48

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

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

6 (iii) One of the following occurs:

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

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

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

28 (D) If the lease is not a consumer lease, the
29 lessor, before the lessee signs the lease
30 contract, informs the lessee in writing: of the
31 identity of the person supplying the goods to the
32 lessor, unless the lessee has selected that person
33 and directed the lessor to acquire the goods or
34 the right to possession and use of the goods from
35 that person; that the lessee is entitled under
36 this Article to the promises and warranties,
37 including those of any third party, provided to
38 the lessor by the person supplying the goods in
39 connection with or as part of the contract by
40 which the lessor acquired the goods or the right
41 to possession and use of the goods; and that the
42 lessee may communicate with the person supplying
43 the goods to the lessor and receive an accurate
44 and complete statement of those promises and
45 warranties, including any disclaimers and
46 limitations of them or of remedies.

48 (h) "Goods" means all things that are movable at the time of
49 identification to the lease contract, or are fixtures
50 (section 2-1309), but the term does not include money.

2 documents, instruments, accounts, chattel paper, general
4 intangibles or minerals or the like, including oil and gas,
before extraction. The term also includes the unborn young
of animals.

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

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

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

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

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

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

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

2 in bulk or as security for or in total or partial
3 satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

41

42

43

44

45

46

47

48

49

50

2 (2) Other definitions applying to this Article and the
3 sections in which they appear are:

4 "Accessions." Section 2-1310, subsection (1).

6 "Construction mortgage." Section 2-1309, subsection
7 (1), paragraph (d).

8 "Encumbrance." Section 2-1309, subsection (1),
9 paragraph (e).

12 "Fixtures." Section 2-1309, subsection (1), paragraph
13 (a).

14 "Fixture filing." Section 2-1309, subsection (1),
15 paragraph (b).

18 "Purchase money lease." Section 2-1309, subsection
19 (1), paragraph (c).

20
21 (3) The following definitions in other Articles apply to
22 this Article:

24 "Account." Section 9-106.

26 "Between merchants." Section 2-104, subsection (3).

28 "Buyer." Section 2-103, subsection (1), paragraph (a).

30 "Chattel paper." Section 9-105, subsection (1),
31 paragraph (b).

32 "Consumer goods." Section 9-109, subsection (1).

34 "Document." Section 9-105, subsection (1), paragraph
35 (f).

38 "Entrusting." Section 2-403, subsection (3).

40 "General intangibles." Section 9-106.

42 "Good faith." Section 2-103, subsection (1), paragraph
43 (b).

44 "Instrument." Section 9-105, subsection (1), paragraph
45 (i).

48 "Merchant." Section 2-104, subsection (1).

50 Mortgage." Section 9-105, subsection (1), paragraph
51 (j).

2 "Pursuant to commitment." Section 9-105, subsection
3 (1), paragraph (k).

4 "Receipt." Section 2-103, subsection (1), paragraph
5 (c).

6 "Sale." Section 2-106, subsection (1).

7 "Sale on approval." Section 2-326.

8 "Sale or return." Section 2-326.

9 "Seller." Section 2-103, subsection (1), paragraph (d).

10 (4) In addition, Article 1 contains general definitions and
11 principles of construction and interpretation applicable
12 throughout this Article.

13 **§2-1104. Leases subject to other statutes**

14 (1) A lease, although subject to this Article, is also
15 subject to any applicable:

16 (a) Certificate of title statute of this State;

17 (b) Certificate of title statute of another jurisdiction
18 (section 2-1105); or

19 (c) Consumer protection statute of this State, or final
20 consumer protection decision of a court of this State
21 existing on the effective date of this Article.

22 (2) In case of conflict between this Article, other than
23 section 2-1105, section 2-1304, subsection (3) and section
24 2-1305, subsection (3), and any statute referred to in subsection
25 (1), the statute or decision controls.

26 (3) Failure to comply with applicable law has only the
27 effect specified in that law.

28 **§2-1105. Territorial application of article to goods covered**
29 **by certificate of title**

30 Subject to the provisions of section 2-1304, subsection (3)
31 and section 2-1305, subsection (3), with respect to goods covered
32 by a certificate of title issued under a statute of this State or
33 of another jurisdiction, compliance and the effect of compliance
34 or noncompliance with a certificate of title statute are governed
35 by the law, including the conflict of laws rules, of the
36 jurisdiction issuing the certificate until the earlier of:

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

(a) Surrender of the certificate; or

(b) Four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

§2-1106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

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

§2-1107. Waiver or renunciation of claim or right after default

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§2-1108. Unconscionability

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

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

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

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

4 (a) If the court finds unconscionability under subsection
(1) or (2), the court shall award reasonable attorney's fees
6 to the lessee;

8 (b) If the court does not find unconscionability and the
lessee claiming unconscionability has brought or maintained
10 an action the lessee knew to be groundless, the court shall
award reasonable attorney's fees to the party against whom
12 the claim is made; or

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

18 **§2-1109. Option to accelerate at will**

20 (1) A term providing that one party or that party's
successor in interest may accelerate payment of performance or
22 require collateral or additional collateral "at will," "when the
party represents that that party is insecure" or in words of
24 similar import must be construed to mean that the party has power
to do so only if the party in good faith believes that the
26 prospect of payment or performance is impaired.

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

34 **PART 2**

36 **FORMATION OF CONSTRUCTION OF LEASE CONTRACT**

38 **§2-1201. Statute of frauds**

40 (1) A lease contract is not enforceable by way of action or
42 defense unless:

44 (a) The total payments to be made under the lease contract,
excluding payments for options to renew or buy, are less
46 than \$1,000; or

48 (b) There is a writing, signed by the party against whom
enforcement is sought or by that party's authorized agent,
50 sufficient to indicate that a lease contract has been made

2 between the parties and to describe the goods leased and the
3 lease term.

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

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

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

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

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

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

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

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

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

37 (c) A reasonable lease term.

38 **§2-1202. Final written expression; parol or extrinsic evidence**

39 Terms with respect to which the confirmatory memoranda of
40 the parties agree or which are otherwise set forth in a writing

2 intended by the parties as a final expression of their agreement
4 with respect to such terms as are included therein may not be
6 contradicted by evidence of any prior agreement or of a
8 contemporaneous oral agreement but may be explained or
10 supplemented:

12 (a) By course of dealing or usage of trade or by course of
14 performance; and

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

24 §2-1203. Seals inoperative

26 The affixing of a seal to a writing evidencing a lease
28 contract or an offer to enter into a lease contract does not
30 render the writing a sealed instrument and the law with respect
32 to sealed instruments does not apply to the lease contract or
34 offer.

36 §2-1204. Formation in general

38 (1) A lease contract may be made in any manner sufficient
40 to show agreement, including conduct by both parties that
42 recognizes the existence of a lease contract.

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

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

§2-1205. Firm offers

An offer by a merchant to lease goods to or from another
person in a signed writing that by its terms gives assurance it
will be held open is not revocable, for lack of consideration,
during the time stated or, if no time is stated, for a reasonable
time, but in no event may the period of irrevocability exceed 3
months. Any such term of assurance on a form supplied by the
offeree must be separately signed by the offeror.

