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HOUSE FILE 2321
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 594)

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Vote: Ayes 98 Nays 0 Vote: Ayes 46 Nays 0
Approved April 8, 1994

A BILL FOR

1 An Act relating to leases, by providing for leasing agreements,
2 and amending the uniform commercial code by establishing a new
3 article relating to leases.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2321

1 Section 1. NEW SECTION. 321.51 TERMINAL RENTAL ADJUST-
2 MENT CLAUSE -- VEHICLE LEASES THAT ARE NOT SALES OR SECURITY
3 INTERESTS.

4 An agreement involving the leasing of a motor vehicle or
5 trailer does not create a sale or security interest solely
6 because the agreement provides for an increase or decrease
7 adjustment in the rental price of the motor vehicle or trailer
8 based upon the amount realized upon sale or other disposition
9 of the motor vehicle or trailer following the termination of
10 the lease.

11 Sec. 2. Section 554.1105, subsection 2, Code 1993, is
12 amended by adding the following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. Applicability of the Article on
14 Leases. Sections 554.13105 and 554.13106.

15 Sec. 3. Section 554.1201, subsection 37, Code 1993, is
16 amended to read as follows:

17 37. a. "Security interest" means an interest in personal
18 property or fixtures which secures payment or performance of
19 an obligation. The retention or reservation of title by a
20 seller of goods notwithstanding shipment or delivery to the
21 buyer (section 554.2401) is limited in effect to a reservation
22 of a "security interest". The term also includes any interest
23 of a buyer of accounts or chattel paper which is subject to
24 Article 9. The special property interest of a buyer of goods
25 on identification of such those goods to a contract for sale
26 under section 554.2401 is not a "security interest", but a
27 buyer may also acquire a "security interest" by complying with
28 Article 9. Unless a lease or consignment is intended as
29 security, reservation of title thereunder is not a "security
30 interest", but a consignment ~~is~~ in any event is subject to the
31 provisions on consignment sales (section 554.2326).

32 b. Whether a transaction creates a lease is intended as or
33 security interest is to be determined by the facts of each
34 case; however, ~~(a) the inclusion of an option to purchase does~~
35 ~~not of itself make the lease one intended for security, and~~

1 (b)-an-agreement-that-upon-compliance-with-the-terms-of-the
2 lease-the-lessee-shall-become-or-has-the-option-to-become-the
3 owner-of-the-property-for-no-additional-consideration-or-for-a
4 nominal-consideration-does-make-the-lease-one-intended-for
5 security a transaction creates a security interest if the
6 consideration the lessee is to pay the lessor for the right to
7 possession and use of the goods is an obligation for the term
8 of the lease not subject to termination by the lessee, and

9 (1) the original term of the lease is equal to or greater
10 than the remaining economic life of the goods,

11 (2) the lessee is bound to renew the lease for the
12 remaining economic life of the goods or is bound to become the
13 owner of the goods,

14 (3) the lessee has an option to renew the lease for the
15 remaining economic life of the goods for no additional
16 consideration or nominal additional consideration upon
17 compliance with the lease agreement, or

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

21 c. A transaction does not create a security interest
22 merely because it provides that

23 (1) the present value of the consideration the lessee is
24 obligated to pay the lessor for the right to possession and
25 use of the goods is substantially equal to or is greater than
26 the fair market value of the goods at the time the lease is
27 entered into,

28 (2) the lessee assumes risk of loss of the goods, or
29 agrees to pay taxes, insurance, filing, recording, or
30 registration fees, or service or maintenance costs with
31 respect to the goods,

32 (3) the lessee has an option to renew the lease or to
33 become the owner of the goods,

34 (4) the lessee has an option to renew the lease for a
35 fixed rent that is equal to or greater than the reasonably

1 predictable fair market rent for the use of the goods for the
2 term of the renewal at the time the option is to be performed,
3 or

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

8 d. For purposes of this subsection:

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

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

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

33 Sec. 4. Section 554.9113, Code 1993, is amended to read as
34 follows:

35 554.9113 SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES

1 OR UNDER ARTICLE ON LEASES.

2 A security interest arising solely under the Article on
3 Sales (Article 2) or the Article on Leases (Article 13) is
4 subject to the provisions of this Article except that to the
5 extent that and so long as the debtor does not have or does
6 not lawfully obtain possession of the goods

7 a. no security agreement is necessary to make the security
8 interest enforceable; and

9 b. no filing is required to perfect the security interest;
10 and

11 c. the rights of the secured party on default by the
12 debtor are governed (i) by the Article on Sales (Article 2) in
13 the case of a security interest arising solely under such
14 Article or (ii) by the Article on Leases (Article 13) in the
15 case of a security interest arising solely under such Article.

16 ARTICLE 13

17 LEASES

18 PART 1

19 GENERAL PROVISIONS

20 Sec. 5. NEW SECTION. 554.13101 SHORT TITLE.

21 This Article shall be known and may be cited as the Uniform
22 Commercial Code - Leases.

23 Sec. 6. NEW SECTION. 554.13102 SCOPE.

24 This Article applies to any transaction, regardless of
25 form, that creates a lease.

26 Sec. 7. NEW SECTION. 554.13103 DEFINITIONS AND INDEX OF
27 DEFINITIONS.

28 1. In this Article unless the context otherwise requires:

29 a. "Buyer in ordinary course of business" means a person
30 who in good faith and without knowledge that the sale to the
31 person is in violation of the ownership rights or security
32 interest or leasehold interest of a third party in the goods,
33 buys in ordinary course from a person in the business of
34 selling goods of that kind but does not include a pawnbroker.
35 "Buying" may be for cash or by exchange of other property or

1 on secured or unsecured credit and includes receiving goods or
2 documents of title under a preexisting contract for sale but
3 does not include a transfer in bulk or as security for or in
4 total or partial satisfaction of a money debt.

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

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

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

18 e. "Consumer lease" means a lease that a lessor regularly
19 engaged in the business of leasing or selling makes to a
20 lessee who is an individual and who takes under the lease
21 primarily for a personal, family, or household purpose, if the
22 total payments to be made under the lease contract, excluding
23 payments for options to renew or buy, do not exceed the dollar
24 amount designated in section 537.1301, subsection 13.

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

27 g. "Finance lease" means a lease with respect to which:

28 (1) the lessor does not select, manufacture, or supply the
29 goods;

30 (2) the lessor acquires the goods or the right to
31 possession and use of the goods in connection with the lease;
32 and

33 (3) one of the following occurs:

34 (a) the lessee receives a copy of the contract by which
35 the lessor acquired the goods or the right to possession and

1 use of the goods before signing the lease contract;

2 (b) the lessee's approval of the contract by which the
3 lessor acquired the goods or the right to possession and use
4 of the goods is a condition to effectiveness of the lease
5 contract;

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

15 (d) if the lease is not a consumer lease, the lessor,
16 before the lessee signs the lease contract, informs the lessee
17 in writing (i) of the identity of the person supplying the
18 goods to the lessor, unless the lessee has selected that
19 person and directed the lessor to acquire the goods or the
20 right to possession and use of the goods from that person,
21 (ii) that the lessee is entitled under this Article to the
22 promises and warranties, including those of any third party,
23 provided to the lessor by the person supplying the goods in
24 connection with or as part of the contract by which the lessor
25 acquired the goods or the right to possession and use of the
26 goods, and (iii) that the lessee may communicate with the
27 person supplying the goods to the lessor and receive an
28 accurate and complete statement of those promises and
29 warranties, including any disclaimers and limitations of them
30 or of remedies.

31 h. "Goods" means all things that are movable at the time
32 of identification to the lease contract, or are fixtures
33 (section 554.13309), but the term does not include money,
34 documents, instruments, accounts, chattel paper, general
35 intangibles, or minerals or the like, including oil and gas,

1 before extraction. The term also includes the unborn young of
2 animals.

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

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

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

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

26 m. "Leasehold interest" means the interest of the lessor
27 or the lessee under a lease contract.

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

31 o. "Lessee in ordinary course of business" means a person
32 who in good faith and without knowledge that the lease to the
33 person is in violation of the ownership rights or security
34 interest or leasehold interest of a third party in the goods
35 leases in ordinary course from a person in the business of

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

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

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

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

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

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

22 u. "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 rate
25 specified by the parties if the rate was not manifestly
26 unreasonable at the time the transaction was 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.

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

34 w. "Sublease" means a lease of goods the right to
35 possession and use of which was acquired by the lessor as a

1 lessee under an existing lease.

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

4 y. "Supply contract" means a contract under which a lessor
5 buys or leases goods to be leased.

6 z. "Termination" occurs when either party pursuant to a
7 power created by agreement or law puts an end to the lease
8 contract otherwise than for default.

9 2. Other definitions applying to this Article and the
10 sections in which they appear are:

11 "Accessions".	Section 554.13310, subsection 1.
12 "Construction mortgage".	Section 554.13309, subsection 1, 13 paragraph "d".
14 "Encumbrance".	Section 554.13309, subsection 1, 15 paragraph "e".
16 "Fixtures".	Section 554.13309, subsection 1, 17 paragraph "a".
18 "Fixture filing".	Section 554.13309, subsection 1, 19 paragraph "b".
20 "Purchase money lease".	Section 554.13309, subsection 1, 21 paragraph "c".

22 3. The following definitions in other Articles apply to
23 this Article:

24 "Account".	Section 554.9106.
25 "Between merchants".	Section 554.2104, subsection 3.
26 "Buyer".	Section 554.2103, subsection 1, 27 paragraph "a".
28 "Chattel paper".	Section 554.9105, subsection 1, 29 paragraph "b".
30 "Consumer goods".	Section 554.9109, subsection 1.
31 "Document".	Section 554.9105, subsection 1, 32 paragraph "f".
33 "Entrusting".	Section 554.2403, subsection 3.
34 "General intangibles".	Section 554.9106.
35 "Good faith".	Section 554.2103, subsection 1,

- 1 paragraph "b".
- 2 "Instrument". Section 554.9105, subsection 1,
- 3 paragraph "i".
- 4 "Merchant". Section 554.2104, subsection 1.
- 5 "Mortgage". Section 554.9105, subsection 1,
- 6 paragraph "j".
- 7 "Pursuant to Section 554.9105, subsection 1,
- 8 commitment". paragraph "k".
- 9 "Receipt". Section 554.2103, subsection 1,
- 10 paragraph "c".
- 11 "Sale". Section 554.2106, subsection 1.
- 12 "Sale on approval". Section 554.2326.
- 13 "Sale or return". Section 554.2326.
- 14 "Seller". Section 554.2103, subsection 1,
- 15 paragraph "d".

16 4. In addition, Article 1 contains general definitions and
 17 principles of construction and interpretation applicable
 18 throughout this Article.

19 Sec. 8. NEW SECTION. 554.13104 LEASES SUBJECT TO OTHER
 20 LAW.

- 21 1. A lease, although subject to this Article, is also
- 22 subject to any applicable:
 - 23 a. certificate of title or registration statute of this
 - 24 state: (including as provided in chapters 321 and 462A);
 - 25 b. certificate of title statute of another jurisdiction
 - 26 (section 554.13105); or
 - 27 c. consumer protection statute of this state, or final
 - 28 consumer protection decision of a court of this state existing
 - 29 on the effective date of this Act.
- 30 2. In case of conflict between this Article, other than
- 31 sections 554.13105, 554.13304, subsection 3, and 554.13305,
- 32 subsection 3, and a statute or decision referred to in
- 33 subsection 1, the statute or decision controls.
- 34 3. Failure to comply with an applicable law has only the
- 35 effect specified therein.

1 Sec. 9. NEW SECTION. 554.13105 TERRITORIAL APPLICATION
2 OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

3 Subject to the provisions of sections 554.13304, subsection
4 3, and 554.13305, subsection 3, with respect to goods covered
5 by a certificate of title issued under a statute of this state
6 or of another jurisdiction, compliance and the effect of
7 compliance or noncompliance with a certificate of title
8 statute are governed by the law (including the conflict of
9 laws rules) of the jurisdiction issuing the certificate until
10 the earlier of (i) surrender of the certificate, or (ii) four
11 months after the goods are removed from that jurisdiction and
12 thereafter until a new certificate of title is issued by
13 another jurisdiction.

14 Sec. 10. NEW SECTION. 554.13106 LIMITATION ON POWER OF
15 PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND
16 JUDICIAL FORUM.

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

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

25 Sec. 11. NEW SECTION. 554.13107 WAIVER OR RENUNCIATION
26 OF CLAIM OR RIGHT AFTER DEFAULT.

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

31 Sec. 12. NEW SECTION. 554.13108 UNCONSCIONABILITY.

32 1. If the court as a matter of law finds a lease contract
33 or any clause of a lease contract to have been unconscionable
34 at the time it was made the court may refuse to enforce the
35 lease contract, or it may enforce the remainder of the lease

1 contract without the unconscionable clause, or it may so limit
2 the application of any unconscionable clause as to avoid any
3 unconscionable result.

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

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

15 4. In an action in which the lessee claims
16 unconscionability with respect to a consumer lease:

17 a. If the court finds unconscionability under subsection 1
18 or 2, the court shall award reasonable attorney's fees to the
19 lessee.

20 b. If the court does not find unconscionability and the
21 lessee claiming unconscionability has brought or maintained an
22 action that the lessee knew to be groundless, the court shall
23 award reasonable attorney's fees to the party against whom the
24 claim is made.

25 c. In determining attorney's fees, the amount of the
26 recovery on behalf of the claimant under subsections 1 and 2
27 is not controlling.

28 Sec. 13. NEW SECTION. 554.13109 OPTION TO ACCELERATE AT
29 WILL.

30 1. A term providing that one party or the party's
31 successor in interest may accelerate payment or performance or
32 require collateral or additional collateral "at will" or "when
33 the party deems the party insecure" or in words of similar
34 import must be construed to mean that the party has power to
35 do so only if the party in good faith believes that the

1 prospect of payment or performance is impaired.

2 2. With respect to a consumer lease, the burden of
3 establishing good faith under subsection 1 is on the party who
4 exercised the power; otherwise the burden of establishing lack
5 of good faith is on the party against whom the power has been
6 exercised.

7 PART 2

8 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

9 Sec. 14. NEW SECTION. 554.13201 STATUTE OF FRAUDS.

10 1. A lease contract is not enforceable by way of action or
11 defense unless:

12 a. the total payments to be made under the lease contract,
13 excluding payments for options to renew or buy, are less than
14 one thousand dollars; or

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

20 2. Any description of leased goods or of the lease term is
21 sufficient and satisfies subsection 1, paragraph "b", whether
22 or not it is specific, if it reasonably identifies what is
23 described.

24 3. A writing is not insufficient because it omits or
25 incorrectly states a term agreed upon, but the lease contract
26 is not enforceable under subsection 1, paragraph "b", beyond
27 the lease term and the quantity of goods shown in the writing.

28 4. A lease contract that does not satisfy the requirements
29 of subsection 1, but which is valid in other respects, is
30 enforceable:

31 a. if the goods are to be specially manufactured or
32 obtained for the lessee and are not suitable for lease or sale
33 to others in the ordinary course of the lessor's business, and
34 the lessor, before notice of repudiation is received and under
35 circumstances that reasonably indicate that the goods are for

1 the lessee, has made either a substantial beginning of their
2 manufacture or commitments for their procurement;

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

8 c. with respect to goods that have been received and
9 accepted by the lessee.

10 5. The lease term under a lease contract referred to in
11 subsection 4 is:

12 a. if there is a writing signed by the party against whom
13 enforcement is sought or by that party's authorized agent
14 specifying the lease term, the term so specified;

15 b. if the party against whom enforcement is sought admits
16 in that party's pleading, testimony, or otherwise in court a
17 lease term, the term so admitted; or

18 c. a reasonable lease term.

19 Sec. 15. NEW SECTION. 554.13202 FINAL WRITTEN EXPRESSION -
20 - PAROL OR EXTRINSIC EVIDENCE.

21 Terms with respect to which the confirmatory memoranda of
22 the parties agree or which are otherwise set forth in a
23 writing intended by the parties as a final expression of their
24 agreement with respect to such terms as are included therein
25 may not be contradicted by evidence of any prior agreement or
26 of a contemporaneous oral agreement but may be explained or
27 supplemented:

28 1. by course of dealing or usage of trade or by course of
29 performance; and

30 2. by evidence of consistent additional terms unless the
31 court finds the writing to have been intended also as a
32 complete and exclusive statement of the terms of the
33 agreement.

34 Sec. 16. NEW SECTION. 554.13203 SEALS INOPERATIVE.

35 The affixing of a seal to a writing evidencing a lease

1 contract or an offer to enter into a lease contract does not
2 render the writing a sealed instrument and the law with
3 respect to sealed instruments does not apply to the lease
4 contract or offer.

5 Sec. 17. NEW SECTION. 554.13204 FORMATION IN GENERAL.

6 1. A lease contract may be made in any manner sufficient
7 to show agreement, including conduct by both parties which
8 recognizes the existence of a lease contract.

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

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

16 Sec. 18. NEW SECTION. 554.13205 FIRM OFFERS.

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

25 Sec. 19. NEW SECTION. 554.13206 OFFER AND ACCEPTANCE IN
26 FORMATION OF LEASE CONTRACT.

27 1. Unless otherwise unambiguously indicated by the
28 language or circumstances, an offer to make a lease contract
29 must be construed as inviting acceptance in any manner and by
30 any medium reasonable in the circumstances.

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

35 Sec. 20. NEW SECTION. 554.13207 COURSE OF PERFORMANCE OR

1 PRACTICAL CONSTRUCTION.

2 1. If a lease contract involves repeated occasions for
3 performance by either party with knowledge of the nature of
4 the performance and opportunity for objection to it by the
5 other, any course of performance accepted or acquiesced in
6 without objection is relevant to determine the meaning of the
7 lease agreement.

8 2. The express terms of a lease agreement and any course
9 of performance, as well as any course of dealing and usage of
10 trade, must be construed whenever reasonable as consistent
11 with each other; but if that construction is unreasonable,
12 express terms control course of performance, course of
13 performance controls both course of dealing and usage of
14 trade, and course of dealing controls usage of trade.

15 3. Subject to the provisions of section 554.13208 on
16 modification and waiver, course of performance is relevant to
17 show a waiver or modification of any term inconsistent with
18 the course of performance.

19 Sec. 21. NEW SECTION. 554.13208 MODIFICATION,
20 RESCISSION, AND WAIVER.

21 1. An agreement modifying a lease contract needs no
22 consideration to be binding.

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

28 3. Although an attempt at modification or rescission does
29 not satisfy the requirements of subsection 2, it may operate
30 as a waiver.

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

1 position in reliance on the waiver.

2 Sec. 22. NEW SECTION. 554.13209 LESSEE UNDER FINANCE
3 LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

4 1. The benefit of a supplier's promises to the lessor
5 under the supply contract and of all warranties, whether
6 express or implied, including those of any third party
7 provided in connection with or as part of the supply contract,
8 extends to the lessee to the extent of the lessee's leasehold
9 interest under a finance lease related to the supply contract,
10 but is subject to the terms of the warranty and of the supply
11 contract and all 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 (i) modify the rights and obligations of the parties to the
15 supply contract, whether arising therefrom or otherwise, or
16 (ii) impose any duty or liability under the supply contract on
17 the lessee.

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

35 Sec. 23. NEW SECTION. 554.13210 EXPRESS WARRANTIES.

1 1. Express warranties by the lessor are created as
2 follows:

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

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

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

13 2. It is not necessary to the creation of an express
14 warranty that the lessor use formal words, such as "warrant"
15 or "guarantee," or that the lessor have a specific intention
16 to make a warranty, but an affirmation merely of the value of
17 the goods or a statement purporting to be merely the lessor's
18 opinion or commendation of the goods does not create a
19 warranty.

20 Sec. 24. NEW SECTION. 554.13211 WARRANTIES AGAINST
21 INTERFERENCE AND AGAINST INFRINGEMENT -- LESSEE'S OBLIGATION
22 AGAINST INFRINGEMENT.

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

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

33 3. A lessee who furnishes specifications to a lessor or a
34 supplier shall hold the lessor and the supplier harmless
35 against any claim by way of infringement or the like that

1 arises out of compliance with the specifications.

2 Sec. 25. NEW SECTION. 554.13212 IMPLIED WARRANTY OF
3 MERCHANTABILITY.

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

7 2. Goods to be merchantable must be at least such as

8 a. pass without objection in the trade under the
9 description in the lease agreement;

10 b. in the case of fungible goods, are of fair average
11 quality within the description;

12 c. are fit for the ordinary purposes for which goods of
13 that type are used;

14 d. run, within the variation permitted by the lease
15 agreement, of even kind, quality, and quantity within each
16 unit and among all units involved;

17 e. are adequately contained, packaged, and labeled as the
18 lease agreement may require; and

19 f. conform to any promises or affirmations of fact made on
20 the container or label.