§2-1206. Offer and acceptance in formation of lease contract

(1) Unless otherwise unambiguously indicated by the
language or circumstances, an offer to make a lease contract must

2 be construed as inviting acceptance in any manner and by any
medium reasonable in the circumstances.

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

8 **§2-1207. Course of performance or practical construction**

10 (1) If a lease contract involves repeated occasions for
12 performance by either party with knowledge of the nature of the
performance and opportunity for objection to it by the other, any
14 course of performance accepted or acquiesced in without objection
is relevant to determine the meaning of the lease agreement.

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

24 (3) Subject to the provisions of section 2-1208 on
26 modification and waiver, course of performance is relevant to
show a waiver or modification of any term inconsistent with the
28 course of performance.

30 **§2-1208. Modification, rescission and waiver**

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

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

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

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

2 **§2-1209. Lessee under finance lease as beneficiary of**
3 **supply contract**

4 (1) The benefit of a supplier's promises to the lessor
5 under the supply contract and of all warranties, whether express
6 or implied, including those of any third party provided in
7 connection with or as part of the supply contract, extends to the
8 lessee to the extent of the lessee's leasehold interest under a
9 finance lease related to the supply contract, but is subject to
10 the terms of the warranty and of the supply contract and all
11 defenses or claims arising therefrom.

12 (2) The extension of the benefit of a supplier's promises
13 and of warranties to the lessee under subsection (1) does not:

14 (a) Modify the rights and obligations of the parties
15 to the supply contract, whether arising therefrom or
16 otherwise; or

17 (b) Impose any duty or liability under the supply
18 contract on the lessee.

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

30 (4) In addition to the extension of the benefit of the
31 supplier's promises and of warranties to the lessee under
32 subsection (1), the lessee retains all rights that the lessee may
33 have against the supplier that arise from an agreement between
34 the lessee and the supplier or under other law.

35 **§2-1210. Express warranties**

36 (1) Express warranties by the lessor are created as follows.

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

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

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

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

14 **§2-1211. Warranties against interference and against**
15 **infringement; lessee's obligation against**
16 **infringement**

17 (1) There is in a lease contract a warranty that for the
18 lease term no person holds a claim to or interest in the goods
19 that arose from an act or omission of the lessor, other than a
20 claim by way of infringement or the like, that will interfere
21 with the lessee's enjoyment of its leasehold interest.

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

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

30 **§2-1212. Implied warranty of merchantability**

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

34 (2) Goods to be merchantable must at least:

35 (a) Pass without objection in the trade under the
36 description in the lease agreement;

37 (b) In the case of fungible goods, be of fair average
38 quality within the description;

39 (c) Be fit for the ordinary purposes for which goods of
40 that type are used;

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

6 (e) Be adequately contained, packaged and labeled as the
 lease agreement may require; and

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

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

14 **§2-1213. Implied warranty of fitness for particular purpose**

16 Except in a finance lease, if the lessor at the time the
18 lease contract is made has reason to know of any particular
20 purpose for which the goods are required and that the lessee is
 relying on the lessor's skill or judgment to select or furnish
22 suitable goods, there is in the lease contract an implied
 warranty that the goods will be fit for that purpose.

24 **§2-1214. Exclusion or modification of warranties**

26 (1) Words or conduct relevant to the creation of an express
 warranty and words or conduct tending to negate or limit a
28 warranty must be construed wherever reasonable as consistent with
 each other; but, subject to the provisions of section 2-1202 on
30 parol or extrinsic evidence, negation or limitation is
 inoperative to the extent that the construction is unreasonable.

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

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

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

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

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

12 **(4) To exclude or modify a warranty against interference or**
14 **against infringement under section 2-1211, or any part of it, the**
16 **language must be specific, be by a writing and be conspicuous,**
18 **unless the circumstances, including course of performance, course**
 of dealing or usage of trade, give the lessee reason to know that
 the goods are being leased subject to a claim or interest of any
 person.

20 **§2-1215. Cumulation and conflict of warranties express or**
 implied

22 **Warranties, whether express or implied, must be construed as**
24 **consistent with each other and as cumulative, but if that**
26 **construction is unreasonable, the intention of the parties**
 determines which warranty is dominant. In ascertaining that
 intention the following rules apply.

28 **(a) Exact or technical specifications displace an**
30 **inconsistent sample or model or general language of**
 description.

32 **(b) A sample from an existing bulk displaces inconsistent**
34 **general language of description.**

36 **(c) Express warranties displace inconsistent implied**
38 **warranties other than an implied warranty of fitness for a**
 particular purpose.

40 **§2-1216. Third-party beneficiaries of express and implied**
 warranties

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

2 **§2-1217. Identification**

4 Identification of goods as goods to which a lease contract
6 refers may be made at any time and in any manner explicitly
8 agreed to by the parties. In the absence of explicit agreement,
10 identification occurs:

12 (a) When the lease contract is made, if the lease contract
14 is for a lease of goods that are existing and identified;

16 (b) When the goods are shipped, marked or otherwise
18 designated by the lessor as goods to which the lease
20 contract refers, if the lease contract is for a lease of
22 goods that are not existing and identified; or

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

28 **§2-1218. Insurance and proceeds**

30 (1) A lessee obtains an insurable interest when existing
32 goods are identified to the lease contract even though the goods
34 identified are nonconforming and the lessee has an option to
36 reject them.

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

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

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

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

68 **§2-1219. Risk of loss**

70 (1) Except in the case of a finance lease, risk of loss is
72 retained by the lessor and does not pass to the lessee. In the
74 case of a finance lease, risk of loss passes to the lessee.

2 (2) Subject to the provisions of this Article on the effect
3 of default on risk of loss (section 2-1220) if risk of loss is to
4 pass to the lessee and the time of passage is not stated, the
5 following rules apply.

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

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

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

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

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

25 **§2-1220. Effect of default on risk of loss**

26 (1) When risk of loss is to pass to the lessee and the time
27 of passage is not stated:

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

32 (b) If the lessee rightfully revokes acceptance, the
33 lessee, to the extent of any deficiency in the lessee's
34 effective insurance coverage, may treat the risk of loss as
35 having remained with the lessor from the beginning.

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

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

12 (3) A provision in a lease agreement that prohibits the
13 creation or enforcement of a security interest in an interest of
14 a party under the lease contract or in the lessor's residual
15 interest in the goods, or makes such a transfer an event of
16 default, is not enforceable unless, and then only to the extent
17 that, there is an actual transfer by the lessee of the lessee's
18 right of possession or use of the goods in violation of the
19 provision or an actual delegation of a material performance of
20 either party to the lease contract in violation of the
21 provision. Neither the granting nor the enforcement of a
22 security interest in the lessor's interest under the lease
23 contract or the lessor's residual interest in the goods is a
24 transfer that materially impairs the prospect of obtaining return
25 performance by, materially changes the duty of or materially
26 increases the burden or risk imposed on, the lessee within the
27 purview of subsection (5) unless, and then only to the extent
28 that, there is an actual delegation of a material performance of
29 the lessor.

30 (4) A provision in a lease agreement that prohibits a
31 transfer of a right to damages for default with respect to the
32 whole lease contract or of a right to payment arising out of the
33 transferor's due performance of the transferor's entire
34 obligation, or makes such a transfer an event of default, is not
35 enforceable, and such a transfer is not a transfer that
36 materially impairs the prospect of obtaining return performance
37 by, materially changes the duty of or materially increases the
38 burden or risk imposed on, the other party to the lease contract
39 within the purview of subsection (5).

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

41 (a) If a transfer is made which is made an event of default
42 under a lease agreement, the party to the lease contract not
43 making the transfer, unless that party waives the default or
44 otherwise agrees, has the rights and remedies described in
45 section 2-1501, subsection (2); and

46 (b) If paragraph (a) is not applicable and if a transfer is
47 made that is prohibited under a lease agreement or

2 materially impairs the prospect of obtaining return
3 performance by, materially changes the duty of, or
4 materially increases the burden or risk imposed on, the
5 other party to the lease contract, unless the party not
6 making the transfer agrees at any time to the transfer in
7 the lease contract or otherwise, then, except as limited by
8 contract:

9
10 (i) The transferor is liable to the party not making
11 the transfer for damages caused by the transfer to the
12 extent that the damages could not reasonably be
13 prevented by the party not making the transfer; and

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

17 (6) A transfer of "the lease" or of "all my rights under
18 the lease," or a transfer in similar general terms, is a transfer
19 of rights and, unless the language or the circumstances, as in a
20 transfer for security, indicate the contrary, the transfer is a
21 delegation of duties by the transferor to the transferee.
22 Acceptance by the transferee constitutes a promise by the
23 transferee to perform those duties. The promise is enforceable
24 by either the transferor or the other party to the lease contract.
25

26
27 (7) Unless otherwise agreed by the lessor and the lessee, a
28 delegation of performance does not relieve the transferor as
29 against the other party of any duty to perform or of any
30 liability for default.

31
32 (8) In a consumer lease, to prohibit the transfer of an
33 interest of a party under the lease contract or to make a
34 transfer an event of default, the language must be specific, by a
35 writing and conspicuous.
36

37 **§2-1304. Subsequent lease of goods by lessor**

38
39 (1) Subject to section 2-1303, a subsequent lessee from a
40 lessor of goods under an existing lease contract obtains, to the
41 extent of the leasehold interest transferred, the leasehold
42 interest in the goods that the lessor had or had power to
43 transfer, and, except as provided in subsection (2) and section
44 2-1527, subsection (4), takes subject to the existing lease
45 contract. A lessor with voidable title has power to transfer a
46 good leasehold interest to a good faith subsequent lessee for
47 value, but only to the extent set forth in the preceding
48 sentence. If goods have been delivered under a transaction of
49 purchase, the lessor has that power even though:
50

- 2 (a) The lessor's transferor was deceived as to the identity
 of the lessor;
- 4 (b) The delivery was in exchange for a check that is later
 dishonored;
- 6 (c) It was agreed that the transaction was to be a "cash
8 sale"; or
- 10 (d) The delivery was procured through fraud punishable as
 larcenous under the criminal law.

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

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

28 **§2-1305. Sale or sublease of goods by lessee**

30 (1) Subject to the provisions of section 2-1303, a buyer or
 sublessee from the lessee of goods under an existing lease
32 contract obtains, to the extent of the interest transferred, the
 leasehold interest in the goods that the lessee had or had power
34 to transfer, and, except as provided in subsection (2) and
 section 2-1511, subsection (4), takes subject to the existing
36 lease contract. A lessee with a voidable leasehold interest has
 power to transfer a good leasehold interest to a good faith buyer
38 for value or a good faith sublessee for value, but only to the
 extent set forth in the preceding sentence. When goods have been
40 delivered under a transaction of lease the lessee has that power
 even though:

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

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

8 (3) A buyer or sublessee from the lessee of goods that are
9 subject to an existing lease contract and are covered by a
10 certificate of title issued under a statute of this State or of
11 another jurisdiction takes no greater rights than those provided
12 both by this section and by this certificate of title statute.

14 §2-1306. Priority of certain liens arising by operation
15 of law

16 If a person in the ordinary course of business furnishes
17 services or materials with respect to goods subject to a lease
18 contract, a lien upon those goods in the possession of that
19 person given by statute or rule of law for those materials or
20 services takes priority over any interest of the lessor or lessee
21 under the lease contract or this Article unless the lien is
22 created by statute and the statute provides otherwise or unless
23 the lien is created by rule of law and the rule of law provides
24 otherwise.

26 §2-1307. Priority of certain liens arising by operation
27 of law

28 (1) Except as otherwise provided in section 2-1306, a
29 creditor of a lessee takes subject to the lease contract.

30 (2) Except as otherwise provided in subsections (3) and (4)
31 and in sections 2-1306 and 2-1308, a creditor of a lessor takes
32 subject to the lease contract unless:

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

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

38 (c) The creditor holds a security interest in the goods
39 that was perfected (section 9-303) before the lease contract
40 became enforceable.

41 (3) A lessee in the ordinary course of business takes the
42 leasehold interest free of a security interest in the goods
43 created by the lessor even though the security interest is
44 perfected (section 9-303) and the lessee knows of its existence.
45

2 (4) A lessee other than a lessee in the ordinary course of
4 business takes the leasehold interest free of a security interest
6 to the extent that it secures future advances made after the
8 secured party acquires knowledge of the lease or more than 45
10 days after the lease contract becomes enforceable, whichever
12 first occurs, unless the future advances are made pursuant to a
14 commitment entered into without knowledge of the lease and before
16 the expiration of the 45-day period.

18 **§2-1308. Special rights of creditors**

20 (1) A creditor of a lessor in possession of goods subject
22 to a lease contract may treat the lease contract as void if as
24 against the creditor retention of possession by the lessor is
26 fraudulent under any statute or rule of law, but retention of
28 possession in good faith and current course of trade by the
30 lessor for a commercially reasonable time after the lease
32 contract becomes enforceable is not fraudulent.

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

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

§2-1309. Lessor's and lessee's rights when goods become
 fixtures

(1) In this section:

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

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

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

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

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

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

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

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

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

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

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

48 (a) The fixtures are readily removable factory or office
50 machines, readily removable equipment that is not primarily
 used or leased for use in the operation of the real estate
 or readily removable replacements of domestic appliances

2 that are goods subject to a consumer lease and, before the
3 goods become fixtures, the lease contract is enforceable;

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

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

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

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

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

31 (8) If the interest of a lessor of fixtures, including the
32 lessor's residual interest, has priority over all conflicting
33 interests of all owners and encumbrancers of the real estate, the
34 lessor or the lessee may, on default, expiration, termination or
35 cancellation of the lease agreement but subject to the lease
36 agreement and this Article, or, if necessary to enforce other
37 rights and remedies of the lessor or lessee under this Article,
38 remove the goods from the real estate, free and clear of all
39 conflicting interests of all owners and encumbrancers of the real
40 estate, but the lessor or lessee must reimburse any encumbrancer
41 or owner of the real estate who is not the lessee and who has not
42 otherwise agreed for the cost of repair of any physical injury,
43 but not for any diminution in value of the real estate caused by
44 the absence of the goods removed or by any necessity of replacing
45 them. A person entitled to reimbursement may refuse permission

2 to remove until the party seeking removal gives adequate security
3 for the performance of this obligation.