21 3. Other implied warranties may arise from course of
22 dealing or usage of trade.

23 Sec. 26. NEW SECTION. 554.13213 IMPLIED WARRANTY OF
24 FITNESS FOR PARTICULAR PURPOSE.

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

31 Sec. 27. NEW SECTION. 554.13214 EXCLUSION OR
32 MODIFICATION OF WARRANTIES.

33 1. Words or conduct relevant to the creation of an express
34 warranty and words or conduct tending to negate or limit a
35 warranty must be construed wherever reasonable as consistent

1 with each other; but, subject to the provisions of section
2 554.13202 on parol or extrinsic evidence, negation or
3 limitation is inoperative to the extent that the construction
4 is unreasonable.

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

14 3. Notwithstanding subsection 2, but subject to subsection
15 4,

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

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

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

29 4. To exclude or modify a warranty against interference or
30 against infringement (section 554.13211) or any part of it,
31 the language must be specific, be by a writing, and be
32 conspicuous, unless the circumstances, including course of
33 performance, course of dealing, or usage of trade, give the
34 lessee reason to know that the goods are being leased subject
35 to a claim or interest of any person.

1 Sec. 28. NEW SECTION. 554.13215 CUMULATION AND CONFLICT
2 OF WARRANTIES EXPRESS OR IMPLIED.

3 Warranties, whether express or implied, must be construed
4 as consistent with each other and as cumulative, but if that
5 construction is unreasonable, the intention of the parties
6 determines which warranty is dominant. In ascertaining that
7 intention the following rules apply:

8 1. Exact or technical specifications displace an
9 inconsistent sample or model or general language of
10 description.

11 2. A sample from an existing bulk displaces inconsistent
12 general language of description.

13 3. Express warranties displace inconsistent implied
14 warranties other than an implied warranty of fitness for a
15 particular purpose.

16 Sec. 29. NEW SECTION. 554.13216 THIRD-PARTY
17 BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

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

29 Sec. 30. NEW SECTION. 554.13217 IDENTIFICATION.

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

34 1. when the lease contract is made if the lease contract
35 is for a lease of goods that are existing and identified;

1 2. when the goods are shipped, marked, or otherwise
2 designated by the lessor as goods to which the lease contract
3 refers, if the lease contract is for a lease of goods that are
4 not existing and identified; or

5 3. when the young are conceived, if the lease contract is
6 for a lease of unborn young of animals.

7 Sec. 31. NEW SECTION. 554.13218 INSURANCE AND PROCEEDS.

8 1. A lessee obtains an insurable interest when existing
9 goods are identified to the lease contract even though the
10 goods identified are nonconforming and the lessee has an
11 option to reject them.

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

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

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

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

27 Sec. 32. NEW SECTION. 554.13219 RISK OF LOSS.

28 1. Except in the case of a finance lease, risk of loss is
29 retained by the lessor and does not pass to the lessee. In
30 the case of a finance lease, risk of loss passes to the
31 lessee.

32 2. Subject to the provisions of this Article on the effect
33 of default on risk of loss (section 554.13220), if risk of
34 loss is to pass to the lessee and the time of passage is not
35 stated, the following rules apply:

1 a. If the lease contract requires or authorizes the goods
2 to be shipped by carrier

3 (1) and it does not require delivery at a particular
4 destination, the risk of loss passes to the lessee when the
5 goods are duly delivered to the carrier; but

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

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

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

20 Sec. 33. NEW SECTION. 554.13220 EFFECT OF DEFAULT ON
21 RISK OF LOSS.

22 1. Where risk of loss is to pass to the lessee and the
23 time of passage is not stated:

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

28 b. If the lessee rightfully revokes acceptance, the
29 lessee, to the extent of any deficiency in the lessee's
30 effective insurance coverage, may treat the risk of loss as
31 having remained with the lessor from the beginning.

32 2. Whether or not risk of loss is to pass to the lessee,
33 if the lessee as to conforming goods already identified to a
34 lease contract repudiates or is otherwise in default under the
35 lease contract, the lessor, or, in the case of a finance

1 lease, the supplier, to the extent of any deficiency in the
2 lessor's or supplier's effective insurance coverage may treat
3 the risk of loss as resting on the lessee for a commercially
4 reasonable time.

5 Sec. 34. NEW SECTION. 554.13221 CASUALTY TO IDENTIFIED
6 GOODS.

7 If a lease contract requires goods identified when the
8 lease contract is made, and the goods suffer casualty without
9 fault of the lessee, the lessor or the supplier before
10 delivery, or the goods suffer casualty before risk of loss
11 passes to the lessee pursuant to the lease agreement or
12 section 554.13219, then:

13 1. if the loss is total, the lease contract is avoided;
14 and

15 2. if the loss is partial or the goods have so
16 deteriorated as to no longer conform to the lease contract,
17 the lessee may nevertheless demand inspection and at the
18 lessee's option either treat the lease contract as avoided or,
19 except in a finance lease that is not a consumer lease, accept
20 the goods with due allowance from the rent payable for the
21 balance of the lease term for the deterioration or the
22 deficiency in quantity but without further right against the
23 lessor.

24 PART 3

25 EFFECT OF LEASE CONTRACT

26 Sec. 35. NEW SECTION. 554.13301 ENFORCEABILITY OF LEASE
27 CONTRACT.

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

32 Sec. 36. NEW SECTION. 554.13302 TITLE TO AND POSSESSION
33 OF GOODS.

34 Except as otherwise provided in this Article, each
35 provision of this Article applies whether the lessor or a

1 third party has title to the goods, and whether the lessor,
2 the lessee, or a third party has possession of the goods,
3 notwithstanding any statute or rule of law that possession or
4 the absence of possession is fraudulent.

5 Sec. 37. NEW SECTION. 554.13303 ALIENABILITY OF PARTY'S
6 INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST
7 IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.

8 1. As used in this section, "creation of a security
9 interest" includes the sale of a lease contract that is
10 subject to Article 9, Secured Transactions, by reason of
11 section 554.9102, subsection 1, paragraph "b".

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

22 3. A provision in a lease agreement which (i) prohibits
23 the creation or enforcement of a security interest in an
24 interest of a party under the lease contract or in the
25 lessor's residual interest in the goods, or (ii) makes such a
26 transfer an event of default, is not enforceable unless, and
27 then only to the extent that, there is an actual transfer by
28 the lessee of the lessee's right of possession or use of the
29 goods in violation of the provision or an actual delegation of
30 a material performance of either party to the lease contract
31 in violation of the provision. Neither the granting nor the
32 enforcement of a security interest in (i) the lessor's
33 interest under the lease contract or (ii) the lessor's
34 residual interest in the goods is a transfer that materially
35 impairs the prospect of obtaining return performance by,

1 materially changes the duty of, or materially increases the
2 burden or risk imposed on, the lessee within the purview of
3 subsection 5 unless, and then only to the extent that, there
4 is an actual delegation of a material performance of the
5 lessor.

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

16 5. Subject to subsections 3 and 4:

17 a. if a transfer is made which is made an event of default
18 under a lease agreement, the party to the lease contract not
19 making the transfer, unless that party waives the default or
20 otherwise agrees, has the rights and remedies described in
21 section 554.13501, subsection 2;

22 b. if paragraph "a" is not applicable and if a transfer is
23 made that (i) is prohibited under a lease agreement or (ii)
24 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 other party to
27 the lease contract, unless the party not making the transfer
28 agrees at any time to the transfer in the lease contract or
29 otherwise, then, except as limited by contract, (i) the
30 transferor is liable to the party not making the transfer for
31 damages caused by the transfer to the extent that the damages
32 could not reasonably be prevented by the party not making the
33 transfer and (ii) a court having jurisdiction may grant other
34 appropriate relief, including cancellation of the lease
35 contract or an injunction against the transfer.

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

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

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

18 Sec. 38. NEW SECTION. 554.13304 SUBSEQUENT LEASE OF
19 GOODS BY LESSOR.

20 1. Subject to section 554.13303, a subsequent lessee from
21 a lessor of goods under an existing lease contract obtains, to
22 the extent of the leasehold interest transferred, the
23 leasehold interest in the goods that the lessor had or had
24 power to transfer, and except as provided in subsection 2 and
25 section 554.13527, subsection 4, takes subject to the existing
26 lease contract. A lessor with voidable title has power to
27 transfer a good leasehold interest to a good faith subsequent
28 lessee for value, but only to the extent set forth in the
29 preceding sentence. If goods have been delivered under a
30 transaction of purchase, the lessor has that power even
31 though:

32 a. the lessor's transferor was deceived as to the identity
33 of the lessor;

34 b. the delivery was in exchange for a check which is later
35 dishonored;

1 c. it was agreed that the transaction was to be a "cash
2 sale"; or

3 d. the delivery was procured through fraud punishable as
4 larcenous under the criminal law.

5 2. A subsequent lessee in the ordinary course of business
6 from a lessor who is a merchant dealing in goods of that kind
7 to whom the goods were entrusted by the existing lessee of
8 that lessor before the interest of the subsequent lessee
9 became enforceable against that lessor obtains, to the extent
10 of the leasehold interest transferred, all of that lessor's
11 and the existing lessee's rights to the goods, and takes free
12 of the existing lease contract.

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

19 Sec. 39. NEW SECTION. 554.13305 SALE OR SUBLEASE OF
20 GOODS BY LESSEE.

21 1. Subject to the provisions of section 554.13303, a buyer
22 or sublessee from the lessee of goods under an existing lease
23 contract obtains, to the extent of the interest transferred,
24 the leasehold interest in the goods that the lessee had or had
25 power to transfer, and except as provided in subsection 2 and
26 section 554.13511, subsection 4, takes subject to the existing
27 lease contract. A lessee with a voidable leasehold interest
28 has power to transfer a good leasehold interest to a good
29 faith buyer for value or a good faith sublessee for value, but
30 only to the extent set forth in the preceding sentence. When
31 goods have been delivered under a transaction of lease the
32 lessee has that power even though:

33 a. the lessor was deceived as to the identity of the
34 lessee;

35 b. the delivery was in exchange for a check which is later

1 dishonored; or

2 c. the delivery was procured through fraud punishable as
3 larcenous under the criminal law.

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

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

16 Sec. 40. NEW SECTION. 554.13306 PRIORITY OF CERTAIN
17 LIENS ARISING BY OPERATION OF LAW.

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

27 Sec. 41. NEW SECTION. 554.13307 PRIORITY OF LIENS
28 ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND
29 OTHER CLAIMS TO GOODS.

30 1. Except as otherwise provided in section 554.13306, a
31 creditor of a lessee takes subject to the lease contract.

32 2. Except as otherwise provided in subsections 3 and 4 and
33 in sections 554.13306 and 554.13308, a creditor of a lessor
34 takes subject to the lease contract unless:

35 a. the creditor holds a lien that attached to the goods

1 before the lease contract became enforceable,

2 b. the creditor holds a security interest in the goods and
3 the lessee did not give value and receive delivery of the
4 goods without knowledge of the security interest; or

5 c. the creditor holds a security interest in the goods
6 which was perfected (section 554.9303) before the lease
7 contract became enforceable.

8 3. A lessee in the ordinary course of business takes the
9 leasehold interest free of a security interest in the goods
10 created by the lessor even though the security interest is
11 perfected (section 554.9303) and the lessee knows of its
12 existence.

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

22 Sec. 42. NEW SECTION. 554.13308 SPECIAL RIGHTS OF
23 CREDITORS.

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

31 2. Nothing in this Article impairs the rights of creditors
32 of a lessor if the lease contract (i) becomes enforceable, nor
33 in current course of trade but in satisfaction of or as
34 security for a preexisting claim for money, security, or the
35 like, and (ii) is made under circumstances which under any

1 statute or rule of law apart from this Article would
2 constitute the transaction a fraudulent transfer or voidable
3 preference.

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

12 Sec. 43. NEW SECTION. 554.13309 LESSOR'S AND LESSEE'S
13 RIGHTS WHEN GOODS BECOME FIXTURES.

14 1. In this section:

15 a. goods are "fixtures" when they become so related to
16 particular real estate that an interest in them arises under
17 real estate law;

18 b. a "fixture filing" is the filing, in the office where a
19 mortgage on the real estate would be filed or recorded, of a
20 financing statement covering goods that are or are to become
21 fixtures and conforming to the requirements of section
22 554.9402, subsection 5;

23 c. a lease is a "purchase money lease" unless the lessee
24 has possession or use of the goods or the right to possession
25 or use of the goods before the lease agreement is enforceable;

26 d. a mortgage is a "construction mortgage" to the extent
27 it secures an obligation incurred for the construction of an
28 improvement on land including the acquisition cost of the
29 land, if the recorded writing so indicates; and

30 e. "encumbrance" includes real estate mortgages and other
31 liens on real estate and all other rights in real estate that
32 are not ownership interests.

33 2. Under this Article a lease may be of goods that are
34 fixtures or may continue in goods that become fixtures, but no
35 lease exists under this Article of ordinary building materials

1 incorporated into an improvement on land.

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

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

7 a. the lease is a purchase money lease, the conflicting
8 interest of the encumbrancer or owner arises before the goods
9 become fixtures, the interest of the lessor is perfected by a
10 fixture filing before the goods become fixtures or within ten
11 days thereafter, and the lessee has an interest of record in
12 the real estate or is in possession of the real estate; or

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

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

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

29 b. the conflicting interest is a lien on the real estate
30 obtained by legal or equitable proceedings after the lease
31 contract is enforceable; or

32 c. the encumbrancer or owner has consented in writing to
33 the lease or has disclaimed an interest in the goods as
34 fixtures; or

35 d. the lessee has a right to remove the goods as against

1 the encumbrancer or owner. If the lessee's right to remove
2 terminates, the priority of the interest of the lessor
3 continues for a reasonable time.

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

16 7. In cases not within the preceding subsections, priority
17 between the interest of a lessor of fixtures, including the
18 lessor's residual interest, and the conflicting interest of an
19 encumbrancer or owner of the real estate who is not the lessee
20 is determined by the priority rules governing conflicting
21 interests in real estate.

22 8. If the interest of a lessor of fixtures, including the
23 lessor's residual interest, has priority over all conflicting
24 interests of all owners and encumbrancers of the real estate,
25 the lessor or the lessee may (i) on default, expiration,
26 termination, or cancellation of the lease agreement but
27 subject to the lease agreement and this Article, or (ii) if
28 necessary to enforce other rights and remedies of the lessor
29 or lessee under this Article, remove the goods from the real
30 estate, free and clear of all conflicting interests of all
31 owners and encumbrancers of the real estate, but the lessor or
32 lessee must reimburse any encumbrancer or owner of the real
33 estate who is not the lessee and who has not otherwise agreed
34 for the cost of repair of any physical injury, but not for any
35 diminution in value of the real estate caused by the absence

1 of the goods removed or by any necessity of replacing them. A
2 person entitled to reimbursement may refuse permission to
3 remove until the party seeking removal gives adequate security
4 for the performance of this obligation.

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

12 Sec. 44. NEW SECTION. 554.13310 LESSOR'S AND LESSEE'S
13 RIGHTS WHEN GOODS BECOME ACCESSIONS.

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

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

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

28 4. The interest of a lessor or a lessee under a lease
29 contract described in subsection 2 or 3 is subordinate to the
30 interest of

31 a. a buyer in the ordinary course of business or a lessee
32 in the ordinary course of business of any interest in the
33 whole acquired after the goods became accessions; or

34 b. a creditor with a security interest in the whole
35 perfected before the lease contract was made to the extent

1 that the creditor makes subsequent advances without knowledge
2 of the lease contract.

3 5. When under subsections 2 or 3 and 4 a lessor or a
4 lessee of accessions holds an interest that is superior to all
5 interests in the whole, the lessor or the lessee may (i) on
6 default, expiration, termination, or cancellation of the lease
7 contract by the other party but subject to the provisions of
8 the lease contract and this Article, or (ii) if necessary to
9 enforce the lessor's or lessee's other rights and remedies
10 under this Article, remove the goods from the whole, free and
11 clear of all interests in the whole, but the lessor or lessee
12 must reimburse any holder of an interest in the whole who is
13 not the lessee and who has not otherwise agreed for the cost
14 of repair of any physical injury but not for any diminution in
15 value of the whole caused by the absence of the goods removed
16 or by any necessity for replacing them. A person entitled to
17 reimbursement may refuse permission to remove until the party
18 seeking removal gives adequate security for the performance of
19 this obligation.

20 Sec. 45. NEW SECTION. 554.13311 PRIORITY SUBJECT TO
21 SUBORDINATION.

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

24 PART 4
25 PERFORMANCE OF LEASE CONTRACT -- REPUDIATED,
26 SUBSTITUTED, AND EXCUSED

27 Sec. 46. NEW SECTION. 554.13401 INSECURITY -- ADEQUATE
28 ASSURANCE OF PERFORMANCE.

29 1. A lease contract imposes an obligation on each party
30 that the other's expectation of receiving due performance will
31 not be impaired.

32 2. If reasonable grounds for insecurity arise with respect
33 to the performance of either party, the insecure party may
34 demand in writing adequate assurance of due performance.
35 Until the insecure party receives that assurance, if

1 commercially reasonable the insecure party may suspend any
2 performance for which the insecure party has not already
3 received the agreed return.

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

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

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

15 Sec. 47. NEW SECTION. 554.13402 ANTICIPATORY
16 REPUDIATION.

17 If either party repudiates a lease contract with respect to
18 a performance not yet due under the lease contract, the loss
19 of which performance will substantially impair the value of
20 the lease contract to the other, the aggrieved party may:

21 1. for a commercially reasonable time, await retraction of
22 repudiation and performance by the repudiating party;

23 2. make demand pursuant to section 554.13401 and await
24 assurance of future performance adequate under the
25 circumstances of the particular case; or

26 3. resort to any right or remedy upon default under the
27 lease contract or this Article, even though the aggrieved
28 party has notified the repudiating party that the aggrieved
29 party would await the repudiating party's performance and
30 assurance and has urged retraction. In addition, whether or
31 not the aggrieved party is pursuing one of the foregoing
32 remedies, the aggrieved party may suspend performance or, if
33 the aggrieved party is the lessor, proceed in accordance with
34 the provisions of this Article on the lessor's right to
35 identify goods to the lease contract notwithstanding default.

1 or to salvage unfinished goods (section 554.13524).

2 Sec. 48. NEW SECTION. 554.13403 RETRACTION OF
3 ANTICIPATORY REPUDIATION.

4 1. Until the repudiating party's next performance is due,
5 the repudiating party can retract the repudiation unless,
6 since the repudiation, the aggrieved party has cancelled the
7 lease contract or materially changed the aggrieved party's
8 position or otherwise indicated that the aggrieved party
9 considers the repudiation final.

10 2. Retraction may be by any method that clearly indicates
11 to the aggrieved party that the repudiating party intends to
12 perform under the lease contract and includes any assurance
13 demanded under section 554.13401.

14 3. Retraction reinstates a repudiating party's rights
15 under a lease contract with due excuse and allowance to the
16 aggrieved party for any delay occasioned by the repudiation.

17 Sec. 49. NEW SECTION. 554.13404 SUBSTITUTED PERFORMANCE.

18 1. If without fault of the lessee, the lessor and the
19 supplier, the agreed berthing, loading, or unloading
20 facilities fail or the agreed type of carrier becomes
21 unavailable or the agreed manner of delivery otherwise becomes
22 commercially impracticable, but a commercially reasonable
23 substitute is available, the substitute performance must be
24 tendered and accepted.

25 2. If the agreed means or manner of payment fails because
26 of domestic or foreign governmental regulation:

27 a. the lessor may withhold or stop delivery or cause the
28 supplier to withhold or stop delivery unless the lessee
29 provides a means or manner of payment that is commercially a
30 substantial equivalent; and

31 b. if delivery has already been taken, payment by the
32 means or in the manner provided by the regulation discharges
33 the lessee's obligation unless the regulation is
34 discriminatory, oppressive, or predatory.

35 Sec. 50. NEW SECTION. 554.13405 EXCUSED PERFORMANCE.

1 Subject to section 554.13404 on substituted performance,
2 the following rules apply:

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

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

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

27 Sec. 51. NEW SECTION. 554.13406 PROCEDURE ON EXCUSED
28 PERFORMANCE.

29 1. If the lessee receives notification of a material or
30 indefinite delay or an allocation justified under section
31 554.13405, the lessee may by written notification to the
32 lessor as to any goods involved, and with respect to all of
33 the goods if under an installment lease contract the value of
34 the whole lease contract is substantially impaired (section
35 554.13510):

1 a. terminate the lease contract (section 554.13505,
2 subsection 2); or
3 b. except in a finance lease that is not a consumer lease,
4 modify the lease contract by accepting the available quota in
5 substitution, with due allowance from the rent payable for the
6 balance of the lease term for the deficiency but without
7 further right against the lessor.