4 (9) Even though the lease agreement does not create a
5 security interest, the interest of a lessor of fixtures,
6 including the lessor's residual interest, is perfected by filing
7 a financing statement as a fixture filing for leased goods that
8 are or are to become fixtures in accordance with the relevant
9 provisions of the Article 9.

10 **§2-1310. Lessor's and lessee's rights when goods become**
11 **accessions**

12
13
14 (1) Goods are "accessions" when they are installed in or
15 affixed to other goods.

16
17 (2) The interest of a lessor or a lessee under a lease
18 contract entered into before the goods become accessions is
19 superior to all interests in the whole except as stated in
20 subsection (4).

21
22 (3) The interest of a lessor or a lessee under a lease
23 contract entered into at the time or after the goods became
24 accessions is superior to all subsequently acquired interests in
25 the whole except as stated in subsection (4) but is subordinate
26 to interests in the whole existing at the time the lease contract
27 was made unless the holders of such interest in the whole have in
28 writing consented to the lease or disclaimed an interest in the
29 goods as part of the whole.

30
31 (4) The interest of a lessor or a lessee under a lease
32 contract described in subsection (2) or (3) is subordinate to the
33 interest of:

34
35 (a) A buyer in the ordinary course of business or a lessee
36 in the ordinary course of business of any interest in the
37 whole acquired after the goods became accessions; or

38
39 (b) A creditor with a security interest in the whole
40 perfected before the lease contract was made to the extent
41 that the creditor makes subsequent advances without
42 knowledge of the lease contract.

43
44 (5) When under subsections (2) or (3) and (4) a lessor or a
45 lessee of accessions holds an interest that is superior to all
46 interests in the whole, the lessor or the lessee may, on default,
47 expiration, termination or cancellation of the lease contract by
48 the other party but subject to the provisions of the lease
49 contract and this Article, or, if necessary to enforce the other
50 rights and remedies under this Article, remove the goods from the
51 whole, free and clear of all interests in the whole, but the

2 lessor or the lessee must reimburse any holder of an interest in
4 the whole who is not the lessee and who has not otherwise agreed
6 for the cost of repair of any physical injury but not for any
8 diminution in value of the whole caused by the absence of the
10 goods removed or by any necessity for replacing them. A person
12 entitled to reimbursement may refuse permission to remove until
14 the party seeking removal gives adequate security for the
16 performance of this obligation.

18 **§2-1311. Priority subject to subordination**

20 Nothing in this Article prevents subordination by agreement
22 by any person entitled to priority.

24 **PART 4**

26 **PERFORMANCE OF LEASE CONTRACT: REPUDIATED,**
28 **SUBSTITUTED AND EXCUSED**

30 **§2-1401. Insecurity; adequate assurance of performance**

32 (1) A lease contract imposes an obligation on each party
34 that the other's expectation of receiving due performance will
36 not be impaired.

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

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

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

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

§2-1402. Anticipatory repudiation

If either party repudiates a lease contract with respect to
a performance not yet due under the lease contract, the loss of

2 which performance will substantially impair the value of the
3 lease contract to the other, the aggrieved party may:

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

6
7 (b) Make demand pursuant to section 2-1401 and await
8 assurance of future performance adequate under the
9 circumstances of the particular case; or

10
11 (c) Resort to any right or remedy upon default under the
12 lease contract or this Article, even though the aggrieved
13 party has notified the repudiating party that the aggrieved
14 party would await the repudiating party's performance and
15 assurance and has urged retraction. In addition, whether or
16 not the aggrieved party is pursuing one of the foregoing
17 remedies, the aggrieved party may suspend performance or, if
18 the aggrieved party is the lessor, proceed in accordance
19 with the provisions of this Article on the lessor's right to
20 identify goods to the lease contract notwithstanding default
21 or to salvage unfinished goods under section 2-1524.

22 **§2-1403. Retraction of anticipatory repudiation**

23
24 (1) Until the repudiating party's next performance is due,
25 the repudiating party may retract the repudiation unless, since
26 the repudiation, the aggrieved party has cancelled the lease
27 contract or materially changed the aggrieved party's position or
28 otherwise indicated that the aggrieved party considers the
29 repudiation final.

30
31 (2) Retraction may be by any method that clearly indicates
32 to the aggrieved party that the repudiating party intends to
33 perform under the lease contract and includes any assurance
34 demand under section 2-1401.

35
36 (3) Retraction reinstates a repudiating party's rights
37 under a lease contract with due excuse and allowance to the
38 aggrieved party for any delay occasioned by the repudiation.

39 **§2-1404. Substituted performance**

40
41 (1) If without fault of the lessee, the lessor and the
42 supplier, the agreed berthing, loading or unloading facilities
43 fail, the agreed type of carrier becomes unavailable or the
44 agreed manner of delivery otherwise becomes commercially
45 impracticable, but a commercially reasonable substitute is
46 available, the substitute performance must be tendered and
47 accepted.

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

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

8 (b) If delivery has already been taken, payment by the
9 means or in the manner provided by the regulation discharges
10 the lessee's obligation unless the regulation is
11 discriminatory, oppressive or predatory.

12
13
14 §2-1405. Excused performance

15 Subject to section 2-1404 on substituted performance, the
16 following rules apply.

17 (a) Delay in delivery or nondelivery in whole or in part by
18 a lessor or a supplier who complies with paragraphs (b) and
19 (c) is not a default under the lease contract if performance
20 as agreed has been made impracticable by the occurrence of a
21 contingency the nonoccurrence of which was a basic
22 assumption on which the lease contract was made or by
23 compliance in good faith with any applicable foreign or
24 domestic governmental regulation or order, whether or not
25 the regulation or order later proves to be invalid.

26 (b) If the causes mentioned in paragraph (a) affect only
27 part of the lessor's or the supplier's capacity to perform,
28 the lessor or supplier shall allocate production and
29 deliveries among the lessor's or supplier's customers but at
30 the lessor's or supplier's option may include regular
31 customers not then under contract for sale or lease as well
32 as the lessor's or supplier's own requirements for further
33 manufacture. The lessor or supplier may so allocate in any
34 manner that is fair and reasonable.

35 (c) The lessor seasonably shall notify the lessee and in the
36 case of a finance lease the supplier seasonably shall notify
37 the lessor and the lessee, if known, that there will be
38 delay or nondelivery and, if allocation is required under
39 paragraph (b), of the estimated quota thus made available
40 for the lessee.

41
42
43
44
45
46 §2-1406. Procedure on excused performance

47 (1) If the lessee receives notification of a material or
48 indefinite delay or an allocation justified under section 2-1405,
49 the lessee may, by written notification to the lessor as to any
50 goods involved and with respect to all of the goods if, under an

2 installment lease contract, the value of the whole lease contract
3 is substantially impaired under section 2-1510:

4 (a) Terminate the lease contract under section 2-1505,
5 subsection (2); or

6
7 (b) Except in a finance lease that is not a consumer lease,
8 modify the lease contract by accepting the available quota
9 in substitution, with due allowance from the rent payable
10 for the balance of the lease term for the deficiency but
11 without further right against the lessor.