8 2. If, after receipt of a notification from the lessor
9 under section 554.13405, the lessee fails so to modify the
10 lease agreement within a reasonable time not exceeding thirty
11 days, the lease contract lapses with respect to any deliveries
12 affected.

13 Sec. 52. NEW SECTION. 554.13407 IRREVOCABLE PROMISES --
14 FINANCE LEASES.

15 1. In the case of a finance lease that is not a consumer
16 lease the lessee's promises under the lease contract become
17 irrevocable and independent upon the lessee's acceptance of
18 the goods.

19 2. A promise that has become irrevocable and independent
20 under subsection 1:

21 a. is effective and enforceable between the parties, and
22 by or against third parties including assignees of the
23 parties, and

24 b. is not subject to cancellation, termination,
25 modification, repudiation, excuse, or substitution without the
26 consent of the party to whom the promise runs.

27 3. This section does not affect the validity under any
28 other law of a covenant in any lease contract making the
29 lessee's promises irrevocable and independent upon the
30 lessee's acceptance of the goods.

31 PART 5

32 DEFAULT

33 A. IN GENERAL

34 Sec. 53. NEW SECTION. 554.13501 DEFAULT -- PROCEDURE.

35 1. Whether the lessor or the lessee is in default under a

1 lease contract is determined by the lease agreement and this
2 Article.

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

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

13 4. Except as otherwise provided in section 554.1106,
14 subsection 1, of this Article or the lease agreement, the
15 rights and remedies referred to in subsections 2 and 3 are
16 cumulative.

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

23 Sec. 54. NEW SECTION. 554.13502 NOTICE AFTER DEFAULT.

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

28 Sec. 55. NEW SECTION. 554.13503 MODIFICATION OR
29 IMPAIRMENT OF RIGHTS AND REMEDIES.

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

35 2. Resort to a remedy provided under this Article or in

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

6 3. Consequential damages may be liquidated under section
7 554.13504, or may otherwise be limited, altered, or excluded
8 unless the limitation, alteration, or exclusion is
9 unconscionable. Limitation, alteration, or exclusion of
10 consequential damages for injury to the person in the case of
11 consumer goods is prima facie unconscionable but limitation,
12 alteration, or exclusion of damages where the loss is
13 commercial is not prima facie unconscionable.

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

18 Sec. 56. NEW SECTION. 554.13504 LIQUIDATION OF DAMAGES.

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

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

31 3. If the lessor justifiably withholds or stops delivery
32 of goods because of the lessee's default or insolvency
33 (section 554.13525 or 554.13526), the lessee is entitled to
34 restitution of any amount by which the sum of the lessee's
35 payments exceeds:

1 a. the amount to which the lessor is entitled by virtue of
2 terms liquidating the lessor's damages in accordance with
3 subsection 1; or

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

9 4. A lessee's right to restitution under subsection 3 is
10 subject to offset to the extent the lessor establishes:

11 a. a right to recover damages under the provisions of this
12 Article other than subsection 1; and

13 b. the amount or value of any benefits received by the
14 lessee directly or indirectly by reason of the lease contract.

15 Sec. 57. NEW SECTION. 554.13505 CANCELLATION AND
16 TERMINATION AND EFFECT OF CANCELLATION, TERMINATION,
17 RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

18 1. On cancellation of the lease contract, all obligations
19 that are still executory on both sides are discharged, but any
20 right based on prior default or performance survives, and the
21 cancelling party also retains any remedy for default of the
22 whole lease contract or any unperformed balance.

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

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

30 4. Rights and remedies for material misrepresentation or
31 fraud include all rights and remedies available under this
32 Article for default.

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

1 or remedy.

2 Sec. 58. NEW SECTION. 554.13506 STATUTE OF LIMITATIONS.

3 1. An action for default under a lease contract, including
4 breach of warranty or indemnity, must be commenced within four
5 years after the cause of action accrued. By the original
6 lease contract the parties may reduce the period of limitation
7 to not less than one year.

8 2. A cause of action for default accrues when the act or
9 omission on which the default or breach of warranty is based
10 is or should have been discovered by the aggrieved party, or
11 when the default occurs, whichever is later. A cause of
12 action for indemnity accrues when the act or omission on which
13 the claim for indemnity is based is or should have been
14 discovered by the indemnified party, whichever is later.

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

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

26 Sec. 59. NEW SECTION. 554.13507 PROOF OF MARKET RENT --
27 TIME AND PLACE.

28 1. Damages based on market rent (section 554.13519 or
29 554.13528) are determined according to the rent for the use of
30 the goods concerned for a lease term identical to the
31 remaining lease term of the original lease agreement and
32 prevailing at the times specified in sections 554.13519 and
33 554.13528.

34 2. If evidence of rent for the use of the goods concerned
35 for a lease term identical to the remaining lease term of the

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

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

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

22 B. DEFAULT BY LESSOR

23 Sec. 60. NEW SECTION. 554.13508 LESSEE'S REMEDIES.

24 1. If a lessor fails to deliver the goods in conformity to
25 the lease contract (section 554.13509) or repudiates the lease
26 contract (section 554.13402), or a lessee rightfully rejects
27 the goods (section 554.13509) or justifiably revokes
28 acceptance of the goods (section 554.13517), then with respect
29 to any goods involved, and with respect to all of the goods if
30 under an installment lease contract the value of the whole
31 lease contract is substantially impaired (section 554.13510),
32 the lessor is in default under the lease contract and the
33 lessee may:

34 a. cancel the lease contract (section 554.13505,
35 subsection 1);

1 b. recover so much of the rent and security as has been
2 paid and is just under the circumstances;

3 c. cover and recover damages as to all goods affected
4 whether or not they have been identified to the lease contract
5 (sections 554.13518 and 554.13520), or recover damages for
6 nondelivery (sections 554.13519 and 554.13520);

7 d. exercise any other rights or pursue any other remedies
8 provided in the lease contract.

9 2. If a lessor fails to deliver the goods in conformity to
10 the lease contract or repudiates the lease contract, the
11 lessee may also:

12 a. if the goods have been identified, recover them
13 (section 554.13522); or

14 b. in a proper case, obtain specific performance or
15 replevy the goods (section 554.13521).

16 3. If a lessor is otherwise in default under a lease
17 contract, the lessee may exercise the rights and pursue the
18 remedies provided in the lease contract, which may include a
19 right to cancel the lease, and in section 554.13519,
20 subsection 3.

21 4. If a lessor has breached a warranty, whether express or
22 implied, the lessee may recover damages (section 554.13519,
23 subsection 4).

24 5. On rightful rejection or justifiable revocation of
25 acceptance, a lessee has a security interest in goods in the
26 lessee's possession or control for any rent and security that
27 has been paid and any expenses reasonably incurred in their
28 inspection, receipt, transportation, and care and custody and
29 may hold those goods and dispose of them in good faith and in
30 a commercially reasonable manner, subject to section
31 554.13527, subsection 5.

32 6. Subject to the provisions of section 554.13407, a
33 lessee, on notifying the lessor of the lessee's intention to
34 do so, may deduct all or any part of the damages resulting
35 from any default under the lease contract from any part of the

1 rent still due under the same lease contract.

2 Sec. 61. NEW SECTION. 554.13509 LESSEE'S RIGHTS ON
3 IMPROPER DELIVERY -- RIGHTFUL REJECTION.

4 1. Subject to the provisions of section 554.13510 on
5 default in installment lease contracts, if the goods or the
6 tender or delivery fail in any respect to conform to the lease
7 contract, the lessee may reject or accept the goods or accept
8 any commercial unit or units and reject the rest of the goods.

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

12 Sec. 62. NEW SECTION. 554.13510 INSTALLMENT LEASE
13 CONTRACTS -- REJECTION AND DEFAULT.

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

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

29 Sec. 63. NEW SECTION. 554.13511 MERCHANT LESSEE'S DUTIES
30 AS TO RIGHTFULLY REJECTED GOODS.

31 1. Subject to any security interest of a lessee (section
32 554.13508, subsection 5), if a lessor or a supplier has no
33 agent or place of business at the market of rejection, a
34 merchant lessee, after rejection of goods in the merchant
35 lessee's possession or control, shall follow any reasonable

1 instructions received from the lessor or the supplier with
2 respect to the goods. In the absence of those instructions, a
3 merchant lessee shall make reasonable efforts to sell, lease,
4 or otherwise dispose of the goods for the lessor's or
5 supplier's account if they threaten to decline in value
6 speedily. Instructions are not reasonable if on demand
7 indemnity for expenses is not forthcoming.

8 2. If a merchant lessee (subsection 1) or any other lessee
9 (section 554.13512) disposes of goods, the lessee is entitled
10 to reimbursement either from the lessor or the supplier or out
11 of the proceeds for reasonable expenses of caring for and
12 disposing of the goods and, if the expenses include no
13 disposition commission, to such commission as is usual in the
14 trade, or if there is none, to a reasonable sum not exceeding
15 ten percent of the gross proceeds.

16 3. In complying with this section or section 554.13512,
17 the lessee is held only to good faith. Good faith conduct
18 hereunder is neither acceptance or conversion nor the basis of
19 an action for damages.

20 4. A purchaser who purchases in good faith from a lessee
21 pursuant to this section or section 554.13512 takes the goods
22 free of any rights of the lessor and the supplier even though
23 the lessee fails to comply with one or more of the
24 requirements of this Article.

25 Sec. 64. NEW SECTION. 554.13512 LESSEE'S DUTIES AS TO
26 RIGHTFULLY REJECTED GOODS.

27 1. Except as otherwise provided with respect to goods that
28 threaten to decline in value speedily (section 554.13511) and
29 subject to any security interest of a lessee (section
30 554.13508, subsection 5):

31 a. the lessee, after rejection of goods in the lessee's
32 possession, shall hold them with reasonable care at the
33 lessor's or the supplier's disposition for a reasonable time
34 after the lessee's seasonable notification of rejection;

35 b. if the lessor or the supplier gives no instructions

1 within a reasonable time after notification of rejection, the
2 lessee may store the rejected goods for the lessor's or the
3 supplier's account or ship them to the lessor or the supplier
4 or dispose of them for the lessor's or the supplier's account
5 with reimbursement in the manner provided in section
6 554.13511; but

7 c. the lessee has no further obligations with regard to
8 goods rightfully rejected.

9 2. Action by the lessee pursuant to subsection 1 is not
10 acceptance or conversion.

11 Sec. 65. NEW SECTION. 554.13513 CURE BY LESSOR OF
12 IMPROPER TENDER OR DELIVERY -- REPLACEMENT.

13 1. If any tender or delivery by the lessor or the supplier
14 is rejected because nonconforming and the time for performance
15 has not yet expired, the lessor or the supplier may seasonably
16 notify the lessee of the lessor's or the supplier's intention
17 to cure and may then make a conforming delivery within the
18 time provided in the lease contract.

19 2. If the lessee rejects a nonconforming tender that the
20 lessor or the supplier had reasonable grounds to believe would
21 be acceptable with or without money allowance, the lessor or
22 the supplier may have a further reasonable time to substitute
23 a conforming tender if the lesser or supplier seasonably
24 notifies the lessee.

25 Sec. 66. NEW SECTION. 554.13514 WAIVER OF LESSEE'S
26 OBJECTIONS.

27 1. In rejecting goods, a lessee's failure to state a
28 particular defect that is ascertainable by reasonable
29 inspection precludes the lessee from relying on the defect to
30 justify rejection or to establish default:

31 a. if, stated seasonably, the lessor or the supplier could
32 have cured it (section 554.13513); or

33 b. between merchants if the lessor or the supplier after
34 rejection has made a request in writing for a full and final
35 written statement of all defects on which the lessee proposes

1 to rely.

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

5 Sec. 67. NEW SECTION. 554.13515 ACCEPTANCE OF GOODS.

6 1. Acceptance of goods occurs after the lessee has had a
7 reasonable opportunity to inspect the goods and

8 a. the lessee signifies or acts with respect to the goods
9 in a manner that signifies to the lessor or the supplier that
10 the goods are conforming or that the lessee will take or
11 retain them in spite of their nonconformity; or

12 b. the lessee fails to make an effective rejection of the
13 goods (section 554.13509, subsection 2).

14 2. Acceptance of a part of any commercial unit is
15 acceptance of that entire unit.

16 Sec. 68. NEW SECTION. 554.13516 EFFECT OF ACCEPTANCE OF
17 GOODS -- NOTICE OF DEFAULT -- BURDEN OF ESTABLISHING DEFAULT
18 AFTER ACCEPTANCE -- NOTICE OF CLAIM OR LITIGATION TO PERSON
19 ANSWERABLE OVER.

20 1. A lessee must pay rent for any goods accepted in
21 accordance with the lease contract, with due allowance for
22 goods rightfully rejected or not delivered.

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

32 3. If a tender has been accepted:

33 a. within a reasonable time after the lessee discovers or
34 should have discovered any default, the lessee shall notify
35 the lessor and the supplier, if any, or be barred from any

1 remedy against the party not notified;

2 b. except in the case of a consumer lease, within a
3 reasonable time after the lessee receives notice of litigation
4 for infringement or the like (section 554.13211) the lessee
5 shall notify the lessor or be barred from any remedy over for
6 liability established by the litigation; and

7 c. the burden is on the lessee to establish any default.

8 4. If a lessee is sued for breach of a warranty or other
9 obligation for which a lessor or a supplier is answerable over
10 the following apply:

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

19 b. The lessor or the supplier may demand in writing that
20 the lessee turn over control of the litigation including
21 settlement if the claim is one for infringement or the like
22 (section 554.13211) or else be barred from any remedy over.
23 If the demand states that the lessor or the supplier agrees to
24 bear all expense and to satisfy any adverse judgment, then
25 unless the lessee after reasonable receipt of the demand does
26 turn over control the lessee is so barred.

27 5. Subsections 3 and 4 apply to any obligation of a lessee
28 to hold the lessor or the supplier harmless against
29 infringement or the like (section 554.13211).

30 Sec. 69. NEW SECTION. 554.13517 REVOCATION OF ACCEPTANCE
31 OF GOODS.

32 1. A lessee may revoke acceptance of a lot or commercial
33 unit whose nonconformity substantially impairs its value to
34 the lessee if the lessee has accepted it:

35 a. except in the case of a finance lease, on the

1 reasonable assumption that its nonconformity would be cured
2 and it has not been seasonably cured; or

3 b. without discovery of the nonconformity if the lessee's
4 acceptance was reasonably induced either by the lessor's
5 assurances or, except in the case of a finance lease, by the
6 difficulty of discovery before acceptance.

7 2. Except in the case of a finance lease that is not a
8 consumer lease, a lessee may revoke acceptance of a lot or
9 commercial unit if the lessor defaults under the lease
10 contract and the default substantially impairs the value of
11 that lot or commercial unit to the lessee.

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

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

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

24 Sec. 70. NEW SECTION. 554.13518 COVER -- SUBSTITUTE
25 GOODS.

26 1. After a default by a lessor under the lease contract of
27 the type described in section 554.13508, subsection 1, or, if
28 agreed, after other default by the lessor, the lessee may
29 cover by making any purchase or lease of or contract to
30 purchase or lease goods in substitution for those due from the
31 lessor.

32 2. Except as otherwise provided with respect to damages
33 liquidated in the lease agreement (section 554.13504) or
34 otherwise determined pursuant to agreement of the parties
35 (sections 554.1102, subsection 3, and 554.13503), if a

1 lessee's cover is by a lease agreement substantially similar
2 to the original lease agreement and the new lease agreement is
3 made in good faith and in a commercially reasonable manner,
4 the lessee may recover from the lessor as damages (i) the
5 present value, as of the date of the commencement of the term
6 of the new lease agreement, of the rent under the new lease
7 agreement applicable to that period of the new lease term
8 which is comparable to the then remaining term of the original
9 lease agreement minus the present value as of the same date of
10 the total rent for the then remaining lease term of the
11 original lease agreement, and (ii) any incidental or
12 consequential damages, less expenses saved in consequence of
13 the lessor's default.

14 3. If a lessee's cover is by lease agreement that for any
15 reason does not qualify for treatment under subsection 2, or
16 is by purchase or otherwise, the lessee may recover from the
17 lessor as if the lessee had elected not to cover and section
18 554.13519 governs.

19 Sec. 71. NEW SECTION. 554.13519 LESSEE'S DAMAGES FOR
20 NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN
21 REGARD TO ACCEPTED GOODS.

22 1. Except as otherwise provided with respect to damages
23 liquidated in the lease agreement (section 554.13504) or
24 otherwise determined pursuant to agreement of the parties
25 (sections 554.1102, subsection 3, and 554.13503), if a lessee
26 elects not to cover or a lessee elects to cover and the cover
27 is by lease agreement that for any reason does not qualify for
28 treatment under section 554.13518, subsection 2, or is by
29 purchase or otherwise, the measure of damages for nondelivery
30 or repudiation by the lessor or for rejection or revocation of
31 acceptance by the lessee is the present value, as of the date
32 of the default, of the then market rent minus the present
33 value as of the same date of the original rent, computed for
34 the remaining lease term of the original lease agreement,
35 together with incidental and consequential damages, less

1 expenses saved in consequence of the lessor's default.

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

5 3. Except as otherwise agreed, if the lessee has accepted
6 goods and given notification (section 554.13516, subsection
7 3), the measure of damages for nonconforming tender or
8 delivery or other default by a lessor is the loss resulting in
9 the ordinary course of events from the lessor's default as
10 determined in any manner that is reasonable together with
11 incidental and consequential damages, less expenses saved in
12 consequence of the lessor's default.

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

21 Sec. 72. NEW SECTION. 554.13520 LESSEE'S INCIDENTAL AND
22 CONSEQUENTIAL DAMAGES.

23 1. Incidental damages resulting from a lessor's default
24 include expenses reasonably incurred in inspection, receipt,
25 transportation, and care and custody of goods rightfully
26 rejected or goods the acceptance of which is justifiably
27 revoked, any commercially reasonable charges, expenses or
28 commissions in connection with effecting cover, and any other
29 reasonable expense incident to the default.

30 2. Consequential damages resulting from a lessor's default
31 include:

32 a. any loss resulting from general or particular
33 requirements and needs of which the lessor at the time of
34 contracting had reason to know and which could not reasonably
35 be prevented by cover or otherwise; and

1 b. injury to person or property proximately resulting from
2 any breach of warranty.

3 Sec. 73. NEW SECTION. 554.13521 LESSEE'S RIGHT TO
4 SPECIFIC PERFORMANCE OR REPLEVIN.

5 1. Specific performance may be decreed if the goods are
6 unique or in other proper circumstances.

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

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

16 Sec. 74. NEW SECTION. 554.13522 LESSEE'S RIGHT TO GOODS
17 ON LESSOR'S INSOLVENCY.

18 1. Subject to subsection 2 and even though the goods have
19 not been shipped, a lessee who has paid a part or all of the
20 rent and security for goods identified to a lease contract
21 (section 554.13217) on making and keeping good a tender of any
22 unpaid portion of the rent and security due under the lease
23 contract may recover the goods identified from the lessor if
24 the lessor becomes insolvent within ten days after receipt of
25 the first installment of rent and security.

26 2. A lessee acquires the right to recover goods identified
27 to a lease contract only if they conform to the lease
28 contract.

29 C. DEFAULT BY LESSEE

30 Sec. 75. NEW SECTION. 554.13523 LESSOR'S REMEDIES.

31 1. If a lessee wrongfully rejects or revokes acceptance of
32 goods or fails to make a payment when due or repudiates with
33 respect to a part or the whole, then, with respect to any
34 goods involved, and with respect to all of the goods if under
35 an installment lease contract the value of the whole lease

1 contract is substantially impaired (section 554.13510), the
2 lessee is in default under the lease contract and the lessor
3 may:

4 a. cancel the lease contract (section 554.13505,
5 subsection 1);

6 b. proceed respecting goods not identified to the lease
7 contract (section 554.13524);

8 c. withhold delivery of the goods and take possession of
9 goods previously delivered (section 554.13525);

10 d. stop delivery of the goods by any bailee (section
11 554.13526);

12 e. dispose of the goods and recover damages (section
13 554.13527), or retain the goods and recover damages (section
14 554.13528), or in a proper case recover rent (section
15 554.13529);

16 f. exercise any other rights or pursue any other remedies
17 provided in the lease contract.

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

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

29 a. if the default substantially impairs the value of the
30 lease contract to the lessor, the lessor may exercise the
31 rights and pursue the remedies provided in subsection 1 or 2;
32 or

33 b. if the default does not substantially impair the value
34 of the lease contract to the lessor, the lessor may recover as
35 provided in subsection 2.