12
13 (2) If, after receipt of a notification from the lessor
14 under section 2-1405, the lessee fails so to modify the lease
15 agreement within a reasonable time not exceeding 30 days, the
16 lease contract lapses with respect to any deliveries affected.

17 **§2-1407. Irrevocable promises; finance leases**

18
19 (1) In the case of a finance lease that is not a consumer
20 lease, the lessee's promises under the lease contract become
21 irrevocable and independent upon the lessee's acceptance of the
22 goods.

23
24 (2) A promise that has become irrevocable and independent
25 under subsection (1):

26
27 (a) Is effective and enforceable between the parties and by
28 or against third parties including assignees of the parties;
29 and

30
31 (b) Is not subject to cancellation, termination,
32 modification, repudiation, excuse or substitution without
33 the consent of the party to whom the promise runs.

34
35 (3) This section does not affect the validity under any
36 other law of a covenant in any lease contract making the lessee's
37 promises irrevocable and independent upon the lessee's acceptance
38 of the goods.

39
40 **PART 5**

41
42 **DEFAULT**

43
44 **§2-1501. Default; procedure**

45
46 (1) Whether the lessor or the lessee is in default under a
47 lease contract is determined by the lease agreement and this
48 Article.

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

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

12 (4) Except as otherwise provided in section 1-106,
13 subsection (1), this Article or the lease agreement, the rights
14 and remedies referred to in subsections (2) and (3) are
15 cumulative.

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

22 **§2-1502. Notice after default**

23 Except as otherwise provided in this Article or the lease
24 agreement, the lessor or lessee in default under the lease
25 contract is not entitled to notice of default or notice of
26 enforcement from the other party to the lease agreement.

27 **§2-1503. Modification or impairment of rights and remedies**

28 (1) Except as otherwise provided in this Article, the lease
29 agreement may include rights and remedies for default in addition
30 to or in substitution for those provided in this Article and may
31 limit or alter the measure of damages recoverable under this
32 Article.

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

39 (3) Consequential damages may be liquidated under section
40 2-1504, or may otherwise be limited, altered or excluded unless
41 the limitation, alteration or exclusion is unconscionable.
42 Limitation, alteration or exclusion of consequential damages for
43 injury to the person in the case of consumer goods is prima facie
44 consequential.

2 unconscionable but limitation, alteration or exclusion of damages
3 where the loss is commercial is not prima facie unconscionable.

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

8 **§2-1504. Liquidation of damages**

10 (1) Damages payable by either party for default or any
11 other act or omission, including indemnity for loss or diminution
12 of anticipated tax benefits or loss or damage to lessor's
13 residual interest, may be liquidated in the lease agreement but
14 only at an amount or by a formula that is reasonable in light of
15 the then anticipated harm caused by the default or other act or
16 omission.

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

24 (3) If the lessor justifiably withholds or stops delivery
25 of goods because of the lessee's default or insolvency (section
26 2-1525 or 2-1526) the lessee is entitled to restitution of any
27 amount by which the sum of the lessee's payments exceeds:

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

31 (b) In the absence of those terms, 20% of the then present
32 value of the total rent the lessee was obligated to pay for
33 the balance of the lease term, or, in the case of a consumer
34 lease, the lesser of that amount or \$500.

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

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

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

44 **§2-1505. Cancellation and termination and effect of**
45 **cancellation, termination, rescission or fraud**
46 **on rights and remedies**

2 (1) On cancellation of the lease contract, all obligations
4 that are still executory on both sides are discharged, but any
6 right based on prior default or performance survives and the
8 cancelling party also retains any remedy for default of the whole
10 lease contract or any unperformed balance.

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

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

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

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

40 §2-1506. Statute of limitations

42 (1) An action for default under a lease contract, including
44 breach of warranty or indemnity, must be commenced within 4 years
46 after the cause of action accrued. By the original lease
48 contract the parties may reduce the period of limitation to not
 less than one year.

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

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

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

6 **§2-1507. Proof of market rent; time and place**

8 (1) Damages based on market rent (section 2-1519 or 2-1528)
9 are determined according to the rent for the use of the goods
10 concerned for a lease term identical to the remaining lease term
11 of the original lease agreement and prevailing at the times
12 specified in sections 2-1519 and 2-1528.

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

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

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

38 **§2-1508. Lessee's remedies**

40 (1) If a lessor fails to deliver the goods in conformity
41 to the lease contract (section 2-1509) or repudiates the lease
42 contract (section 2-1402) or a lessee rightfully rejects the
43 goods (section 2-1509) or justifiably revokes acceptance of the
44 goods (section 2-1517) then, with respect to any goods involved
45 and with respect to all of the goods if, under an installment
46 lease contract the value of the whole lease contract is
47 substantially impaired (section 2-1510) the lessor is in default
48 under the lease contract and the lessee may:

50 (a) Cancel the lease contract (section 2-1505, subsection
51 (1));

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

6 (c) Cover and recover damages as to all goods affected,
8 whether or not they have been identified to the lease
 contract (sections 2-1518 and 2-1520) or recover damages for
 nondelivery (sections 2-1519 and 2-1520); or

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

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

18 (a) If the goods have been identified, recover them
 (section 2-1522); or

20 (b) In a proper case, obtain specific performance or
22 replevy the goods (section 2-1521).

24 (3) If a lessor is otherwise in default under a lease
26 contract, the lessee may exercise the rights and pursue the
 remedies provided in the lease contract, which may include a
 right to cancel the lease, and provided in section 2-1519,
 subsection (3).

28 (4) If a lessor has breached a warranty, whether express or
30 implied, the lessee may recover damages (section 2-1519,
 subsection (4)).

32 (5) On rightful rejection or justifiable revocation of
34 acceptance, a lessee has a security interest in goods in the
36 lessee's possession or control for any rent and security that has
38 been paid and any expenses reasonably incurred in their
40 inspection, receipt, transportation, care and custody and may
 hold those goods and dispose of them in good faith and in a
 commercially reasonable manner subject to section 2-1527,
 subsection (5).

42 (6) Subject to the provisions of section 2-1407, a lessee,
44 on notifying the lessor of the lessee's intention to do so, may
46 deduct all or any part of the damages resulting from any default
 under the lease contract from any part of the rent still due
 under the same lease contract.

48 **§2-1509. Lessee's rights on improper delivery; rightful**
50 **rejection**

2 (1) Subject to the provisions of section 2-1510 on default
3 in installment lease contracts, if the goods or the tender or
4 delivery fail in any respect to conform to the lease contract,
5 the lessee may reject or accept the goods or accept any
6 commercial unit or units and reject the rest of the goods.

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

10 **§2-1510. Installment lease contracts; rejection and default**

11 (1) Under an installment lease contract, a lessee may
12 reject any delivery that is nonconforming if the nonconformity
13 substantially impairs the value of that delivery and can not be
14 cured or if the nonconformity is a defect in the required
15 documents; but if the nonconformity does not fall within
16 subsection (2) and the lessor or the supplier gives adequate
17 assurance of its cure, the lessee must accept that delivery.

18 (2) Whenever nonconformity or default with respect to one
19 or more deliveries substantially impairs the value of the
20 installment lease contract as a whole, there is a default with
21 respect to the whole. The aggrieved party shall reinstate the
22 installment lease contract as a whole if the aggrieved party
23 accepts a nonconforming delivery without seasonably notifying of
24 cancellation, brings an action with respect only to past
25 deliveries or demands performance as to future deliveries.

26 **§2-1511. Merchant lessee's duties as to rightfully rejected**
27 **goods**

28 (1) Subject to any security interest of a lessee (section
29 2-1508, subsection (5)), if a lessor or a supplier has no agent
30 or place of business at the market of rejection, a merchant
31 lessee, after rejection of goods in the merchant lessee's
32 possession or control, shall follow any reasonable instructions
33 received from the lessor to the supplier with respect to the
34 goods. In the absence of those instructions a merchant lessee
35 shall make reasonable efforts to sell, lease or otherwise dispose
36 of the goods for the lessor's account if they threaten to decline
37 in value speedily. Instructions are not reasonable if on demand
38 indemnity for expenses is not forthcoming.

39 (2) If a merchant lessee (subsection (1)) or any other
40 lessee (section 2-1512) disposes of goods, the merchant lessee or
41 other lessee is entitled to reimbursement, either from the lessor
42 or the supplier or out of the proceeds, for reasonable expenses
43 of caring for and disposing of the goods and, if the expenses
44 include no disposition commission, to such commission as is usual

2 in the trade, or, if there is none, to a reasonable sum not
3 exceeding 10% of the gross proceeds.

4 (3) In complying with this section or section 2-1512, the
5 lessee is held only to good faith. Good faith conduct is neither
6 acceptance or conversion nor the basis of an action for damages.

7 (4) A purchaser who purchases in good faith from a lessee
8 pursuant to this section or section 2-1512 takes the goods free
9 of any rights of the lessor and the supplier even though the
10 lessee fails to comply with one or more of the requirements of
11 this Article.

12
13 **§2-1512. Lessee's duties as to rightfully rejected goods**

14
15 (1) Except as otherwise provided with respect to goods that
16 threaten to decline in value speedily (section 2-1511), and
17 subject to any security interest of a lessee (section 2-1508,
18 subsection (5)):

19
20 (a) The lessee, after rejection of goods in the lessee's
21 possession, shall hold them with reasonable care at the
22 lessor's or supplier's disposition for a reasonable time
23 after the lessee's seasonable notification of rejection; or

24
25 (b) If the lessor or the supplier gives no instructions
26 within a reasonable time after notification of rejection,
27 the lessee may store the rejected goods for the lessor's or
28 the supplier's account, ship them to the lessor or the
29 supplier or dispose of them for the lessor's or the
30 supplier's account with reimbursement in the manner provided
31 in section 2-1511; but

32
33 (c) The lessee has no further obligations with regard to
34 goods rightfully rejected.

35
36 (2) Action by the lessee pursuant to subsection (1) is not
37 acceptance or conversion.

38
39 **§2-1513. Cure by lessor of improper tender or delivery;**
40 **replacement**

41
42 (1) If any tender or delivery by the lessor or the supplier
43 is rejected because nonconforming and the time for performance
44 has not yet expired, the lessor or the supplier may seasonably
45 notify the lessee of the lessor's or the supplier's intention to
46 cure and may then make a conforming delivery within the time
47 period in the lease contract.

48
49 (2) If the lessee rejects a nonconforming tender that the
50 lessor or the supplier had reasonable grounds to believe would be

2 acceptable with or without money allowance, the lessor or the
3 supplier may have a further reasonable time to substitute a
4 conforming tender if the lessee or the supplier seasonably
5 notifies the lessee.

6 **§2-1514. Waiver of lessee's objections**

8 (1) In rejecting goods, a lessee's failure to state a
9 particular defect that is ascertainable by reasonable inspection
10 precludes the lessee from relying on the defect to justify
11 rejection or to establish default:

12 (a) If, stated seasonably, the lessor or the supplier could
13 have cured it (section 2-1513); or

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

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

21 **§2-1515. Acceptance of goods**

22 (1) Acceptance of goods occurs after the lessee has had a
23 reasonable opportunity to inspect the goods and:

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

28 (b) The lessee fails to make an effective rejection of the
29 goods (section 2-1509, subsection (2)).

30 (2) Acceptance of a part of any commercial unit is
31 acceptance of that entire unit.

32 **§2-1516. Effect of acceptance of goods; notice of default;**
33 **burden of establishing default after acceptance;**
34 **notice of claim or litigation to person answerable**
35 **over**

36 (1) A lessee must pay rent for any goods accepted in
37 accordance with the lease contract, with due allowance for goods
38 rightfully rejected or not delivered.

39 (2) A lessee's acceptance of goods precludes rejection of
40 the goods accepted. In the case of a finance lease, if made with

2 knowledge of a nonconformity, acceptance can not be revoked
4 because of the nonconforming. In any other case, if made with
6 knowledge of a nonconformity, acceptance can not be revoked
8 because of the nonconformity unless the acceptance was on the
10 reasonable assumption that the nonconformity would be seasonably
12 cured. Acceptance does not of itself impair any other remedy
14 provided by this Article or the lease agreement for nonconformity.

16 (3) If a tender has been accepted:

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

26 (b) Except in the case of a consumer lease, within a
28 reasonable time after the lessee receives notice of
30 litigation for infringement or the like (section 2-1211),
32 the lessee shall notify the lessor or be barred from any
34 remedy over for liability established by the litigation; and

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

38 (4) If a lessee is sued for breach of a warranty or other
40 obligation for which a lessor or a supplier is answerable over,
42 the following apply.

44 (a) The lessee may give the lessor or the supplier, or
46 both, written notice of the litigation. If the notice
48 states that the person notified may come in and defend and
50 that if the person notified does not do so that person will
be bound in any action against that person by the lessee by
any determination of fact common to the 2 litigations, then
unless the person notified after seasonable receipt of the
notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that
the lessee turn over control of the litigation including
settlement if the claim is one for infringement or the like
(section 2-1211) or be barred from any remedy over. If the
demand states that the lessor or the supplier agrees to bear
all expense and to satisfy any adverse judgment, then unless
the lessee after seasonable receipt of the demand does turn
over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a
lessee to hold the lessor or the supplier harmless against
infringement or the like (section 2-1211).

§2-1517. Revocation of acceptance of goods

2 (1) A lessee may revoke acceptance of a lot or commercial
3 unit whose nonconformity substantially impairs its value to the
4 lessee if the lessee has accepted it:

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

8 (b) Without discovery of the nonconformity if the lessee's
9 acceptance was reasonably induced either by the lessor's
10 assurances or, except in the case of a finance lease, by the
11 difficulty of discovery before acceptance.

12 (2) Except in the case of a finance lease that is not a
13 consumer lease, a lessee may revoke acceptance of a lot or
14 commercial unit if the lessor defaults under the lease contract
15 and the default substantially impairs the value of that lot or
16 commercial unit to the lessee.