1 Sec. 76. NEW SECTION. 554.13524 LESSOR'S RIGHT TO
2 IDENTIFY GOODS TO LEASE CONTRACT.

3 1. After default by the lessee under the lease contract of
4 the type described in section 554.13523, subsection 1 or
5 section 554.13523, subsection 3, paragraph "a" or, if agreed,
6 after other default by the lessee, the lessor may:

7 a. identify to the lease contract conforming goods not
8 already identified if at the time the lessor learned of the
9 default they were in the lessor's or the supplier's possession
10 or control; and

11 b. dispose of goods (section 554.13527, subsection 1) that
12 demonstrably have been intended for the particular lease
13 contract even though those goods are unfinished.

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

21 Sec. 77. NEW SECTION. 554.13525 LESSOR'S RIGHT TO
22 POSSESSION OF GOODS.

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

25 2. After a default by the lessee under the lease contract
26 of the type described in section 554.13523, subsection 1 or
27 section 554.13523, subsection 3, paragraph "a" or, if agreed,
28 after other default by the lessee, the lessor has the right to
29 take possession of the goods. If the lease contract so
30 provides, the lessor may require the lessee to assemble the
31 goods and make them available to the lessor at a place to be
32 designated by the lessor which is reasonably convenient to
33 both parties. Without removal, the lessor may render unusable
34 any goods employed in trade or business, and may dispose of
35 goods on the lessee's premises (section 554.13527).

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

4 Sec. 78. NEW SECTION. 554.13526 LESSOR'S STOPPAGE OF
5 DELIVERY IN TRANSIT OR OTHERWISE.

6 1. A lessor may stop delivery of goods in the possession
7 of a carrier or other bailee if the lessor discovers the
8 lessee to be insolvent and may stop delivery of carload,
9 truckload, paneload, or larger shipments of express or
10 freight if the lessee repudiates or fails to make a payment
11 due before delivery, whether for rent, security or otherwise
12 under the lease contract, or for any other reason the lessor
13 has a right to withhold or take possession of the goods.

14 2. In pursuing its remedies under subsection 1, the lessor
15 may stop delivery until

16 a. receipt of the goods by the lessee;

17 b. acknowledgment to the lessee by any bailee of the
18 goods, except a carrier, that the bailee holds the goods for
19 the lessee; or

20 c. such an acknowledgment to the lessee by a carrier via
21 reshipment or as warehouseman.

22 3. a. To stop delivery, a lessor shall so notify as to
23 enable the bailee by reasonable diligence to prevent delivery
24 of the goods.

25 b. After notification, the bailee shall hold and deliver
26 the goods according to the directions of the lessor, but the
27 lessor is liable to the bailee for any ensuing charges or
28 damages.

29 c. A carrier who has issued a nonnegotiable bill of lading
30 is not obliged to obey a notification to stop received from a
31 person other than the consignor.

32 Sec. 79. NEW SECTION. 554.13527 LESSOR'S RIGHTS TO
33 DISPOSE OF GOODS.

34 1. After a default by a lessee under the lease contract of
35 the type described in section 554.13523, subsection 1 or

1 section 554.13523, subsection 3, paragraph "a" or after the
2 lessor refuses to deliver or takes possession of goods
3 (section 554.13525 or 554.13526), or, if agreed, after other
4 default by a lessee, the lessor may dispose of the goods
5 concerned or the undelivered balance thereof by lease, sale,
6 or otherwise.

7 2. Except as otherwise provided with respect to damages
8 liquidated in the lease agreement (section 554.13504) or
9 otherwise determined pursuant to agreement of the parties
10 (sections 554.1102, subsection 3, and 554.13503), if the
11 disposition is by lease agreement substantially similar to the
12 original lease agreement and the new lease agreement is made
13 in good faith and in a commercially reasonable manner, the
14 lessor may recover from the lessee as damages (i) accrued and
15 unpaid rent as of the date of the commencement of the term of
16 the new lease agreement, (ii) the present value, as of the
17 same date, of the total rent for the remaining lease term of
18 the original lease agreement minus the present value, as of
19 the same date, of the rent under the new lease agreement
20 applicable to that period of the new lease term which is
21 comparable to the then remaining term of the original lease
22 agreement, and (iii) any incidental damages allowed under
23 section 554.13530, less expenses saved in consequence of the
24 lessee's default.

25 3. If the lessor's disposition is by lease agreement that
26 for any reason does not qualify for treatment under subsection
27 2, or is by sale or otherwise, the lessor may recover from the
28 lessee as if the lessor had elected not to dispose of the
29 goods and section 554.13528 governs.

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

1 5. The lessor is not accountable to the lessee for any
2 profit made on any disposition. A lessee who has rightfully
3 rejected or justifiably revoked acceptance shall account to
4 the lessor for any excess over the amount of the lessee's
5 security interest (section 554.13508, subsection 5).

6 Sec. 80. NEW SECTION. 554.13528 LESSOR'S DAMAGES FOR
7 NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

8 1. Except as otherwise provided with respect to damages
9 liquidated in the lease agreement (section 554.13504) or
10 otherwise determined pursuant to agreement of the parties
11 (sections 554.1102, subsection 3, and 554.13503), if a lessor
12 elects to retain the goods or a lessor elects to dispose of
13 the goods and the disposition is by lease agreement that for
14 any reason does not qualify for treatment under section
15 554.13527, subsection 2, or is by sale or otherwise, the
16 lessor may recover from the lessee as damages for a default of
17 the type described in section 554.13523, subsection 1, or
18 section 554.13523, subsection 3, paragraph "a", or, if agreed,
19 for other default of the lessee, (i) accrued and unpaid rent
20 as of the date of default if the lessee has never taken
21 possession of the goods, or, if the lessee has taken
22 possession of the goods, as of the date the lessor repossesses
23 the goods or an earlier date on which the lessee makes a
24 tender of the goods to the lessor, (ii) the present value as
25 of the date determined under clause (i) of the total rent for
26 the then remaining lease term of the original lease agreement
27 minus the present value as of the same date of the market rent
28 at the place where the goods are located computed for the same
29 lease term, and (iii) any incidental damages allowed under
30 section 554.13530, less expenses saved in consequence of the
31 lessee's default.

32 2. If the measure of damages provided in subsection 1 is
33 inadequate to put a lessor in as good a position as
34 performance would have, the measure of damages is the present
35 value of the profit, including reasonable overhead, the lessor

1 would have made from full performance by the lessee, together
2 with any incidental damages allowed under section 554.13530,
3 due allowance for costs reasonably incurred and due credit for
4 payments or proceeds of disposition.

5 Sec. 81. NEW SECTION. 554.13529 LESSOR'S ACTION FOR THE
6 RENT.

7 1. After default by the lessee under the lease contract of
8 the type described in section 554.13523, subsection 1 or
9 section 554.13523, subsection 3, paragraph "a" or, if agreed,
10 after other default by the lessee, if the lessor complies with
11 subsection 2, the lessor may recover from the lessee as
12 damages:

13 a. for goods accepted by the lessee and not repossessed by
14 or tendered to the lessor, and for conforming goods lost or
15 damaged within a commercially reasonable time after risk of
16 loss passes to the lessee (section 554.13219), (i) accrued and
17 unpaid rent as of the date of entry of judgment in favor of
18 the lessor, (ii) the present value as of the same date of the
19 rent for the then remaining lease term of the lease agreement,
20 and (iii) any incidental damages allowed under section
21 554.13530, less expenses saved in consequence of the lessee's
22 default; and

23 b. for goods identified to the lease contract if the
24 lessor is unable after reasonable effort to dispose of them at
25 a reasonable price or the circumstances reasonably indicate
26 that effort will be unavailing, (i) accrued and unpaid rent as
27 of the date of entry of judgment in favor of the lessor, (ii)
28 the present value as of the same date of the rent for the then
29 remaining lease term of the lease agreement, and (iii) any
30 incidental damages allowed under section 554.13530, less
31 expenses saved in consequence of the lessee's default.

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

1 3. The lessor may dispose of the goods at any time before
2 collection of the judgment for damages obtained pursuant to
3 subsection 1. If the disposition is before the end of the
4 remaining lease term of the lease agreement, the lessor's
5 recovery against the lessee for damages is governed by section
6 554.13527 or 554.13528, and the lessor will cause an
7 appropriate credit to be provided against a judgment for
8 damages to the extent that the amount of the judgment exceeds
9 the recovery available pursuant to section 554.13527 or
10 554.13528.

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

15 5. After default by the lessee under the lease contract of
16 the type described in section 554.13523, subsection 1 or
17 section 554.13523, subsection 3, paragraph "a" or, if agreed,
18 after other default by the lessee, a lessor who is held not
19 entitled to rent under this section must nevertheless be
20 awarded damages for nonacceptance under section 554.13527 or
21 section 554.13528.

22 Sec. 82. NEW SECTION. 554.13530 LESSOR'S INCIDENTAL
23 DAMAGES.

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

30 Sec. 83. NEW SECTION. 554.13531 STANDING TO SUE THIRD
31 PARTIES FOR INJURY TO GOODS.

32 1. If a third party so deals with goods that have been
33 identified to a lease contract as to cause actionable injury
34 to a party to the lease contract (i) the lessor has a right of
35 action against the third party, and (ii) the lessee also has a

1 right of action against the third party if the lessee:

2 a. has a security interest in the goods;

3 b. has an insurable interest in the goods; or

4 c. bears the risk of loss under the lease contract or has
5 since the injury assumed that risk as against the lessor and
6 the goods have been converted or destroyed.

7 2. If at the time of the injury the party plaintiff did
8 not bear the risk of loss as against the other party to the
9 lease contract and there is no arrangement between them for
10 disposition of the recovery, the plaintiff party's suit or
11 settlement, subject to party plaintiff's own interest, is as a
12 fiduciary for the other party to the lease contract.

13 3. Either party with the consent of the other may sue for
14 the benefit of whom it may concern.

15 Sec. 84. NEW SECTION. 554.13532 LESSOR'S RIGHTS TO
16 RESIDUAL INTEREST.

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

22 EXPLANATION

23 This bill is based upon the recommendation of the permanent
24 editorial board for the uniform commercial code, by the
25 national conference for commissioners on uniform state laws,
26 and the American law institute.

27 Section 1 of the bill also contains a provision which was
28 not included in the recommendation of the permanent editorial
29 board for the uniform commercial code. That section of the
30 bill provides that an agreement involving the leasing of a
31 motor vehicle or trailer does not create a sale or security
32 interest solely because the agreement provides for an increase
33 or decrease adjustment in the rental price of the motor
34 vehicle or trailer based upon the amount realized upon sale or
35 other disposition of the motor vehicle following the

1 termination of the lease.

2 The bill generally relates to leases, other than leases
3 intended as security, but includes consumer leases and finance
4 leases.

5 Part 1 of the Article includes general provisions including
6 definitions. It provides that leases are subject to other
7 statutes, provides territorial application of the bill to
8 goods covered by a certificate of title, limits the power of
9 parties to consumer leases to choose applicable law and
10 judicial forums, provides for leases which are considered
11 unconscionable, and provides for acceleration of leases.

12 Part 2 of the Article provides for the formation and
13 construction of lease contracts, by restricting the
14 introduction on parol or extrinsic evidence, provides for the
15 manner of its formation; requires an offer and acceptance;
16 provides that course of performance may be used in its
17 construction; provides for modification, rescission, and
18 waiver; provides for warranties, the identification of goods
19 subject to lease, and insurance and insurance proceeds.

20 Part 3 of the Article provides for the effect of a lease,
21 including enforceability of a lease contract, title to and
22 possession of goods under lease, the subsequent lease of goods
23 by a lessor, the priority of liens and the rights of
24 creditors, and the rights of lessees when goods become
25 fixtures or accessions.

26 Part 4 of the Article provides for the performance of a
27 lease, including adequate assurance of performance,
28 anticipatory repudiation, substituted performance, excused
29 performance, and the irrevocability of finance leases upon a
30 promise under the lease.

31 Part 5 provides for default, including default procedures,
32 the modification or impairment of rights and remedies,
33 liquidated damages, cancellation and termination, damages, the
34 rejection or acceptance of goods, nondelivery, damages
35 including incidental and consequential damages, specific

1 performance, remedies, the right of the lessor to possession,
2 stoppage of delivery, and disposal, a lessor's action for
3 rent, and the standing to sue third parties.

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HSB 594

McNEAL, CHAIR
RAFFERTY

~~AT LITTONS~~

Judiciary & Law Enforcement
HOUSE FILE 2321
BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW EN-
FORCEMENT BILL BY
CHAIRPERSON McNEAL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to leases, by providing for leasing agreements,
2 and amending the uniform commercial code by establishing a new
3 article relating to leases.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 321.51 TERMINAL RENTAL ADJUST-
2 MENT CLAUSE -- VEHICLE LEASES THAT ARE NOT SALES OR SECURITY
3 INTERESTS.

4 An agreement involving the leasing of a motor vehicle or
5 trailer does not create a sale or security interest solely
6 because the agreement provides for an increase or decrease
7 adjustment in the rental price of the motor vehicle or trailer
8 based upon the amount realized upon sale or other disposition
9 of the motor vehicle following the termination of the lease.

10 Sec. 2. Section 554.1105, subsection 2, Code 1993, is
11 amended by adding the following new unnumbered paragraph:

12 NEW UNNUMBERED PARAGRAPH. Applicability of the Article on
13 Leases. Sections 554.13105 and 554.13106.

14 Sec. 3. Section 554.1201, subsection 37, Code 1993, is
15 amended to read as follows:

16 37. a. "Security interest" means an interest in personal
17 property or fixtures which secures payment or performance of
18 an obligation. The retention or reservation of title by a
19 seller of goods notwithstanding shipment or delivery to the
20 buyer (section 554.2401) is limited in effect to a reservation
21 of a "security interest". The term also includes any interest
22 of a buyer of accounts or chattel paper which is subject to
23 Article 9. The special property interest of a buyer of goods
24 on identification of ~~such~~ those goods to a contract for sale
25 under section 554.2401 is not a "security interest", but a
26 buyer may also acquire a "security interest" by complying with
27 Article 9. Unless a ~~lease-or~~ consignment is intended as
28 security, reservation of title thereunder is not a "security
29 interest", but a consignment ~~is~~ in any event is subject to the
30 provisions on consignment sales (section 554.2326).

31 b. Whether a transaction creates a lease is-intended-as or
32 security interest is ~~to-be~~ determined by the facts of each
33 case; however, ~~{a}-the-inclusion-of-an-option-to-purchase-does~~
34 ~~not-of-itself-make-the-lease-one-intended-for-security,-and~~
35 ~~{b}-an-agreement-that-upon-compliance-with-the-terms-of-the~~

1 lease-the-lessee-shall-become-or-has-the-option-to-become-the
2 owner-of-the-property-for-no-additional-consideration-or-for-a
3 nominal-consideration-does-make-the-lease-one-intended-for
4 security a transaction creates a security interest if the
5 consideration the lessee is to pay the lessor for the right to
6 possession and use of the goods is an obligation for the term
7 of the lease not subject to termination by the lessee, and

8 (1) the original term of the lease is equal to or greater
9 than the remaining economic life of the goods,

10 (2) the lessee is bound to renew the lease for the
11 remaining economic life of the goods or is bound to become the
12 owner of the goods,

13 (3) the lessee has an option to renew the lease for the
14 remaining economic life of the goods for no additional
15 consideration or nominal additional consideration upon
16 compliance with the lease agreement, or

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

20 c. A transaction does not create a security interest
21 merely because it provides that

22 (1) the present value of the consideration the lessee is
23 obligated to pay the lessor for the right to possession and
24 use of the goods is substantially equal to or is greater than
25 the fair market value of the goods at the time the lease is
26 entered into,

27 (2) the lessee assumes risk of loss of the goods, or
28 agrees to pay taxes, insurance, filing, recording, or
29 registration fees, or service or maintenance costs with
30 respect to the goods,

31 (3) the lessee has an option to renew the lease or to
32 become the owner of the goods,

33 (4) the lessee has an option to renew the lease for a
34 fixed rent that is equal to or greater than the reasonably
35 predictable fair market rent for the use of the goods for the

1 term of the renewal at the time the option is to be performed,
2 or

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

7 d. For purposes of this subsection:

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

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

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

32 Sec. 4. Section 554.9113, Code 1993, is amended to read as
33 follows:

34 554.9113 SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES
35 OR UNDER ARTICLE ON LEASES.

1 A security interest arising solely under the Article on
2 Sales (Article 2) or the Article on Leases (Article 13) is
3 subject to the provisions of this Article except that to the
4 extent that and so long as the debtor does not have or does
5 not lawfully obtain possession of the goods

6 a. no security agreement is necessary to make the security
7 interest enforceable; and

8 b. no filing is required to perfect the security interest;
9 and

10 c. the rights of the secured party on default by the
11 debtor are governed (i) by the Article on Sales (Article 2) in
12 the case of a security interest arising solely under such
13 Article or (ii) by the Article on Leases (Article 13) in the
14 case of a security interest arising solely under such Article.

15 ARTICLE 13

16 LEASES

17 PART 1

18 GENERAL PROVISIONS

19 Sec. 5. NEW SECTION. 554.13101 SHORT TITLE.

20 This Article shall be known and may be cited as the Uniform
21 Commercial Code - Leases.

22 Sec. 6. NEW SECTION. 554.13102 SCOPE.

23 This Article applies to any transaction, regardless of
24 form, that creates a lease.

25 Sec. 7. NEW SECTION. 554.13103 DEFINITIONS AND INDEX OF
26 DEFINITIONS.

27 1. In this Article unless the context otherwise requires:

28 a. "Buyer in ordinary course of business" means a person
29 who in good faith and without knowledge that the sale to the
30 person is in violation of the ownership rights or security
31 interest or leasehold interest of a third party in the goods,
32 buys in ordinary course from a person in the business of
33 selling goods of that kind but does not include a pawnbroker.
34 "Buying" may be for cash or by exchange of other property or
35 on secured or unsecured credit and includes receiving goods or

1 documents of title under a preexisting contract for sale but
2 does not include a transfer in bulk or as security for or in
3 total or partial satisfaction of a money debt.

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

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

14 d. "Conforming" goods or performance under a lease
15 contract means goods or performance that are in accordance
16 with the obligations under the lease contract.

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

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

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

27 (1) the lessor does not select, manufacture, or supply the
28 goods;

29 (2) the lessor acquires the goods or the right to
30 possession and use of the goods in connection with the lease;
31 and

32 (3) one of the following occurs:

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

1 (b) the lessee's approval of the contract by which the
2 lessor acquired the goods or the right to possession and use
3 of the goods is a condition to effectiveness of the lease
4 contract;

5 (c) the lessee, before signing the lease contract,
6 receives an accurate and complete statement designating the
7 promises and warranties, and any disclaimers of warranties,
8 limitations or modifications of remedies, or liquidated
9 damages, including those of a third party, such as the
10 manufacturer of the goods, provided to the lessor by the
11 person supplying the goods in connection with or as part of
12 the contract by which the lessor acquired the goods or the
13 right to possession and use of the goods; or

14 (d) if the lease is not a consumer lease, the lessor,
15 before the lessee signs the lease contract, informs the lessee
16 in writing (i) of the identity of the person supplying the
17 goods to the lessor, unless the lessee has selected that
18 person and directed the lessor to acquire the goods or the
19 right to possession and use of the goods from that person,
20 (ii) that the lessee is entitled under this Article to the
21 promises and warranties, including those of any third party,
22 provided to the lessor by the person supplying the goods in
23 connection with or as part of the contract by which the lessor
24 acquired the goods or the right to possession and use of the
25 goods, and (iii) that the lessee may communicate with the
26 person supplying the goods to the lessor and receive an
27 accurate and complete statement of those promises and
28 warranties, including any disclaimers and limitations of them
29 or of remedies.

30 h. "Goods" means all things that are movable at the time
31 of identification to the lease contract, or are fixtures
32 (section 554.13309), but the term does not include money,
33 documents, instruments, accounts, chattel paper, general
34 intangibles, or minerals or the like, including oil and gas,
35 before extraction. The term also includes the unborn young of

1 animals.

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

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

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

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

25 m. "Leasehold interest" means the interest of the lessor
26 or the lessee under a lease contract.

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

30 o. "Lessee in ordinary course of business" means a person
31 who in good faith and without knowledge that the lease to the
32 person is in violation of the ownership rights or security
33 interest or leasehold interest of a third party in the goods
34 leases in ordinary course from a person in the business of
35 selling or leasing goods of that kind but does not include a

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

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

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

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

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

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

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

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

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

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

3 y. "Supply contract" means a contract under which a lessor
4 buys or leases goods to be leased.

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

8 2. Other definitions applying to this Article and the
9 sections in which they appear are:

10 "Accessions".	Section 554.13310, subsection 1.
11 "Construction mortgage".	Section 554.13309, subsection 1, 12 paragraph "d".
13 "Encumbrance".	Section 554.13309, subsection 1, 14 paragraph "e".
15 "Fixtures".	Section 554.13309, subsection 1, 16 paragraph "a".
17 "Fixture filing".	Section 554.13309, subsection 1, 18 paragraph "b".
19 "Purchase money lease".	Section 554.13309, subsection 1, 20 paragraph "c".