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

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

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

28 **§2-1518. Cover; substitute goods**

29 (1) After a default by a lessor under the lease contract of
30 the type described in section 2-1508, subsection (1), or, if
31 agreed, after other default by the lessor, the lessee may cover
32 by making any purchase or lease of or contract to purchase or
33 lease goods in substitution for those due from the lessor.

34 (2) Except as otherwise provided with respect to damages
35 liquidated in the lease agreement (section 2-1504) or otherwise
36 determined pursuant to agreement of the parties (section 1-102,
37 subsection (3) and section 2-1503), if a lessee's cover is by a
38 lease agreement substantially similar to the original lease
39 agreement and the new lease agreement is made in good faith and
40 in a commercially reasonable manner, the lessee may recover from
41 the lessor as damages:

2 (a) The present value, as of the date of the
3 commencement of the term of the new lease agreement, of
4 the rent under the new lease agreement applicable to
5 that period of the new lease term comparable to the
6 then remaining term of the original lease agreement
7 minus the present value as of the same date of the
8 total rent for the then remaining lease term of the
9 original lease agreement; and

10 (b) Any incidental or consequential damages minus
11 expenses saved in consequence of the lessor's default.

12 (3) If a lessee's cover is by lease agreement that for any
13 reason does not qualify for treatment under subsection 2, or is
14 by purchase or otherwise, the lessee may recover from the lessor
15 as if the lessee had elected not to cover and section 2-1519
16 governs.

17 **§2-1519. Lessee's damages for nondelivery, repudiation,**
18 **default and breach of warranty in regard to accepted**
19 **goods**

20 (1) Except as otherwise provided with respect to damages
21 liquidated in the lease agreement (section 2-1504), or otherwise
22 determined pursuant to agreement of the parties (section 1-102,
23 subsection (3) and section 2-1503) if a lessee elects not to
24 cover or a lessee elects to cover and the cover is by lease
25 agreement that for any reason does not qualify for treatment
26 under section 2-1518, subsection (2) or is by purchase or
27 otherwise, the measure of damages for nondelivery or repudiation
28 by the lessor or for rejection or revocation of acceptance by the
29 lessee is the present value, as of the date of the default, of
30 the then market rent minus the present value as of the same date
31 of the original rent, computed for the remaining lease term of
32 the original lease agreement, together with incidental and
33 consequential damages minus expenses saved in consequence of the
34 lessor's default.

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

38 (3) Except as otherwise agreed, if the lessee has accepted
39 goods and given notification (section 2-1516, subsection (3)) the
40 measure of damages for nonconforming tender or delivery or other
41 default by a lessor is the loss resulting in the ordinary course
42 of events from the lessor's default as determined in any manner
43 that is reasonable together with incidental and consequential
44 damages minus expenses saved in consequence of the lessor's
45 default.

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

10 **§2-1520. Lessee's incidental and consequential damages**

12 (1) Incidental damages resulting from a lessor's default
14 include expenses reasonably incurred in inspection, receipt,
16 transportation, care and custody of goods rightfully rejected or
18 goods the acceptance of which is justifiably revoked, any
commercially reasonable charges, expenses or commissions in
connection with effecting cover and any other reasonable expense
incident to the default.

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

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

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

32 **§2-1521. Lessee's right to specific performance or replevin**

34 (1) Specific performance may be decreed if the goods are
unique or in other proper circumstances.

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

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

46 **§2-1522. Lessee's right to goods on lessor's insolvency**

48 (1) Subject to subsection (2) and even though the goods
50 have not been shipped, a lessee who has paid a part or all of the
rent and security for goods identified to a lease contract

2 (section 2-1217) on making and keeping good a tender of any
4 unpaid portion of the rent and security due under the lease
6 contract, may recover the goods identified from the lessor if the
8 lessor becomes insolvent within 10 days after receipt of the
10 first installment of rent and security.

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

16 **§2-1523. Lessor's remedies**

18 (1) If a lessee wrongfully rejects or revokes acceptance of
20 goods, fails to make a payment when due or repudiates with
22 respect to a part or the whole, then, with respect to any goods
24 involved, and with respect to all of the goods if under an
26 installment lease contract the value of the whole lease contract
28 is substantially impaired (section 2-1510) the lessee is in
30 default under the lease contract and the lessor may:

32 (a) Cancel the lease contract (section 2-1505, subsection
34 (1));

36 (b) Proceed respecting goods not identified to the lease
38 contract (section 2-1524);

40 (c) Withhold delivery of the goods and take possession of
42 goods previously delivered (section 2-1525);

44 (d) Stop delivery of the goods by any bailee (section
46 2-1526);

48 (e) Dispose of the goods and recover damages (section
50 2-1527), retain the goods and recover damages (section
2-1528) or in a proper case recover rent (section 2-1529); or

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

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

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

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

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

10 **§2-1524. Lessor's right to identify goods to lease contract**

12 (1) A lessor aggrieved under section 2-1523, subsection (1)
13 may:

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

18 (b) Dispose of goods (section 2-1527, subsection (1)) that
19 demonstrably have been intended for the particular lease
20 contract even though those goods are unfinished.

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

28 **§2-1525. Lessor's right to identify goods to lease contract**

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

31 (2) After a default by the lessee under the lease contract
32 of the type described in section 2-1523, subsection (1) or
33 section 2-1523, subsection (3), paragraph (a) or, if agreed,
34 after other default by the lessee, the lessor has the right to
35 take possession of the goods. If the lease contract so provides,
36 the lessor may require the lessee to assemble the goods and make
37 them available to the lessor at a place to be designated by the
38 lessor that is reasonably convenient to both parties. Without
39 removal, the lessor may render unusable any goods employed in
40 trade or business, and may dispose of goods on the lessee's
41 premises (section 2-1527).

42 (3) The lessor may proceed under subsection (2) without
43 judicial process if possible without breach of the peace or the
44 lessor may proceed by action.

2 subsection (3) and section 2-1503), if the disposition is by
3 lease agreement substantially similar to the original lease
4 agreement and the new lease agreement is made in good faith and
5 in a commercially reasonable manner, the lessor may recover from
6 the lessee as damages:

7 (a) Accrued and unpaid rent as of the date of the
8 commencement of the term of the new lease agreement;

10 (b) The present value, as of the same date, of the
11 total rent for the then remaining lease term of the
12 original lease agreement minus the present value, as of
13 the same date, of the rent under the new lease
14 agreement applicable to that period of the new lease
15 term comparable to the then remaining term of the
16 original lease agreement; and

18 (c) Any incidental damages allowed under section
19 2-1530 minus expenses saved in consequence of the
20 lessee's default.

22 (3) If the lessor's disposition is by lease agreement that
23 for any reason does not qualify for treatment under subsection
24 (2), or is by sale or otherwise, the lessor may recover from the
25 lessee as if the lessor had elected not to dispose of the goods
26 and section 2-1528 governs.

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

34 (5) The lessor is not accountable to the lessee for any
35 profit made on any disposition. A lessee who has rightfully
36 rejected or justifiably revoked acceptance shall account to the
37 lessor for any excess over the amount of the lessee's security
38 interest (section 2-1508, subsection (5)).