21 3. The following definitions in other Articles apply to
22 this Article:

23 "Account".	Section 554.9106.
24 "Between merchants".	Section 554.2104, subsection 3.
25 "Buyer".	Section 554.2103, subsection 1, 26 paragraph "a".
27 "Chattel paper".	Section 554.9105, subsection 1, 28 paragraph "b".
29 "Consumer goods".	Section 554.9109, subsection 1.
30 "Document".	Section 554.9105, subsection 1, 31 paragraph "f".
32 "Entrusting".	Section 554.2403, subsection 3.
33 "General intangibles".	Section 554.9106.
34 "Good faith".	Section 554.2103, subsection 1, 35 paragraph "b".

1	"Instrument".	Section 554.9105, subsection 1,
2		paragraph "i".
3	"Merchant".	Section 554.2104, subsection 1.
4	"Mortgage".	Section 554.9105, subsection 1,
5		paragraph "j".
6	"Pursuant to	Section 554.9105, subsection 1,
7	commitment".	paragraph "k".
8	"Receipt".	Section 554.2103, subsection 1,
9		paragraph "c".
10	"Sale".	Section 554.2106, subsection 1.
11	"Sale on approval".	Section 554.2326.
12	"Sale or return".	Section 554.2326.
13	"Seller".	Section 554.2103, subsection 1,
14		paragraph "d".

15 4. In addition, Article 1 contains general definitions and
 16 principles of construction and interpretation applicable
 17 throughout this Article.

18 Sec. 8. NEW SECTION. 554.13104 LEASES SUBJECT TO OTHER
 19 LAW.

20 1. A lease, although subject to this Article, is also
 21 subject to any applicable:

- 22 a. certificate of title or registration statute of this
- 23 state: (including as provided in chapters 321 and 462A);
- 24 b. certificate of title statute of another jurisdiction
- 25 (section 554.13105); or
- 26 c. consumer protection statute of this state, or final
- 27 consumer protection decision of a court of this state existing
- 28 on the effective date of this Act.

29 2. In case of conflict between this Article, other than
 30 sections 554.13105, 554.13304, subsection 3, and 554.13305,
 31 subsection 3, and a statute or decision referred to in
 32 subsection 1, the statute or decision controls.

33 3. Failure to comply with an applicable law has only the
 34 effect specified therein.

35 Sec. 9. NEW SECTION. 554.13105 TERRITORIAL APPLICATION

1 OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

2 Subject to the provisions of sections 554.13304, subsection
3 3, and 554.13305, subsection 3, with respect to goods covered
4 by a certificate of title issued under a statute of this state
5 or of another jurisdiction, compliance and the effect of
6 compliance or noncompliance with a certificate of title
7 statute are governed by the law (including the conflict of
8 laws rules) of the jurisdiction issuing the certificate until
9 the earlier of (i) surrender of the certificate, or (ii) four
10 months after the goods are removed from that jurisdiction and
11 thereafter until a new certificate of title is issued by
12 another jurisdiction.

13 Sec. 10. NEW SECTION. 554.13106 LIMITATION ON POWER OF
14 PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND
15 JUDICIAL FORUM.

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

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

24 Sec. 11. NEW SECTION. 554.13107 WAIVER OR RENUNCIATION
25 OF CLAIM OR RIGHT AFTER DEFAULT.

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

30 Sec. 12. NEW SECTION. 554.13108 UNCONSCIONABILITY.

31 1. If the court as a matter of law finds a lease contract
32 or any clause of a lease contract to have been unconscionable.
33 at the time it was made the court may refuse to enforce the
34 lease contract, or it may enforce the remainder of the lease
35 contract without the unconscionable clause, or it may so limit

1 the application of any unconscionable clause as to avoid any
2 unconscionable result.

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

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

14 4. In an action in which the lessee claims
15 unconscionability with respect to a consumer lease:

16 a. If the court finds unconscionability under subsection 1
17 or 2, the court shall award reasonable attorney's fees to the
18 lessee.

19 b. If the court does not find unconscionability and the
20 lessee claiming unconscionability has brought or maintained an
21 action that the lessee knew to be groundless, the court shall
22 award reasonable attorney's fees to the party against whom the
23 claim is made.

24 c. In determining attorney's fees, the amount of the
25 recovery on behalf of the claimant under subsections 1 and 2
26 is not controlling.

27 Sec. 13. NEW SECTION. 554.13109 OPTION TO ACCELERATE AT
28 WILL.

29 1. A term providing that one party or the party's
30 successor in interest may accelerate payment or performance or
31 require collateral or additional collateral "at will" or "when
32 the party deems the party insecure" or in words of similar
33 import must be construed to mean that the party has power to
34 do so only if the party in good faith believes that the
35 prospect of payment or performance is impaired.

1 2. With respect to a consumer lease, the burden of
2 establishing good faith under subsection 1 is on the party who
3 exercised the power; otherwise the burden of establishing lack
4 of good faith is on the party against whom the power has been
5 exercised.

6 PART 2

7 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

8 Sec. 14. NEW SECTION. 554.13201 STATUTE OF FRAUDS.

9 1. A lease contract is not enforceable by way of action or
10 defense unless:

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

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

19 2. Any description of leased goods or of the lease term is
20 sufficient and satisfies subsection 1, paragraph "b", whether
21 or not it is specific, if it reasonably identifies what is
22 described.

23 3. A writing is not insufficient because it omits or
24 incorrectly states a term agreed upon, but the lease contract
25 is not enforceable under subsection 1, paragraph "b", beyond
26 the lease term and the quantity of goods shown in the writing.

27 4. A lease contract that does not satisfy the requirements
28 of subsection 1, but which is valid in other respects, is
29 enforceable:

30 a. if the goods are to be specially manufactured or
31 obtained for the lessee and are not suitable for lease or sale
32 to others in the ordinary course of the lessor's business, and
33 the lessor, before notice of repudiation is received and under
34 circumstances that reasonably indicate that the goods are for
35 the lessee, has made either a substantial beginning of their

1 manufacture or commitments for their procurement;

2 b. if the party against whom enforcement is sought admits
3 in that party's pleading, testimony or otherwise in court that
4 a lease contract was made, but the lease contract is not
5 enforceable under this provision beyond the quantity of goods
6 admitted; or

7 c. with respect to goods that have been received and
8 accepted by the lessee.

9 5. The lease term under a lease contract referred to in
10 subsection 4 is:

11 a. if there is a writing signed by the party against whom
12 enforcement is sought or by that party's authorized agent
13 specifying the lease term, the term so specified;

14 b. if the party against whom enforcement is sought admits
15 in that party's pleading, testimony, or otherwise in court a
16 lease term, the term so admitted; or

17 c. a reasonable lease term.

18 Sec. 15. NEW SECTION. 554.13202 FINAL WRITTEN EXPRESSION
19 -- PAROL OR EXTRINSIC EVIDENCE.

20 Terms with respect to which the confirmatory memoranda of
21 the parties agree or which are otherwise set forth in a
22 writing intended by the parties as a final expression of their
23 agreement with respect to such terms as are included therein
24 may not be contradicted by evidence of any prior agreement or
25 of a contemporaneous oral agreement but may be explained or
26 supplemented:

27 1. by course of dealing or usage of trade or by course of
28 performance; and

29 2. by evidence of consistent additional terms unless the
30 court finds the writing to have been intended also as a
31 complete and exclusive statement of the terms of the
32 agreement.

33 Sec. 16. NEW SECTION. 554.13203 SEALS INOPERATIVE.

34 The affixing of a seal to a writing evidencing a lease
35 contract or an offer to enter into a lease contract does not

1 render the writing a sealed instrument and the law with
2 respect to sealed instruments does not apply to the lease
3 contract or offer.

4 Sec. 17. NEW SECTION. 554.13204 FORMATION IN GENERAL.

5 1. A lease contract may be made in any manner sufficient
6 to show agreement, including conduct by both parties which
7 recognizes the existence of a lease contract.

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

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

15 Sec. 18. NEW SECTION. 554.13205 FIRM OFFERS.

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

24 Sec. 19. NEW SECTION. 554.13206 OFFER AND ACCEPTANCE IN
25 FORMATION OF LEASE CONTRACT.

26 1. Unless otherwise unambiguously indicated by the
27 language or circumstances, an offer to make a lease contract
28 must be construed as inviting acceptance in any manner and by
29 any medium reasonable in the circumstances.

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

34 Sec. 20. NEW SECTION. 554.13207 COURSE OF PERFORMANCE OR
35 PRACTICAL CONSTRUCTION.

1 1. If a lease contract involves repeated occasions for
2 performance by either party with knowledge of the nature of
3 the performance and opportunity for objection to it by the
4 other, any course of performance accepted or acquiesced in
5 without objection is relevant to determine the meaning of the
6 lease agreement.

7 2. The express terms of a lease agreement and any course
8 of performance, as well as any course of dealing and usage of
9 trade, must be construed whenever reasonable as consistent
10 with each other; but if that construction is unreasonable,
11 express terms control course of performance, course of
12 performance controls both course of dealing and usage of
13 trade, and course of dealing controls usage of trade.

14 3. Subject to the provisions of section 554.13208 on
15 modification and waiver, course of performance is relevant to
16 show a waiver or modification of any term inconsistent with
17 the course of performance.

18 Sec. 21. NEW SECTION. 554.13208 MODIFICATION,
19 RESCISSION, AND WAIVER.

20 1. An agreement modifying a lease contract needs no
21 consideration to be binding.

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

27 3. Although an attempt at modification or rescission does
28 not satisfy the requirements of subsection 2, it may operate
29 as a waiver.

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

1 Sec. 22. NEW SECTION. 554.13209 LESSEE UNDER FINANCE
2 LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

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

11 2. The extension of the benefit of a supplier's promises
12 and of warranties to the lessee under subsection 1 does not:
13 (i) modify the rights and obligations of the parties to the
14 supply contract, whether arising therefrom or otherwise, or
15 (ii) impose any duty or liability under the supply contract on
16 the lessee.

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

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

34 Sec. 23. NEW SECTION. 554.13210 EXPRESS WARRANTIES.

35 1. Express warranties by the lessor are created as

1 follows:

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

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

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

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

19 Sec. 24. NEW SECTION. 554.13211 WARRANTIES AGAINST
20 INTERFERENCE AND AGAINST INFRINGEMENT -- LESSEE'S OBLIGATION
21 AGAINST INFRINGEMENT.

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

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

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

1 Sec. 25. NEW SECTION. 554.13212 IMPLIED WARRANTY OF
2 MERCHANTABILITY.

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

6 2. Goods to be merchantable must be at least such as

7 a. pass without objection in the trade under the
8 description in the lease agreement;

9 b. in the case of fungible goods, are of fair average
10 quality within the description;

11 c. are fit for the ordinary purposes for which goods of
12 that type are used;

13 d. run, within the variation permitted by the lease
14 agreement, of even kind, quality, and quantity within each
15 unit and among all units involved;

16 e. are adequately contained, packaged, and labeled as the
17 lease agreement may require; and

18 f. conform to any promises or affirmations of fact made on
19 the container or label.

20 3. Other implied warranties may arise from course of
21 dealing or usage of trade.

22 Sec. 26. NEW SECTION. 554.13213 IMPLIED WARRANTY OF
23 FITNESS FOR PARTICULAR PURPOSE.

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

30 Sec. 27. NEW SECTION. 554.13214 EXCLUSION OR
31 MODIFICATION OF WARRANTIES.

32 1. Words or conduct relevant to the creation of an express
33 warranty and words or conduct tending to negate or limit a
34 warranty must be construed wherever reasonable as consistent
35 with each other; but, subject to the provisions of section

1 554.13202 on parol or extrinsic evidence, negation or
2 limitation is inoperative to the extent that the construction
3 is unreasonable.

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

13 3. Notwithstanding subsection 2, but subject to subsection
14 4,

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

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

26 c. an implied warranty may also be excluded or modified by
27 course of dealing, course of performance, or usage of trade.

28 4. To exclude or modify a warranty against interference or
29 against infringement (section 554.13211) or any part of it,
30 the language must be specific, be by a writing, and be
31 conspicuous, unless the circumstances, including course of
32 performance, course of dealing, or usage of trade, give the
33 lessee reason to know that the goods are being leased subject
34 to a claim or interest of any person.

35 Sec. 28. NEW SECTION. 554.13215 CUMULATION AND CONFLICT

1 OF WARRANTIES EXPRESS OR IMPLIED.

2 Warranties, whether express or implied, must be construed
3 as consistent with each other and as cumulative, but if that
4 construction is unreasonable, the intention of the parties
5 determines which warranty is dominant. In ascertaining that
6 intention the following rules apply:

7 1. Exact or technical specifications displace an
8 inconsistent sample or model or general language of
9 description.

10 2. A sample from an existing bulk displaces inconsistent
11 general language of description.

12 3. Express warranties displace inconsistent implied
13 warranties other than an implied warranty of fitness for a
14 particular purpose.

15 Sec. 29. NEW SECTION. 554.13216 THIRD-PARTY
16 BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

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

28 Sec. 30. NEW SECTION. 554.13217 IDENTIFICATION.

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

33 1. when the lease contract is made if the lease contract
34 is for a lease of goods that are existing and identified;

35 2. when the goods are shipped, marked, or otherwise

1 designated by the lessor as goods to which the lease contract
2 refers, if the lease contract is for a lease of goods that are
3 not existing and identified; or

4 3. when the young are conceived, if the lease contract is
5 for a lease of unborn young of animals.

6 Sec. 31. NEW SECTION. 554.13218 INSURANCE AND PROCEEDS.

7 1. A lessee obtains an insurable interest when existing
8 goods are identified to the lease contract even though the
9 goods identified are nonconforming and the lessee has an
10 option to reject them.

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

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

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

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

26 Sec. 32. NEW SECTION. 554.13219 RISK OF LOSS.

27 1. Except in the case of a finance lease, risk of loss is
28 retained by the lessor and does not pass to the lessee. In
29 the case of a finance lease, risk of loss passes to the
30 lessee.

31 2. Subject to the provisions of this Article on the effect
32 of default on risk of loss (section 554.13220), if risk of
33 loss is to pass to the lessee and the time of passage is not
34 stated, the following rules apply:

35 a. If the lease contract requires or authorizes the goods

1 to be shipped by carrier

2 (1) and it does not require delivery at a particular
3 destination, the risk of loss passes to the lessee when the
4 goods are duly delivered to the carrier; but

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

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

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

19 Sec. 33. NEW SECTION. 554.13220 EFFECT OF DEFAULT ON
20 RISK OF LOSS.

21 1. Where risk of loss is to pass to the lessee and the
22 time of passage is not stated:

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

27 b. If the lessee rightfully revokes acceptance, the
28 lessee, to the extent of any deficiency in the lessee's
29 effective insurance coverage, may treat the risk of loss as
30 having remained with the lessor from the beginning.

31 2. Whether or not risk of loss is to pass to the lessee,
32 if the lessee as to conforming goods already identified to a
33 lease contract repudiates or is otherwise in default under the
34 lease contract, the lessor, or, in the case of a finance
35 lease, the supplier, to the extent of any deficiency in the

1 lessor's or supplier's effective insurance coverage may treat
2 the risk of loss as resting on the lessee for a commercially
3 reasonable time.

4 Sec. 34. NEW SECTION. 554.13221 CASUALTY TO IDENTIFIED
5 GOODS.

6 If a lease contract requires goods identified when the
7 lease contract is made, and the goods suffer casualty without
8 fault of the lessee, the lessor or the supplier before
9 delivery, or the goods suffer casualty before risk of loss
10 passes to the lessee pursuant to the lease agreement or
11 section 554.13219, then:

12 1. if the loss is total, the lease contract is avoided;
13 and

14 2. if the loss is partial or the goods have so
15 deteriorated as to no longer conform to the lease contract,
16 the lessee may nevertheless demand inspection and at the
17 lessee's option either treat the lease contract as avoided or,
18 except in a finance lease that is not a consumer lease, accept
19 the goods with due allowance from the rent payable for the
20 balance of the lease term for the deterioration or the
21 deficiency in quantity but without further right against the
22 lessor.

23 PART 3

24 EFFECT OF LEASE CONTRACT

25 Sec. 35. NEW SECTION. 554.13301 ENFORCEABILITY OF LEASE
26 CONTRACT.

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

31 Sec. 36. NEW SECTION. 554.13302 TITLE TO AND POSSESSION
32 OF GOODS.

33 Except as otherwise provided in this Article, each
34 provision of this Article applies whether the lessor or a
35 third party has title to the goods, and whether the lessor,

1 the lessee, or a third party has possession of the goods,
2 notwithstanding any statute or rule of law that possession or
3 the absence of possession is fraudulent.

4 Sec. 37. NEW SECTION. 554.13303 ALIENABILITY OF PARTY'S
5 INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST
6 IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.

7 1. As used in this section, "creation of a security
8 interest" includes the sale of a lease contract that is
9 subject to Article 9, Secured Transactions, by reason of
10 section 554.9102, subsection 1, paragraph "b".

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

21 3. A provision in a lease agreement which (i) prohibits
22 the creation or enforcement of a security interest in an
23 interest of a party under the lease contract or in the
24 lessor's residual interest in the goods, or (ii) makes such a
25 transfer an event of default, is not enforceable unless, and
26 then only to the extent that, there is an actual transfer by
27 the lessee of the lessee's right of possession or use of the
28 goods in violation of the provision or an actual delegation of
29 a material performance of either party to the lease contract
30 in violation of the provision. Neither the granting nor the
31 enforcement of a security interest in (i) the lessor's
32 interest under the lease contract or (ii) the lessor's
33 residual interest in the goods is a transfer that materially
34 impairs the prospect of obtaining return performance by,
35 materially changes the duty of, or materially increases the

1 burden or risk imposed on, the lessee within the purview of
2 subsection 5 unless, and then only to the extent that, there
3 is an actual delegation of a material performance of the
4 lessor.

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

15 5. Subject to subsections 3 and 4:

16 a. if a transfer is made which is made an event of default
17 under a lease agreement, the party to the lease contract not
18 making the transfer, unless that party waives the default or
19 otherwise agrees, has the rights and remedies described in
20 section 554.13501, subsection 2;

21 b. if paragraph "a" is not applicable and if a transfer is
22 made that (i) is prohibited under a lease agreement or (ii)
23 materially impairs the prospect of obtaining return
24 performance by, materially changes the duty of, or materially
25 increases the burden or risk imposed on, the other party to
26 the lease contract, unless the party not making the transfer
27 agrees at any time to the transfer in the lease contract or
28 otherwise, then, except as limited by contract, (i) the
29 transferor is liable to the party not making the transfer for
30 damages caused by the transfer to the extent that the damages
31 could not reasonably be prevented by the party not making the
32 transfer and (ii) a court having jurisdiction may grant other
33 appropriate relief, including cancellation of the lease
34 contract or an injunction against the transfer.

35 6. A transfer of "the lease" or of "all my rights under

1 the lease", or a transfer in similar general terms, is a
2 transfer of rights and, unless the language or the
3 circumstances, as in a transfer for security, indicate the
4 contrary, the transfer is a delegation of duties by the
5 transferor to the transferee. Acceptance by the transferee
6 constitutes a promise by the transferee to perform those
7 duties. The promise is enforceable by either the transferor
8 or the other party to the lease contract.

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

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

17 Sec. 38. NEW SECTION. 554.13304 SUBSEQUENT LEASE OF
18 GOODS BY LESSOR.

19 1. Subject to section 554.13303, a subsequent lessee from
20 a lessor of goods under an existing lease contract obtains, to
21 the extent of the leasehold interest transferred, the
22 leasehold interest in the goods that the lessor had or had
23 power to transfer, and except as provided in subsection 2 and
24 section 554.13527, subsection 4, takes subject to the existing
25 lease contract. A lessor with voidable title has power to
26 transfer a good leasehold interest to a good faith subsequent
27 lessee for value, but only to the extent set forth in the
28 preceding sentence. If goods have been delivered under a
29 transaction of purchase, the lessor has that power even
30 though:

31 a. the lessor's transferor was deceived as to the identity
32 of the lessor;

33 b. the delivery was in exchange for a check which is later
34 dishonored;

35 c. it was agreed that the transaction was to be a "cash

1 sale"; or

2 d. the delivery was procured through fraud punishable as
3 larcenous under the criminal law.

4 2. A subsequent lessee in the ordinary course of business
5 from a lessor who is a merchant dealing in goods of that kind
6 to whom the goods were entrusted by the existing lessee of
7 that lessor before the interest of the subsequent lessee
8 became enforceable against that lessor obtains, to the extent
9 of the leasehold interest transferred, all of that lessor's
10 and the existing lessee's rights to the goods, and takes free
11 of the existing lease contract.