40 **§2-1528. Lessor's damages for nonacceptance or**
41 **repudiation**

44 (1) Except as otherwise provided with respect to damages
45 liquidated in the lease agreement (section 2-1504) or otherwise
46 determined pursuant to agreement of the parties, (section 1-102,
47 subsection (3) and section 2-1503), if a lessor elects to retain
48 the goods or a lessor elects to dispose of the goods and the
49 disposition is by lease agreement that for any reason does not
50 qualify for treatment under section 2-1527, subsection (2), or is
by sale or otherwise, the lessor may recover from the lessee as

2 damages for a default of the type described in section 2-1523,
3 subsection (1) or section 2-1523, subsection (3), paragraph (a),
4 or, if agreed, for other default of the lessee:

5
6 (a) Accrued and unpaid rent as of the date of default
7 if the lessee has never taken possession of the goods,
8 or, if the lessee has taken possession of the goods, as
9 of the date the lessor repossesses the goods or an
10 earlier date on which the lessee makes a tender of the
11 goods to the lessor;

12 (b) The present value as of the date determined under
13 this subsection of the total rent for the then
14 remaining lease term of the original lease agreement
15 minus the present value as of the same date of the
16 market rent at the place where the goods are located
17 computed for the same lease term; and

18 (c) Any incidental damages allowed under section
19 2-1530 minus expenses saved in consequence of the
20 lessee's default.

21
22 (2) If the measure of damages provided in subsection (1) is
23 inadequate to put a lessor in as good a position as performance
24 would have, the measure of damages is the present value of the
25 profit, including reasonable overhead, the lessor would have made
26 from full performance by the lessee together with any incidental
27 damages allowed under section 2-1530, due allowance for costs
28 reasonably incurred and due credit for payments or proceeds of
29 disposition.

30
31 **§2-1529. Lessor's action for the rent**

32
33 (1) After default by the lessee under the lease contract of
34 the type described in section 2-1523, subsection (1) or section
35 2-1523, subsection (3), paragraph (a) or, if agreed, after other
36 default by the lessee, if the lessor complies with subsection
37 (2), the lessor may recover from the lessee as damages:

38
39 (a) For goods accepted by the lessee and not repossessed by
40 or tendered to the lessor, and for conforming goods lost or
41 damaged within a commercially reasonable time after risk of
42 loss passes to the lessee (section 2-1219):

43 (i) Accrued and unpaid rent as of the date of entry of
44 judgment in favor of the lessor;

45 (ii) The present value as of the same date of the rent
46 for the then remaining lease term of the lease
47 agreement; and
48
49
50

2 (iii) Any incidental damages allowed under section
3 2-1530 minus expenses saved in consequence of the
4 lessee's default.

6 (b) For goods identified to the lease contract if the
7 lessor is unable after reasonable effort to dispose of them
8 at a reasonable price or the circumstances reasonably
9 indicate that effort will be unavailing:

10 (i) Accrued and unpaid rent as of the date of entry of
11 judgment in favor of the lessor;

12 (ii) The present value as of the same date of the rent
13 for the then remaining lease term of the lease
14 agreement; and

15 (iii) Any incidental damages allowed under section
16 2-1530 minus expenses saved in consequence of the
17 lessee's default.

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

22 (3) The lessor may dispose of the goods at any time before
23 collection of the judgment for damages obtained pursuant to
24 subsection (1). If the disposition is before the end of the
25 remaining lease term of the lease agreement, the lessor's
26 recovery against the lessee for damages is governed by section
27 2-1527 or section 2-1528, and the lessor will cause an
28 appropriate credit to be provided against a judgment for damages
29 to the extent that the amount of the judgment exceeds the
30 recovery available pursuant to section 2-1527 or section 2-1528.

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

35 (5) After a lessee has wrongfully rejected or revoked
36 acceptance of goods, has failed to pay rent then due or has
37 repudiated (section 2-1402) a lessor who is held not entitled to
38 rent under this section must be awarded damages for nonacceptance
39 under sections 2-1527 and 2-1528.

40 **§2-1530. Lessor's incidental damages**

41 Incidental damages to an aggrieved lessor include any
42 commercially reasonable charges, expenses or commissions incurred
43 in stopping delivery, in the transportation, care and custody of
44 the goods.

2 goods after the lessee's default, in connection with return or
3 disposition of the goods, or otherwise resulting from the default.

4 **§2-1531. Standing to sue third parties for injury to goods**

6 (1) If a third party so deals with goods that have been
7 identified to a lease contract as to cause actionable injury to a
8 party to the lease contract, the lessor has a right of action
9 against the third party, and the lessee also has a right of
10 action against the third party if the lessee:

12 (a) Has a security interest in the goods;

14 (b) Has an insurable interest in the goods; or

16 (c) Bears the risk of loss under the lease contract or has
17 since the injury assumed that risk as against the lessor and
18 the goods have been converted or destroyed.

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

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

30 **§2-1532. Lessor's rights to residual interest**

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

38 **Sec. 4. 11 MRSA §9-113 is amended to read:**

40 **§9-113. Security interests arising under Article on sales**

42 A security interest arising solely under the Article on
43 sales (Article 2) or the Article on Leases (Article 2-A) is
44 subject to the provisions of this Article except that to the
45 extent that and so long as the debtor does not have or does not
46 lawfully obtain possession of the goods

48 (1) No security agreement is necessary to make the security
49 interest enforceable; and
50

2 (2) No filing is required to perfect the security interest;
and

4 (3) The rights of the secured party on default by the
debtor are governed by the Article on sales (Article 2) in the
6 case of a security interest arising solely under that Article or
8 by the Article on Leases (Article 2A) in the case of a security
interest arising solely under that Article.

10
12 **STATEMENT OF FACT**

14 This bill enacts Article 2A into the Uniform Commercial
Code. Article 2A represents a major and important addition to
16 the Uniform Commercial Code and is the product of many years of
study and drafting by the National Conference of Commissioners on
18 Uniform State Laws and by the American Law Institute. The
Article recognizes the differences between consumer and business
leasing while resting upon concepts that apply generally to any
20 personal property lease transactions.

22 In spite of the volume of leasing transactions now
experienced, the laws governing leasing have not kept pace with
24 the intricacies of today's leasing arrangements, resulting in
considerable uncertainty for lessors and lessees alike. Under
26 current law, transactions of this type are governed partly by
common law principles relating to personal property, partly by
28 principles relating to real estate leases and partly by
references to Articles 2 and 9 of the Uniform Commercial Code.

30 Since the leasing business is interstate in character,
32 uniformity is as important to the conduct of the leasing
transactions as it is to sales transaction.

34 Article 2A provides this uniformity and gives leasing
36 transactions an appropriate underpinning in the law. Because of
the broad similarities between lease and sales transactions that
38 underpinning is largely derived from Article 2 of the Uniform
Commercial Code dealing with sales. Article 2 has been adopted
40 in every state except Louisiana and Article 2A has recently been
adopted by the states of Colorado, Florida, Kentucky, Minnesota,
42 Nevada, Oklahoma, Oregon and South Dakota and by the United
States Virgin Islands. In addition, the Article has been
44 introduced and is awaiting enactment in a number of other states.