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

18 Sec. 39. NEW SECTION. 554.13305 SALE OR SUBLEASE OF
19 GOODS BY LESSEE.

20 1. Subject to the provisions of section 554.13303, a buyer
21 or sublessee from the lessee of goods under an existing lease
22 contract obtains, to the extent of the interest transferred,
23 the leasehold interest in the goods that the lessee had or had
24 power to transfer, and except as provided in subsection 2 and
25 section 554.13511, subsection 4, takes subject to the existing
26 lease contract. A lessee with a voidable leasehold interest
27 has power to transfer a good leasehold interest to a good
28 faith buyer for value or a good faith sublessee for value, but
29 only to the extent set forth in the preceding sentence. When
30 goods have been delivered under a transaction of lease the
31 lessee has that power even though:

32 a. the lessor was deceived as to the identity of the
33 lessee;

34 b. the delivery was in exchange for a check which is later
35 dishonored; or

1 c. the delivery was procured through fraud punishable as
2 larcenous under the criminal law.

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

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

15 Sec. 40. NEW SECTION. 554.13306 PRIORITY OF CERTAIN
16 LIENS ARISING BY OPERATION OF LAW.

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

26 Sec. 41. NEW SECTION. 554.13307 PRIORITY OF LIENS
27 ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND
28 OTHER CLAIMS TO GOODS.

29 1. Except as otherwise provided in section 554.13306, a
30 creditor of a lessee takes subject to the lease contract.

31 2. Except as otherwise provided in subsections 3 and 4 and
32 in sections 554.13306 and 554.13308, a creditor of a lessor
33 takes subject to the lease contract unless:

34 a. the creditor holds a lien that attached to the goods
35 before the lease contract became enforceable,

1 b. the creditor holds a security interest in the goods and
2 the lessee did not give value and receive delivery of the
3 goods without knowledge of the security interest; or

4 c. the creditor holds a security interest in the goods
5 which was perfected (section 554.9303) before the lease
6 contract became enforceable.

7 3. A lessee in the ordinary course of business takes the
8 leasehold interest free of a security interest in the goods
9 created by the lessor even though the security interest is
10 perfected (section 554.9303) and the lessee knows of its
11 existence.

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

21 Sec. 42. NEW SECTION. 554.13308 SPECIAL RIGHTS OF
22 CREDITORS.

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

30 2. Nothing in this Article impairs the rights of creditors
31 of a lessor if the lease contract (i) becomes enforceable, not
32 in current course of trade but in satisfaction of or as
33 security for a preexisting claim for money, security, or the
34 like, and (ii) is made under circumstances which under any
35 statute or rule of law apart from this Article would

1 constitute the transaction a fraudulent transfer or voidable
2 preference.

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

11 Sec. 43. NEW SECTION. 554.13309 LESSOR'S AND LESSEE'S
12 RIGHTS WHEN GOODS BECOME FIXTURES.

13 1. In this section:

14 a. goods are "fixtures" when they become so related to
15 particular real estate that an interest in them arises under
16 real estate law;

17 b. a "fixture filing" is the filing, in the office where a
18 mortgage on the real estate would be filed or recorded, of a
19 financing statement covering goods that are or are to become
20 fixtures and conforming to the requirements of section
21 554.9402, subsection 5;

22 c. a lease is a "purchase money lease" unless the lessee
23 has possession or use of the goods or the right to possession
24 or use of the goods before the lease agreement is enforceable;

25 d. a mortgage is a "construction mortgage" to the extent
26 it secures an obligation incurred for the construction of an
27 improvement on land including the acquisition cost of the
28 land, if the recorded writing so indicates; and

29 e. "encumbrance" includes real estate mortgages and other
30 liens on real estate and all other rights in real estate that
31 are not ownership interests.

32 2. Under this Article a lease may be of goods that are
33 fixtures or may continue in goods that become fixtures, but no
34 lease exists under this Article of ordinary building materials
35 incorporated into an improvement on land.

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

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

6 a. the lease is a purchase money lease, the conflicting
7 interest of the encumbrancer or owner arises before the goods
8 become fixtures; the interest of the lessor is perfected by a
9 fixture filing before the goods become fixtures or within ten
10 days thereafter, and the lessee has an interest of record in
11 the real estate or is in possession of the real estate; or

12 b. the interest of the lessor is perfected by a fixture
13 filing before the interest of the encumbrancer or owner is of
14 record, the lessor's interest has priority over any
15 conflicting interest of a predecessor in title of the
16 encumbrancer or owner, and the lessee has an interest of
17 record in the real estate or is in possession of the real
18 estate.

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

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

28 b. the conflicting interest is a lien on the real estate
29 obtained by legal or equitable proceedings after the lease
30 contract is enforceable; or

31 c. the encumbrancer or owner has consented in writing to
32 the lease or has disclaimed an interest in the goods as
33 fixtures; or

34 d. the lessee has a right to remove the goods as against
35 the encumbrancer or owner. If the lessee's right to remove

1 terminates, the priority of the interest of the lessor
2 continues for a reasonable time.

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

15 7. In cases not within the preceding subsections, priority
16 between the interest of a lessor of fixtures, including the
17 lessor's residual interest, and the conflicting interest of an
18 encumbrancer or owner of the real estate who is not the lessee
19 is determined by the priority rules governing conflicting
20 interests in real estate.

21 8. If the interest of a lessor of fixtures, including the
22 lessor's residual interest, has priority over all conflicting
23 interests of all owners and encumbrancers of the real estate,
24 the lessor or the lessee may (i) on default, expiration,
25 termination, or cancellation of the lease agreement but
26 subject to the lease agreement and this Article, or (ii) if
27 necessary to enforce other rights and remedies of the lessor
28 or lessee under this Article, remove the goods from the real
29 estate, free and clear of all conflicting interests of all
30 owners and encumbrancers of the real estate, but the lessor or
31 lessee must reimburse any encumbrancer or owner of the real
32 estate who is not the lessee and who has not otherwise agreed
33 for the cost of repair of any physical injury, but not for any
34 diminution in value of the real estate caused by the absence
35 of the goods removed or by any necessity of replacing them. A

1 person entitled to reimbursement may refuse permission to
2 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
7 filing a financing statement as a fixture filing for leased
8 goods that are or are to become fixtures in accordance with
9 the relevant provisions of the Article on Secured Transactions
10 (Article 9).

11 Sec. 44. NEW SECTION. 554.13310 LESSOR'S AND LESSEE'S
12 RIGHTS WHEN GOODS BECOME ACCESSIONS.

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

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

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

27 4. The interest of a lessor or a lessee under a lease
28 contract described in subsection 2 or 3 is subordinate to the
29 interest of

30 a. a buyer in the ordinary course of business or a lessee
31 in the ordinary course of business of any interest in the
32 whole acquired after the goods became accessions; or

33 b. a creditor with a security interest in the whole
34 perfected before the lease contract was made to the extent
35 that the creditor makes subsequent advances without knowledge

1 of the lease contract.

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

19 Sec. 45. NEW SECTION. 554.13311 PRIORITY SUBJECT TO
20 SUBORDINATION.

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

23

PART 4

24 PERFORMANCE OF LEASE CONTRACT -- REPUDIATED,
25 SUBSTITUTED, AND EXCUSED

26 Sec. 46. NEW SECTION. 554.13401 INSECURITY -- ADEQUATE
27 ASSURANCE OF PERFORMANCE.

28 1. A lease contract imposes an obligation on each party
29 that the other's expectation of receiving due performance will
30 not be impaired.

31 2. If reasonable grounds for insecurity arise with respect
32 to the performance of either party, the insecure party may
33 demand in writing adequate assurance of due performance.
34 Until the insecure party receives that assurance, if
35 commercially reasonable the insecure party may suspend any

1 performance for which the insecure party has not already
2 received the agreed return.

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

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

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

14 Sec. 47. NEW SECTION. 554.13402 ANTICIPATORY
15 REPUDIATION.

16 If either party repudiates a lease contract with respect to
17 a performance not yet due under the lease contract, the loss
18 of which performance will substantially impair the value of
19 the lease contract to the other, the aggrieved party may:

20 1. for a commercially reasonable time, await retraction of
21 repudiation and performance by the repudiating party;

22 2. make demand pursuant to section 554.13401 and await
23 assurance of future performance adequate under the
24 circumstances of the particular case; or

25 3. resort to any right or remedy upon default under the
26 lease contract or this Article, even though the aggrieved
27 party has notified the repudiating party that the aggrieved
28 party would await the repudiating party's performance and
29 assurance and has urged retraction. In addition, whether or
30 not the aggrieved party is pursuing one of the foregoing
31 remedies, the aggrieved party may suspend performance or, if
32 the aggrieved party is the lessor, proceed in accordance with
33 the provisions of this Article on the lessor's right to
34 identify goods to the lease contract notwithstanding default
35 or to salvage unfinished goods (section 554.13524).

1 Sec. 48. NEW SECTION. 554.13403 RETRACTION OF
2 ANTICIPATORY REPUDIATION.

3 1. Until the repudiating party's next performance is due,
4 the repudiating party can retract the repudiation unless,
5 since the repudiation, the aggrieved party has cancelled the
6 lease contract or materially changed the aggrieved party's
7 position or otherwise indicated that the aggrieved party
8 considers the repudiation final.

9 2. Retraction may be by any method that clearly indicates
10 to the aggrieved party that the repudiating party intends to
11 perform under the lease contract and includes any assurance
12 demanded under section 554.13401.

13 3. Retraction reinstates a repudiating party's rights
14 under a lease contract with due excuse and allowance to the
15 aggrieved party for any delay occasioned by the repudiation.

16 Sec. 49. NEW SECTION. 554.13404 SUBSTITUTED PERFORMANCE.

17 1. If without fault of the lessee, the lessor and the
18 supplier, the agreed berthing, loading, or unloading
19 facilities fail or the agreed type of carrier becomes
20 unavailable or the agreed manner of delivery otherwise becomes
21 commercially impracticable, but a commercially reasonable
22 substitute is available, the substitute performance must be
23 tendered and accepted.

24 2. If the agreed means or manner of payment fails because
25 of domestic or foreign governmental regulation:

26 a. the lessor may withhold or stop delivery or cause the
27 supplier to withhold or stop delivery unless the lessee
28 provides a means or manner of payment that is commercially a
29 substantial equivalent; and

30 b. if delivery has already been taken, payment by the
31 means or in the manner provided by the regulation discharges
32 the lessee's obligation unless the regulation is
33 discriminatory, oppressive, or predatory.

34 Sec. 50. NEW SECTION. 554.13405 EXCUSED PERFORMANCE.

35 Subject to section 554.13404 on substituted performance,

1 the following rules apply:

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

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

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

26 Sec. 51. NEW SECTION. 554.13406 PROCEDURE ON EXCUSED
27 PERFORMANCE.

28 1. If the lessee receives notification of a material or
29 indefinite delay or an allocation justified under section
30 554.13405, the lessee may by written notification to the
31 lessor as to any goods involved, and with respect to all of
32 the goods if under an installment lease contract the value of
33 the whole lease contract is substantially impaired (section
34 554.13510):

35 a. terminate the lease contract (section 554.13505,

1 subsection 2); or

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

7 2. If, after receipt of a notification from the lessor
8 under section 554.13405, the lessee fails so to modify the
9 lease agreement within a reasonable time not exceeding thirty
10 days, the lease contract lapses with respect to any deliveries
11 affected.

12 Sec. 52. NEW SECTION. 554.13407 IRREVOCABLE PROMISES --
13 FINANCE LEASES.

14 1. In the case of a finance lease that is not a consumer
15 lease the lessee's promises under the lease contract become
16 irrevocable and independent upon the lessee's acceptance of
17 the goods.

18 2. A promise that has become irrevocable and independent
19 under subsection 1:

20 a. is effective and enforceable between the parties, and
21 by or against third parties including assignees of the
22 parties, and

23 b. is not subject to cancellation, termination,
24 modification, repudiation, excuse, or substitution without the
25 consent of the party to whom the promise runs.

26 3. This section does not affect the validity under any
27 other law of a covenant in any lease contract making the
28 lessee's promises irrevocable and independent upon the
29 lessee's acceptance of the goods.

30 PART 5

31 DEFAULT

32 A. IN GENERAL

33 Sec. 53. NEW SECTION. 554.13501 DEFAULT -- PROCEDURE.

34 1. Whether the lessor or the lessee is in default under a
35 lease contract is determined by the lease agreement and this

1 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 554.1106,
13 subsection 1, of this Article or the lease agreement, the
14 rights 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
18 Part as to the goods, or under other applicable law as to both
19 the real property and the goods in accordance with that
20 party's rights and remedies in respect of the real property,
21 in which case this Part does not apply.

22 Sec. 54. NEW SECTION. 554.13502 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 Sec. 55. NEW SECTION. 554.13503 MODIFICATION OR
28 IMPAIRMENT OF RIGHTS AND REMEDIES.

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

34 2. Resort to a remedy provided under this Article or in
35 the lease agreement is optional unless the remedy is expressly

1 agreed to be exclusive. If circumstances cause an exclusive
2 or limited remedy to fail of its essential purpose, or
3 provision for an exclusive remedy is unconscionable, remedy
4 may be had as provided in this Article.

5 3. Consequential damages may be liquidated under section
6 554.13504, or may otherwise be limited, altered, or excluded
7 unless the limitation, alteration, or exclusion is
8 unconscionable. Limitation, alteration, or exclusion of
9 consequential damages for injury to the person in the case of
10 consumer goods is prima facie unconscionable but limitation,
11 alteration, or exclusion of damages where the loss is
12 commercial is not prima facie unconscionable.

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

17 Sec. 56. NEW SECTION. 554.13504 LIQUIDATION OF DAMAGES.

18 1. Damages payable by either party for default, or any
19 other act or omission, including indemnity for loss or
20 diminution of anticipated tax benefits or loss or damage to
21 lessor's residual interest, may be liquidated in the lease
22 agreement but only at an amount or by a formula that is
23 reasonable in light of the then anticipated harm caused by the
24 default or other act or omission.

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

30 3. If the lessor justifiably withholds or stops delivery
31 of goods because of the lessee's default or insolvency
32 (section 554.13525 or 554.13526), the lessee is entitled to
33 restitution of any amount by which the sum of the lessee's
34 payments exceeds:

35 a. the amount to which the lessor is entitled by virtue of

1 terms liquidating the lessor's damages in accordance with
2 subsection 1; or

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

8 4. A lessee's right to restitution under subsection 3 is
9 subject to offset to the extent the lessor establishes:

10 a. a right to recover damages under the provisions of this
11 Article other than subsection 1; and

12 b. the amount or value of any benefits received by the
13 lessee directly or indirectly by reason of the lease contract.

14 Sec. 57. NEW SECTION. 554.13505 CANCELLATION AND
15 TERMINATION AND EFFECT OF CANCELLATION, TERMINATION,
16 RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

17 1. On cancellation of the lease contract, all obligations
18 that are still executory on both sides are discharged, but any
19 right based on prior default or performance survives, and the
20 cancelling party also retains any remedy for default of the
21 whole lease contract or any unperformed balance.

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

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

29 4. Rights and remedies for material misrepresentation or
30 fraud include all rights and remedies available under this
31 Article for default.

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

1 Sec. 58. NEW SECTION. 554.13506 STATUTE OF LIMITATIONS.

2 1. An action for default under a lease contract, including
3 breach of warranty or indemnity, must be commenced within four
4 years after the cause of action accrued. By the original
5 lease contract the parties may reduce the period of limitation
6 to not less than one year.

7 2. A cause of action for default accrues when the act or
8 omission on which the default or breach of warranty is based
9 is or should have been discovered by the aggrieved party, or
10 when the default occurs, whichever is later. A cause of
11 action for indemnity accrues when the act or omission on which
12 the claim for indemnity is based is or should have been
13 discovered by the indemnified party, whichever is later.

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

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

25 Sec. 59. NEW SECTION. 554.13507 PROOF OF MARKET RENT --
26 TIME AND PLACE.

27 1. Damages based on market rent (section 554.13519 or
28 554.13528) are determined according to the rent for the use of
29 the goods concerned for a lease term identical to the
30 remaining lease term of the original lease agreement and
31 prevailing at the times specified in sections 554.13519 and
32 554.13528.

33 2. If evidence of rent for the use of the goods concerned
34 for a lease term identical to the remaining lease term of the
35 original lease agreement and prevailing at the times or places

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

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

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

21 B. DEFAULT BY LESSOR.

22 Sec. 60. NEW SECTION. 554.13508 LESSEE'S REMEDIES.

23 1. If a lessor fails to deliver the goods in conformity to
24 the lease contract (section 554.13509) or repudiates the lease
25 contract (section 554.13402), or a lessee rightfully rejects
26 the goods (section 554.13509) or justifiably revokes
27 acceptance of the goods (section 554.13517), then with respect
28 to any goods involved, and with respect to all of the goods if
29 under an installment lease contract the value of the whole
30 lease contract is substantially impaired (section 554.13510),
31 the lessor is in default under the lease contract and the
32 lessee may:

33 a. cancel the lease contract (section 554.13505,
34 subsection 1);

35 b. recover so much of the rent and security as has been

1 paid and is just under the circumstances;

2 c. cover and recover damages as to all goods affected
3 whether or not they have been identified to the lease contract
4 (sections 554.13518 and 554.13520), or recover damages for
5 nondelivery (sections 554.13519 and 554.13520);

6 d. exercise any other rights or pursue any other remedies
7 provided in the lease contract.

8 2. If a lessor fails to deliver the goods in conformity to
9 the lease contract or repudiates the lease contract, the
10 lessee may also:

11 a. if the goods have been identified, recover them
12 (section 554.13522); or

13 b. in a proper case, obtain specific performance or
14 replevy the goods (section 554.13521).

15 3. If a lessor is otherwise in default under a lease
16 contract, the lessee may exercise the rights and pursue the
17 remedies provided in the lease contract, which may include a
18 right to cancel the lease, and in section 554.13519,
19 subsection 3.

20 4. If a lessor has breached a warranty, whether express or
21 implied, the lessee may recover damages (section 554.13519,
22 subsection 4).

23 5. On rightful rejection or justifiable revocation of
24 acceptance, a lessee has a security interest in goods in the
25 lessee's possession or control for any rent and security that
26 has been paid and any expenses reasonably incurred in their
27 inspection, receipt, transportation, and care and custody and
28 may hold those goods and dispose of them in good faith and in
29 a commercially reasonable manner, subject to section
30 554.13527, subsection 5.

31 6. Subject to the provisions of section 554.13407, a
32 lessee, on notifying the lessor of the lessee's intention to
33 do so, may deduct all or any part of the damages resulting
34 from any default under the lease contract from any part of the
35 rent still due under the same lease contract.

1 Sec. 61. NEW SECTION. 554.13509 LESSEE'S RIGHTS ON
2 IMPROPER DELIVERY -- RIGHTFUL REJECTION.

3 1. Subject to the provisions of section 554.13510 on
4 default in installment lease contracts, if the goods or the
5 tender or delivery fail in any respect to conform to the lease
6 contract, the lessee may reject or accept the goods or accept
7 any commercial unit or units and reject the rest of the goods.

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

11 Sec. 62. NEW SECTION. 554.13510 INSTALLMENT LEASE
12 CONTRACTS -- REJECTION AND DEFAULT.

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

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

28 Sec. 63. NEW SECTION. 554.13511 MERCHANT LESSEE'S DUTIES
29 AS TO RIGHTFULLY REJECTED GOODS.

30 1. Subject to any security interest of a lessee (section
31 554.13508, subsection 5), if a lessor or a supplier has no
32 agent or place of business at the market of rejection, a
33 merchant lessee, after rejection of goods in the merchant
34 lessee's possession or control, shall follow any reasonable
35 instructions received from the lessor or the supplier with

1 respect to the goods. In the absence of those instructions, a
2 merchant lessee shall make reasonable efforts to sell, lease,
3 or otherwise dispose of the goods for the lessor's or
4 supplier's account if they threaten to decline in value
5 speedily. Instructions are not reasonable if on demand
6 indemnity for expenses is not forthcoming.

7 2. If a merchant lessee (subsection 1) or any other lessee
8 (section 554.13512) disposes of goods, the lessee is entitled
9 to reimbursement either from the lessor or the supplier or out
10 of the proceeds for reasonable expenses of caring for and
11 disposing of the goods and, if the expenses include no
12 disposition commission, to such commission as is usual in the
13 trade, or if there is none, to a reasonable sum not exceeding
14 ten percent of the gross proceeds.

15 3. In complying with this section or section 554.13512,
16 the lessee is held only to good faith. Good faith conduct
17 hereunder is neither acceptance or conversion nor the basis of
18 an action for damages.

19 4. A purchaser who purchases in good faith from a lessee
20 pursuant to this section or section 554.13512 takes the goods
21 free of any rights of the lessor and the supplier even though
22 the lessee fails to comply with one or more of the
23 requirements of this Article.

24 Sec. 64. NEW SECTION. 554.13512 LESSEE'S DUTIES AS TO
25 RIGHTFULLY REJECTED GOODS.

26 1. Except as otherwise provided with respect to goods that
27 threaten to decline in value speedily (section 554.13511) and
28 subject to any security interest of a lessee (section
29 554.13508, subsection 5):

30 a. the lessee, after rejection of goods in the lessee's
31 possession, shall hold them with reasonable care at the
32 lessor's or the supplier's disposition for a reasonable time
33 after the lessee's seasonable notification of rejection;

34 b. if the lessor or the supplier gives no instructions
35 within a reasonable time after notification of rejection, the

1 lessee may store the rejected goods for the lessor's or the
2 supplier's account or ship them to the lessor or the supplier
3 or dispose of them for the lessor's or the supplier's account
4 with reimbursement in the manner provided in section
5 554.13511; but

6 c. the lessee has no further obligations with regard to
7 goods rightfully rejected.

8 2. Action by the lessee pursuant to subsection 1 is not
9 acceptance or conversion.

10 Sec. 65. NEW SECTION. 554.13513 CURE BY LESSOR OF
11 IMPROPER TENDER OR DELIVERY -- REPLACEMENT.

12 1. If any tender or delivery by the lessor or the supplier
13 is rejected because nonconforming and the time for performance
14 has not yet expired, the lessor or the supplier may seasonably
15 notify the lessee of the lessor's or the supplier's intention
16 to cure and may then make a conforming delivery within the
17 time provided in the lease contract.

18 2. If the lessee rejects a nonconforming tender that the
19 lessor or the supplier had reasonable grounds to believe would
20 be acceptable with or without money allowance, the lessor or
21 the supplier may have a further reasonable time to substitute
22 a conforming tender if the lesser or supplier seasonably
23 notifies the lessee.

24 Sec. 66. NEW SECTION. 554.13514 WAIVER OF LESSEE'S
25 OBJECTIONS.

26 1. In rejecting goods, a lessee's failure to state a
27 particular defect that is ascertainable by reasonable
28 inspection precludes the lessee from relying on the defect to
29 justify rejection or to establish default:

30 a. if, stated seasonably, the lessor or the supplier could
31 have cured it (section 554.13513); or

32 b. between merchants if the lessor or the supplier after
33 rejection has made a request in writing for a full and final
34 written statement of all defects on which the lessee proposes
35 to rely.

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

4 Sec. 67. NEW SECTION. 554.13515 ACCEPTANCE OF GOODS.

- 5 1. Acceptance of goods occurs after the lessee has had a
6 reasonable opportunity to inspect the goods and
7 a. the lessee signifies or acts with respect to the goods
8 in a manner that signifies to the lessor or the supplier that
9 the goods are conforming or that the lessee will take or
10 retain them in spite of their nonconformity; or
11 b. the lessee fails to make an effective rejection of the
12 goods (section 554.13509, subsection 2).

13 2. Acceptance of a part of any commercial unit is
14 acceptance of that entire unit.

15 Sec. 68. NEW SECTION. 554.13516 EFFECT OF ACCEPTANCE OF
16 GOODS -- NOTICE OF DEFAULT -- BURDEN OF ESTABLISHING DEFAULT
17 AFTER ACCEPTANCE -- NOTICE OF CLAIM OR LITIGATION TO PERSON
18 ANSWERABLE OVER.

19 1. A lessee must pay rent for any goods accepted in
20 accordance with the lease contract, with due allowance for
21 goods rightfully rejected or not delivered.

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

31 3. If a tender has been accepted:

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

1 b. except in the case of a consumer lease, within a
2 reasonable time after the lessee receives notice of litigation
3 for infringement or the like (section 554.13211) the lessee
4 shall notify the lessor or be barred from any remedy over for
5 liability established by the litigation; and

6 c. the burden is on the lessee to establish any default.

7 4. If a lessee is sued for breach of a warranty or other
8 obligation for which a lessor or a supplier is answerable over
9 the following apply:

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

18 b. The lessor or the supplier may demand in writing that
19 the lessee turn over control of the litigation including
20 settlement if the claim is one for infringement or the like
21 (section 554.13211) or else be barred from any remedy over.
22 If the demand states that the lessor or the supplier agrees to
23 bear all expense and to satisfy any adverse judgment, then
24 unless the lessee after seasonable receipt of the demand does
25 turn over control the lessee is so barred.

26 5. Subsections 3 and 4 apply to any obligation of a lessee
27 to hold the lessor or the supplier harmless against
28 infringement or the like (section 554.13211).

29 Sec. 69. NEW SECTION. 554.13517 REVOCATION OF ACCEPTANCE
30 OF GOODS.

31 1. A lessee may revoke acceptance of a lot or commercial
32 unit whose nonconformity substantially impairs its value to
33 the lessee if the lessee has accepted it:

34 a. except in the case of a finance lease, on the
35 reasonable assumption that its nonconformity would be cured

1 and it has not been seasonably cured; or

2 b. without discovery of the nonconformity if the lessee's
3 acceptance was reasonably induced either by the lessor's
4 assurances or, except in the case of a finance lease, by the
5 difficulty of discovery before acceptance.

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

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

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

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

23 Sec. 70. NEW SECTION. 554.13518 COVER -- SUBSTITUTE
24 GOODS.

25 1. After a default by a lessor under the lease contract of
26 the type described in section 554.13508, subsection 1, or, if
27 agreed, after other default by the lessor, the lessee may
28 cover by making any purchase or lease of or contract to
29 purchase or lease goods in substitution for those due from the
30 lessor.

31 2. Except as otherwise provided with respect to damages
32 liquidated in the lease agreement (section 554.13504) or
33 otherwise determined pursuant to agreement of the parties
34 (sections 554.1102, subsection 3, and 554.13503), if a
35 lessee's cover is by a lease agreement substantially similar

1 to the original lease agreement and the new lease agreement is
2 made in good faith and in a commercially reasonable manner,
3 the lessee may recover from the lessor as damages (i) the
4 present value, as of the date of the commencement of the term
5 of the new lease agreement, of the rent under the new lease
6 agreement applicable to that period of the new lease term
7 which is comparable to the then remaining term of the original
8 lease agreement minus the present value as of the same date of
9 the total rent for the then remaining lease term of the
10 original lease agreement, and (ii) any incidental or
11 consequential damages, less expenses saved in consequence of
12 the lessor's default.

13 3. If a lessee's cover is by lease agreement that for any
14 reason does not qualify for treatment under subsection 2, or
15 is by purchase or otherwise, the lessee may recover from the
16 lessor as if the lessee had elected not to cover and section
17 554.13519 governs.

18 Sec. 71. NEW SECTION. 554.13519 LESSEE'S DAMAGES FOR
19 NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN
20 REGARD TO ACCEPTED GOODS.

21 1. Except as otherwise provided with respect to damages
22 liquidated in the lease agreement (section 554.13504) or
23 otherwise determined pursuant to agreement of the parties
24 (sections 554.1102, subsection 3, and 554.13503), if a lessee
25 elects not to cover or a lessee elects to cover and the cover
26 is by lease agreement that for any reason does not qualify for
27 treatment under section 554.13518, subsection 2, or is by
28 purchase or otherwise, the measure of damages for nondelivery
29 or repudiation by the lessor or for rejection or revocation of
30 acceptance by the lessee is the present value, as of the date
31 of the default, of the then market rent minus the present
32 value as of the same date of the original rent, computed for
33 the remaining lease term of the original lease agreement,
34 together with incidental and consequential damages, less
35 expenses saved in consequence of the lessor's default.

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

4 3. Except as otherwise agreed, if the lessee has accepted
5 goods and given notification (section 554.13516, subsection
6 3), the measure of damages for nonconforming tender or
7 delivery or other default by a lessor is the loss resulting in
8 the ordinary course of events from the lessor's default as
9 determined in any manner that is reasonable together with
10 incidental and consequential damages, less expenses saved in
11 consequence of the lessor's default.

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

20 Sec. 72. NEW SECTION. 554.13520 LESSEE'S INCIDENTAL AND
21 CONSEQUENTIAL DAMAGES.

22 1. Incidental damages resulting from a lessor's default
23 include expenses reasonably incurred in inspection, receipt,
24 transportation, and care and custody of goods rightfully
25 rejected or goods the acceptance of which is justifiably
26 revoked, any commercially reasonable charges, expenses or
27 commissions in connection with effecting cover, and any other
28 reasonable expense incident to the default.

29 2. Consequential damages resulting from a lessor's default
30 include:

31 a. any loss resulting from general or particular
32 requirements and needs of which the lessor at the time of
33 contracting had reason to know and which could not reasonably
34 be prevented by cover or otherwise; and

35 b. injury to person or property proximately resulting from

1 any breach of warranty.

2 Sec. 73. NEW SECTION. 554.13521 LESSEE'S RIGHT TO
3 SPECIFIC PERFORMANCE OR REPLEVIN.

4 1. Specific performance may be decreed if the goods are
5 unique or in other proper circumstances.

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

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

15 Sec. 74. NEW SECTION. 554.13522 LESSEE'S RIGHT TO GOODS
16 ON LESSOR'S INSOLVENCY.

17 1. Subject to subsection 2 and even though the goods have
18 not been shipped, a lessee who has paid a part or all of the
19 rent and security for goods identified to a lease contract
20 (section 554.13217) on making and keeping good a tender of any
21 unpaid portion of the rent and security due under the lease
22 contract may recover the goods identified from the lessor if
23 the lessor becomes insolvent within ten days after receipt of
24 the first installment of rent and security.

25 2. A lessee acquires the right to recover goods identified
26 to a lease contract only if they conform to the lease
27 contract.

28 C. DEFAULT BY LESSEE

29 Sec. 75. NEW SECTION. 554.13523 LESSOR'S REMEDIES.

30 1. If a lessee wrongfully rejects or revokes acceptance of
31 goods or fails to make a payment when due or repudiates with
32 respect to a part or the whole, then, with respect to any
33 goods involved, and with respect to all of the goods if under
34 an installment lease contract the value of the whole lease
35 contract is substantially impaired (section 554.13510), the

1 lessee is in default under the lease contract and the lessor
2 may:

3 a. cancel the lease contract (section 554.13505,
4 subsection 1);

5 b. proceed respecting goods not identified to the lease
6 contract (section 554.13524);

7 c. withhold delivery of the goods and take possession of
8 goods previously delivered (section 554.13525);

9 d. stop delivery of the goods by any bailee (section
10 554.13526);

11 e. dispose of the goods and recover damages (section
12 554.13527), or retain the goods and recover damages (section
13 554.13528), or in a proper case recover rent (section
14 554.13529);

15 f. exercise any other rights or pursue any other remedies
16 provided in the lease contract.

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

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

28 a. if the default substantially impairs the value of the
29 lease contract to the lessor, the lessor may exercise the
30 rights and pursue the remedies provided in subsection 1 or 2;
31 or

32 b. if the default does not substantially impair the value
33 of the lease contract to the lessor, the lessor may recover as
34 provided in subsection 2.

35 Sec. 76. NEW SECTION. 554.13524 LESSOR'S RIGHT TO

1 IDENTIFY GOODS TO LEASE CONTRACT.

2 1. After default by the lessee under the lease contract of
3 the type described in section 554.13523, subsection 1 or
4 section 554.13523, subsection 3, paragraph "a" or, if agreed,
5 after other default by the lessee, the lessor may:

6 a. identify to the lease contract conforming goods not
7 already identified if at the time the lessor learned of the
8 default they were in the lessor's or the supplier's possession
9 or control; and

10 b. dispose of goods (section 554.13527, subsection 1) that
11 demonstrably have been intended for the particular lease
12 contract even though those goods are unfinished.

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

20 Sec. 77. NEW SECTION. 554.13525 LESSOR'S RIGHT TO
21 POSSESSION OF GOODS.

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

24 2. After a default by the lessee under the lease contract
25 of the type described in section 554.13523, subsection 1 or
26 section 554.13523, subsection 3, paragraph "a" or, if agreed,
27 after other default by the lessee, the lessor has the right to
28 take possession of the goods. If the lease contract so
29 provides, the lessor may require the lessee to assemble the
30 goods and make them available to the lessor at a place to be
31 designated by the lessor which is reasonably convenient to
32 both parties. Without removal, the lessor may render unusable
33 any goods employed in trade or business, and may dispose of
34 goods on the lessee's premises (section 554.13527).

35 3. The lessor may proceed under subsection 2 without

1 judicial process if it can be done without breach of the peace
2 or the lessor may proceed by action.

3 Sec. 78. NEW SECTION. 554.13526 LESSOR'S STOPPAGE OF
4 DELIVERY IN TRANSIT OR OTHERWISE.

5 1. A lessor may stop delivery of goods in the possession
6 of a carrier or other bailee if the lessor discovers the
7 lessee to be insolvent and may stop delivery of carload,
8 truckload, planeload, or larger shipments of express or
9 freight if the lessee repudiates or fails to make a payment
10 due before delivery, whether for rent, security or otherwise
11 under the lease contract, or for any other reason the lessor
12 has a right to withhold or take possession of the goods.

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

15 a. receipt of the goods by the lessee;

16 b. acknowledgment to the lessee by any bailee of the
17 goods, except a carrier, that the bailee holds the goods for
18 the lessee; or

19 c. such an acknowledgment to the lessee by a carrier via
20 reshipment or as warehouseman.

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

24 b. After notification, the bailee shall hold and deliver
25 the goods according to the directions of the lessor, but the
26 lessor is liable to the bailee for any ensuing charges or
27 damages.

28 c. A carrier who has issued a nonnegotiable bill of lading
29 is not obliged to obey a notification to stop received from a
30 person other than the consignor.

31 Sec. 79. NEW SECTION. 554.13527 LESSOR'S RIGHTS TO
32 DISPOSE OF GOODS.

33 1. After a default by a lessee under the lease contract of
34 the type described in section 554.13523, subsection 1 or
35 section 554.13523, subsection 3, paragraph "a" or after the

1 lessor refuses to deliver or takes possession of goods
2 (section 554.13525 or 554.13526), or, if agreed, after other
3 default by a lessee, the lessor may dispose of the goods
4 concerned or the undelivered balance thereof by lease, sale,
5 or otherwise.

6 2. Except as otherwise provided with respect to damages
7 liquidated in the lease agreement (section 554.13504) or
8 otherwise determined pursuant to agreement of the parties
9 (sections 554.1102, subsection 3, and 554.13503), if the
10 disposition is by lease agreement substantially similar to the
11 original lease agreement and the new lease agreement is made
12 in good faith and in a commercially reasonable manner, the
13 lessor may recover from the lessee as damages (i) accrued and
14 unpaid rent as of the date of the commencement of the term of
15 the new lease agreement, (ii) the present value, as of the
16 same date, of the total rent for the remaining lease term of
17 the original lease agreement minus the present value, as of
18 the same date, of the rent under the new lease agreement
19 applicable to that period of the new lease term which is
20 comparable to the then remaining term of the original lease
21 agreement, and (iii) any incidental damages allowed under
22 section 554.13530, less expenses saved in consequence of the
23 lessee's default.

24 3. If the lessor's disposition is by lease agreement that
25 for any reason does not qualify for treatment under subsection
26 2, or is by sale or otherwise, the lessor may recover from the
27 lessee as if the lessor had elected not to dispose of the
28 goods and section 554.13528 governs.

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

35 5. The lessor is not accountable to the lessee for any

1 profit made on any disposition. A lessee who has rightfully
2 rejected or justifiably revoked acceptance shall account to
3 the lessor for any excess over the amount of the lessee's
4 security interest (section 554.13508, subsection 5).

5 Sec. 80. NEW SECTION. 554.13528 LESSOR'S DAMAGES FOR
6 NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

7 1. Except as otherwise provided with respect to damages
8 liquidated in the lease agreement (section 554.13504) or
9 otherwise determined pursuant to agreement of the parties
10 (sections 554.1102, subsection 3, and 554.13503), if a lessor
11 elects to retain the goods or a lessor elects to dispose of
12 the goods and the disposition is by lease agreement that for
13 any reason does not qualify for treatment under section
14 554.13527, subsection 2, or is by sale or otherwise, the
15 lessor may recover from the lessee as damages for a default of
16 the type described in section 554.13523, subsection 1, or
17 section 554.13523, subsection 3, paragraph "a", or, if agreed,
18 for other default of the lessee, (i) accrued and unpaid rent
19 as of the date of default if the lessee has never taken
20 possession of the goods, or, if the lessee has taken
21 possession of the goods, as of the date the lessor repossesses
22 the goods or an earlier date on which the lessee makes a
23 tender of the goods to the lessor, (ii) the present value as
24 of the date determined under clause (i) of the total rent for
25 the then remaining lease term of the original lease agreement
26 minus the present value as of the same date of the market rent
27 at the place where the goods are located computed for the same
28 lease term, and (iii) any incidental damages allowed under
29 section 554.13530, less expenses saved in consequence of the
30 lessee's default.

31 2. If the measure of damages provided in subsection 1 is
32 inadequate to put a lessor in as good a position as
33 performance would have, the measure of damages is the present
34 value of the profit, including reasonable overhead, the lessor
35 would have made from full performance by the lessee, together

1 with any incidental damages allowed under section 554.13530,
2 due allowance for costs reasonably incurred and due credit for
3 payments or proceeds of disposition.

4 Sec. 81. NEW SECTION. 554.13529 LESSOR'S ACTION FOR THE
5 RENT.

6 1. After default by the lessee under the lease contract of
7 the type described in section 554.13523, subsection 1 or
8 section 554.13523, subsection 3, paragraph "a" or, if agreed,
9 after other default by the lessee, if the lessor complies with
10 subsection 2, the lessor may recover from the lessee as
11 damages:

12 a. for goods accepted by the lessee and not repossessed by
13 or tendered to the lessor, and for conforming goods lost or
14 damaged within a commercially reasonable time after risk of
15 loss passes to the lessee (section 554.13219), (i) accrued and
16 unpaid rent as of the date of entry of judgment in favor of
17 the lessor, (ii) the present value as of the same date of the
18 rent for the then remaining lease term of the lease agreement,
19 and (iii) any incidental damages allowed under section
20 554.13530, less expenses saved in consequence of the lessee's
21 default; and

22 b. for goods identified to the lease contract if the
23 lessor is unable after reasonable effort to dispose of them at
24 a reasonable price or the circumstances reasonably indicate
25 that effort will be unavailing, (i) accrued and unpaid rent as
26 of the date of entry of judgment in favor of the lessor, (ii)
27 the present value as of the same date of the rent for the then
28 remaining lease term of the lease agreement, and (iii) any
29 incidental damages allowed under section 554.13530, less
30 expenses saved in consequence of the lessee's default.

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

35 3. The lessor may dispose of the goods at any time before

1 collection of the judgment for damages obtained pursuant to
2 subsection 1. If the disposition is before the end of the
3 remaining lease term of the lease agreement, the lessor's
4 recovery against the lessee for damages is governed by section
5 554.13527 or 554.13528, and the lessor will cause an
6 appropriate credit to be provided against a judgment for
7 damages to the extent that the amount of the judgment exceeds
8 the recovery available pursuant to section 554.13527 or
9 554.13528.

10 4. Payment of the judgment for damages obtained pursuant
11 to subsection 1 entitles the lessee to the use and possession
12 of the goods not then disposed of for the remaining lease term
13 of and in accordance with the lease agreement.

14 5. After default by the lessee under the lease contract of
15 the type described in section 554.13523, subsection 1 or
16 section 554.13523, subsection 3, paragraph "a" or, if agreed,
17 after other default by the lessee, a lessor who is held not
18 entitled to rent under this section must nevertheless be
19 awarded damages for nonacceptance under section 554.13527 or
20 section 554.13528.

21 Sec. 82. NEW SECTION. 554.13530 LESSOR'S INCIDENTAL
22 DAMAGES.

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

29 Sec. 83. NEW SECTION. 554.13531 STANDING TO SUE THIRD
30 PARTIES FOR INJURY TO GOODS.

31 1. If a third party so deals with goods that have been
32 identified to a lease contract as to cause actionable injury
33 to a party to the lease contract (i) the lessor has a right of
34 action against the third party, and (ii) the lessee also has a
35 right of action against the third party if the lessee:

1 a. has a security interest in the goods;
2 b. has an insurable interest in the goods; or
3 c. bears the risk of loss under the lease contract or has
4 since the injury assumed that risk as against the lessor and
5 the goods have been converted or destroyed.

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

12 3. Either party with the consent of the other may sue for
13 the benefit of whom it may concern.

14 Sec. 84. NEW SECTION. 554.13532 LESSOR'S RIGHTS TO
15 RESIDUAL INTEREST.

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

21 EXPLANATION

22 This bill is based upon the recommendation of the permanent
23 editorial board for the uniform commercial code, by the
24 national conference for commissioners on uniform state laws,
25 and the American law institute.

26 Section 1 of the bill also contains a provision which was
27 not included in the recommendation of the permanent editorial
28 board for the uniform commercial code. That section of the
29 bill provides that an agreement involving the leasing of a
30 motor vehicle or trailer does not create a sale or security
31 interest solely because the agreement provides for an increase
32 or decrease adjustment in the rental price of the motor
33 vehicle or trailer based upon the amount realized upon sale or
34 other disposition of the motor vehicle following the
35 termination of the lease.

1 The bill generally relates to leases, other than leases
2 intended as security, but includes consumer leases and finance
3 leases.

4 Part 1 of the Article includes general provisions including
5 definitions. It provides that leases are subject to other
6 statutes, provides territorial application of the bill to
7 goods covered by a certificate of title, limits the power of
8 parties to consumer leases to choose applicable law and
9 judicial forums, provides for leases which are considered
10 unconscionable, and provides for acceleration of leases.

11 Part 2 of the Article provides for the formation and
12 construction of lease contracts, by restricting the
13 introduction on parol or extrinsic evidence, provides for the
14 manner of its formation; requires an offer and acceptance;
15 provides that course of performance may be used in its
16 construction; provides for modification, rescission, and
17 waiver; provides for warranties, the identification of goods
18 subject to lease, and insurance and insurance proceeds.

19 Part 3 of the Article provides for the effect of a lease,
20 including enforceability of a lease contract, title to and
21 possession of goods under lease, the subsequent lease of goods
22 by a lessor, the priority of liens and the rights of
23 creditors, and the rights of lessees when goods become
24 fixtures or accessions.

25 Part 4 of the Article provides for the performance of a
26 lease, including adequate assurance of performance,
27 anticipatory repudiation, substituted performance, excused
28 performance, and the irrevocability of finance leases upon a
29 promise under the lease.

30 Part 5 provides for default, including default procedures,
31 the modification or impairment of rights and remedies,
32 liquidated damages, cancellation and termination, damages, the
33 rejection or acceptance of goods, nondelivery, damages
34 including incidental and consequential damages, specific
35 performance, remedies, the right of the lessor to possession,

1 stoppage of delivery, and disposal, a lessor's action for
2 rent, and the standing to sue third parties.

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HOUSE FILE 2321

AN ACT
RELATING TO LEASES, BY PROVIDING FOR LEASING AGREEMENTS, AND
AMENDING THE UNIFORM COMMERCIAL CODE BY ESTABLISHING A
NEW ARTICLE RELATING TO LEASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 321.51 TERMINAL RENTAL ADJUST-
MENT CLAUSE -- VEHICLE LEASES THAT ARE NOT SALES OR SECURITY
INTERESTS.

An agreement involving the leasing of a motor vehicle or
trailer does not create a sale or security interest solely
because the agreement provides for an increase or decrease
adjustment in the rental price of the motor vehicle or trailer
based upon the amount realized upon sale or other disposition
of the motor vehicle or trailer following the termination of
the lease.

Sec. 2. Section 554.1105, subsection 2, Code 1993, is
amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Applicability of the Article on
Leases. Sections 554.13105 and 554.13106.

Sec. 3. Section 554.1201, subsection 37, Code 1993, is
amended to read as follows:

37. a. "Security interest" means an interest in personal
property or fixtures which secures payment or performance of
an obligation. The retention or reservation of title by a
seller of goods notwithstanding shipment or delivery to the
buyer (section 554.2401) is limited in effect to a reservation
of a "security interest". The term also includes any interest
of a buyer of accounts or chattel paper which is subject to
Article 9. The special property interest of a buyer of goods
on identification of such those goods to a contract for sale
under section 554.2401 is not a "security interest", but a
buyer may also acquire a "security interest" by complying with

Article 9. Unless a lease or consignment is intended as
security, reservation of title thereunder is not a "security
interest", but a consignment ~~is~~ in any event is subject to the
provisions on consignment sales (section 554.2326).

b. Whether a transaction creates a lease is intended as or
security interest is to be determined by the facts of each
case; however, ~~(a) the inclusion of an option to purchase does~~
~~not of itself make the lease one intended for security; and~~
~~(b) an agreement that upon compliance with the terms of the~~
~~lease the lessee shall become or has the option to become the~~
~~owner of the property for no additional consideration or for a~~
~~nominal consideration does make the lease one intended for~~
security a transaction creates a security interest if the
consideration the lessee is to pay the lessor for the right to
possession and use of the goods is an obligation for the term
of the lease not subject to termination by the lessee, and

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

(2) the lessee is bound to renew the lease for the
remaining economic life of the goods or is bound to become the
owner of the goods,

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

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

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

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

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

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

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

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

d. For purposes of this subsection:

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

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

(3) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into;

otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

Sec. 4. Section 554.9113, Code 1993, is amended to read as follows:

554.9113 SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES OR UNDER ARTICLE ON LEASES.

A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 13) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

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

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

c. the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 13) in the case of a security interest arising solely under such Article.

ARTICLE 13

LEASES

PART 1

GENERAL PROVISIONS

Sec. 5. NEW SECTION. 554.13101 SHORT TITLE.

This Article shall be known and may be cited as the Uniform Commercial Code - Leases.

Sec. 6. NEW SECTION. 554.13102 SCOPE.

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

Sec. 7. NEW SECTION. 554.13103 DEFINITIONS AND INDEX OF DEFINITIONS.

1. In this Article unless the context otherwise requires:

a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the 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.

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

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

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

e. "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual 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 the dollar amount designated in section 537.1301, subsection 13.

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

g. "Finance lease" means a lease with respect to which:

(1) the lessor does not select, manufacture, or supply the goods:

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

(3) one of the following occurs:

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

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

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

(d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (i) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (ii) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (iii) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

h. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 554.13309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Accessions".	Section 554.13310, subsection 1.
"Construction mortgage".	Section 554.13309, subsection 1, paragraph "d".
"Encumbrance".	Section 554.13309, subsection 1, paragraph "e".
"Fixtures".	Section 554.13309, subsection 1, paragraph "a".
"Fixture filing".	Section 554.13309, subsection 1, paragraph "b".
"Purchase money lease".	Section 554.13309, subsection 1, paragraph "c".

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

"Account".	Section 554.9106.
"Between merchants".	Section 554.2104, subsection 3.
"Buyer".	Section 554.2103, subsection 1, paragraph "a".
"Chattel paper".	Section 554.9105, subsection 1, paragraph "b".
"Consumer goods".	Section 554.9109, subsection 1.
"Document".	Section 554.9105, subsection 1,

"Entrusting".	Section 554.2403, subsection 3.
"General intangibles".	Section 554.9106.
"Good faith".	Section 554.2103, subsection 1, paragraph "b".
"Instrument".	Section 554.9105, subsection 1, paragraph "i".
"Merchant".	Section 554.2104, subsection 1.
"Mortgage".	Section 554.9105, subsection 1, paragraph "j".
"Pursuant to commitment".	Section 554.9105, subsection 1, paragraph "k".
"Receipt".	Section 554.2103, subsection 1, paragraph "c".
"Sale".	Section 554.2106, subsection 1.
"Sale on approval".	Section 554.2326.
"Sale or return".	Section 554.2326.
"Seller".	Section 554.2103, subsection 1, paragraph "d".

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Sec. 8. NEW SECTION. 554.13104 LEASES SUBJECT TO OTHER LAW.

1. A lease, although subject to this Article, is also subject to any applicable:

a. certificate of title or registration statute of this state: (including as provided in chapters 321 and 462A);

b. certificate of title statute of another jurisdiction (section 554.13105); or

c. consumer protection statute of this state, or final consumer protection decision of a court of this state existing on the effective date of this Act.

2. In case of conflict between this Article, other than sections 554.13105, 554.13304, subsection 2, and 554.13305, subsection 3, and a statute or decision referred to in subsection 1, the statute or decision controls.

3. Failure to comply with an applicable law has only the effect specified therein.

Sec. 9. NEW SECTION. 554.13105 TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

Subject to the provisions of sections 554.13304, subsection 3, and 554.13305, subsection 3, with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (i) surrender of the certificate, or (ii) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Sec. 10. NEW SECTION. 554.13106 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 thirty 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.

Sec. 11. NEW SECTION. 554.13107 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.

Sec. 12. NEW SECTION. 554.13108 UNCONSCIONABILITY.

1. If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the

lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. 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.

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

a. If the court finds unconscionability under subsection 1 or 2, the court shall award reasonable attorney's fees to the lessee.

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

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

Sec. 13. NEW SECTION. 554.13109 OPTION TO ACCELERATE AT WILL.

1. A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems the party insecure" or in words of 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 prospect of payment or performance is impaired.

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

PART 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

Sec. 14. NEW SECTION. 554.13201 STATUTE OF FRAUDS.

1. A lease contract is not enforceable by way of action or defense unless:

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

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

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

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

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

a. if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

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

c. with respect to goods that have been received and accepted by the lessee.

5. The lease term under a lease contract referred to in subsection 4 is:

a. if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

b. if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

c. a reasonable lease term.

Sec. 15. NEW SECTION. 554.13202 FINAL WRITTEN EXPRESSION - PAROL OR EXTRINSIC EVIDENCE.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

1. by course of dealing or usage of trade or by course of performance; and

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

Sec. 16. NEW SECTION. 554.13203 SEALS INOPERATIVE.

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

Sec. 17. NEW SECTION. 554.13204 FORMATION IN GENERAL.

1. A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

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

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

Sec. 18. NEW SECTION. 554.13205 FIRM OFFERS.

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

Sec. 19. NEW SECTION. 554.13206 OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.

1. Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

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

Sec. 20. NEW SECTION. 554.13207 COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

1. If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in

without objection is relevant to determine the meaning of the lease agreement.

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

3. Subject to the provisions of section 554.13208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Sec. 21. NEW SECTION. 554.13208 MODIFICATION, RESCISSION, AND WAIVER.

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

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

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

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

Sec. 22. NEW SECTION. 554.13209 LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

1. The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party

provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

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

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

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

Sec. 23. NEW SECTION. 554.13210 EXPRESS WARRANTIES.

1. Express warranties by the lessor are created as follows:

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

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

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

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

Sec. 24. NEW SECTION. 554.13211 WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT -- LESSEE'S OBLIGATION AGAINST INFRINGEMENT.

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

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

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

Sec. 25. NEW SECTION. 554.13212 IMPLIED WARRANTY OF MERCHANTABILITY.

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

2. Goods to be merchantable must be at least such as

- a. pass without objection in the trade under the description in the lease agreement;
- b. in the case of fungible goods, are of fair average quality within the description;
- c. are fit for the ordinary purposes for which goods of that type are used;
- d. run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
- e. are adequately contained, packaged, and labeled as the lease agreement may require; and
- f. conform to any promises or affirmations of fact made on the container or label.

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

Sec. 26. NEW SECTION. 554.13213 IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

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

Sec. 27. NEW SECTION. 554.13214 EXCLUSION OR MODIFICATION OF WARRANTIES.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 554.13202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection 3, to exclude or modify

any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

3. Notwithstanding subsection 2, but subject to subsection 4,

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

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

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

4. To exclude or modify a warranty against interference or against infringement (section 554.13211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

Sec. 28. NEW SECTION. 554.13215 CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.

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

1. Exact or technical specifications displace an inconsistent sample or model or general language of description.

2. A sample from an existing bulk displaces inconsistent general language of description.

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

Sec. 29. NEW SECTION. 554.13216 THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The 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.

Sec. 30. NEW SECTION. 554.13217 IDENTIFICATION.

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

1. when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;
2. when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or
3. when the young are conceived, if the lease contract is for a lease of unborn young of animals.

Sec. 31. NEW SECTION. 554.13218 INSURANCE AND PROCEEDS.

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

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

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

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

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

Sec. 32. NEW SECTION. 554.13219 RISK OF LOSS.

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

2. Subject to the provisions of this Article on the effect of default on risk of loss (section 554.13220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

- a. If the lease contract requires or authorizes the goods to be shipped by carrier
 - (1) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
 - (2) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.
- b. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on

acknowledgment by the bailee of the lessee's right to possession of the goods.

c. In any case not within paragraph "a" or "b", the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Sec. 33. NEW SECTION. 554.13220 EFFECT OF DEFAULT ON RISK OF LOSS.

1. Where risk of loss is to pass to the lessee and the time of passage is not stated:

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

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

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

Sec. 34. NEW SECTION. 554.13221 CASUALTY TO IDENTIFIED GOODS.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 554.13219, then:

1. if the loss is total, the lease contract is avoided; and

2. if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3
EFFECT OF LEASE CONTRACT

Sec. 35. NEW SECTION. 554.13301 ENFORCEABILITY OF LEASE CONTRACT.

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

Sec. 36. NEW SECTION. 554.13302 TITLE TO AND POSSESSION OF GOODS.

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

Sec. 37. NEW SECTION. 554.13303 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.

1. As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section 554.9102, subsection 1, paragraph "b".

2. Except as provided in subsections 3 and 4, a provision in a lease agreement which (i) prohibits the voluntary or

involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection 5, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

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

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

5. Subject to subsections 3 and 4:

a. if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 554.13501, subsection 2;

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

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

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

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

Sec. 38. NEW SECTION. 554.13304 SUBSEQUENT LEASE OF GOODS BY LESSOR.

1. Subject to section 554.13303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection 2 and section 554.13527, subsection 4, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

- a. the lessor's transferor was deceived as to the identity of the lessor;
- b. the delivery was in exchange for a check which is later dishonored;
- c. it was agreed that the transaction was to be a "cash sale"; or
- d. the delivery was procured through fraud punishable as larcenous under the criminal law.

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

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

Sec. 39. NEW SECTION. 554.13305 SALE OR SUBLEASE OF GOODS BY LESSEE.

1. Subject to the provisions of section 554.13303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection 2 and section 554.13511, subsection 4, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

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

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

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

Sec. 40. NEW SECTION. 554.13306 PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject

to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Sec. 41. NEW SECTION. 554.13307 PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.

1. Except as otherwise provided in section 554.13306, a creditor of a lessee takes subject to the lease contract.
2. Except as otherwise provided in subsections 3 and 4 and in sections 554.13306 and 554.13308, a creditor of a lessor takes subject to the lease contract unless:
 - a. the creditor holds a lien that attached to the goods before the lease contract became enforceable,
 - b. the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or
 - c. the creditor holds a security interest in the goods which was perfected (section 554.9303) before the lease contract became enforceable.
3. A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 554.9303) and the lessee knows of its existence.
4. A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period.

Sec. 42. NEW SECTION. 554.13308 SPECIAL RIGHTS OF CREDITORS.

1. A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.
2. Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (i) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (ii) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.
3. A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Sec. 43. NEW SECTION. 554.13309 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 554.9402, subsection 5;

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

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

e. "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

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

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

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

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

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

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

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

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

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

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

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

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

8. If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting

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

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

Sec. 44. NEW SECTION. 554.13310 LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS.

1. Goods are "accessions" when they are installed in or affixed to other goods.

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

3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection 4 but is subordinate to interests in the whole existing at the time the

lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

4. The interest of a lessor or a lessee under a lease contract described in subsection 2 or 3 is subordinate to the interest of

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

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

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

Sec. 45. NEW SECTION. 554.13311 PRIORITY SUBJECT TO SUBORDINATION.

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

PART 4

PERFORMANCE OF LEASE CONTRACT -- REPUDIATED,
SUBSTITUTED, AND EXCUSSED

Sec. 46. NEW SECTION. 554.13401 INSECURITY -- ADEQUATE ASSURANCE OF PERFORMANCE.

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

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

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

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

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

Sec. 47. NEW SECTION. 554.13402 ANTICIPATORY REPUDIATION.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

1. for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

2. make demand pursuant to section 554.13401 and await assurance of future performance adequate under the circumstances of the particular case; or

3. resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved

party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 554.13524).

Sec. 48. NEW SECTION. 554.13403 RETRACTION OF ANTICIPATORY REPUDIATION.

1. Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

2. Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 554.13401.

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

Sec. 49. NEW SECTION. 554.13404 SUBSTITUTED PERFORMANCE.

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

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

a. the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee

provides a means or manner of payment that is commercially a substantial equivalent; and

b. if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Sec. 50. NEW SECTION. 554.13405 EXCUSED PERFORMANCE.

Subject to section 554.13404 on substituted performance, the following rules apply:

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

2. If the causes mentioned in subsection 1 affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

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

Sec. 51. NEW SECTION. 554.13406 PROCEDURE ON EXCUSED PERFORMANCE.

1. If the lessee receives notification of a material or indefinite delay or an allocation justified under section 554.13405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510):

a. terminate the lease contract (section 554.13505, subsection 2); or

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

2. If, after receipt of a notification from the lessor under section 554.13405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

Sec. 52. NEW SECTION. 554.13407 IRREVOCABLE PROMISES -- FINANCE LEASES.

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

2. A promise that has become irrevocable and independent under subsection 1:

a. is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

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

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

PART 5
DEFAULT

A. IN GENERAL

Sec. 53. NEW SECTION. 554.13501 DEFAULT -- PROCEDURE.

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.
2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.
3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.
4. Except as otherwise provided in section 554.1106, subsection 1, of this Article or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.
5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

Sec. 54. NEW SECTION. 554.13502 NOTICE AFTER DEFAULT.

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

Sec. 55. NEW SECTION. 554.13503 MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.

1. Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in

addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

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

3. Consequential damages may be liquidated under section 554.13504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

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

Sec. 56. NEW SECTION. 554.13504 LIQUIDATION OF DAMAGES.

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

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

3. If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency

(section 554.13525 or 554.13526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

a. the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection 1; or

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

4. A lessee's right to restitution under subsection 3 is subject to offset to the extent the lessor establishes:

a. a right to recover damages under the provisions of this Article other than subsection 1; and

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

Sec. 57. NEW SECTION. 554.13505 CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

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

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

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

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

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

Sec. 58. NEW SECTION. 554.13506 STATUTE OF LIMITATIONS.

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

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

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

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

Sec. 59. NEW SECTION. 554.13507 PROOF OF MARKET RENT -- TIME AND PLACE.

1. Damages based on market rent (section 554.13519 or 554.13528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 554.13519 and 554.13528.

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

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

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

B. DEFAULT BY LESSOR

Sec. 60. NEW SECTION. 554.13508 LESSEE'S REMEDIES.

1. If a lessor fails to deliver the goods in conformity to the lease contract (section 554.13509) or repudiates the lease contract (section 554.13407), or a lessee rightfully rejects the goods (section 554.13509) or justifiably revokes acceptance of the goods (section 554.13517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510), the lessor is in default under the lease contract and the lessee may:

a. cancel the lease contract (section 554.13505, subsection 1);

b. recover so much of the rent and security as has been paid and is just under the circumstances;

c. cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 554.13518 and 554.13520), or recover damages for nondelivery (sections 554.13519 and 554.13520);

d. exercise any other rights or pursue any other remedies provided in the lease contract.

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

a. if the goods have been identified, recover them (section 554.13522); or

b. in a proper case, obtain specific performance or replevy the goods (section 554.13521).

3. If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 554.13519, subsection 3.

4. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 554.13519, subsection 4).

5. On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 554.13527, subsection 5.

6. Subject to the provisions of section 554.13407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting

from any default under the lease contract from any part of the rent still due under the same lease contract.

Sec. 61. NEW SECTION. 554.13509 LESSEE'S RIGHTS ON IMPROPER DELIVERY -- RIGHTFUL REJECTION.

1. Subject to the provisions of section 554.13510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

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

Sec. 62. NEW SECTION. 554.13510 INSTALLMENT LEASE CONTRACTS -- REJECTION AND DEFAULT.

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

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

Sec. 63. NEW SECTION. 554.13511 MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

1. Subject to any security interest of a lessee (section 554.13508, subsection 5), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable

instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's or supplier's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. If a merchant lessee (subsection 1) or any other lessee (section 554.13512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

3. In complying with this section or section 554.13512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

4. A purchaser who purchases in good faith from a lessee pursuant to this section or section 554.13512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

Sec. 64. NEW SECTION. 554.13512 LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 554.13511) and subject to any security interest of a lessee (section 554.13508, subsection 5):

a. the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

b. if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the

lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 554.13511; but

c. the lessee has no further obligations with regard to goods rightfully rejected.

2. Action by the lessee pursuant to subsection 1 is not acceptance or conversion.

Sec. 65. NEW SECTION. 554.13513 CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY -- REPLACEMENT.

1. If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

Sec. 66. NEW SECTION. 554.13514 WAIVER OF LESSEE'S OBJECTIONS.

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

a. if, stated seasonably, the lessor or the supplier could have cured it (section 554.13513); or

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

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

Sec. 67. NEW SECTION. 554.13515 ACCEPTANCE OF GOODS.

1. Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

a. the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

b. the lessee fails to make an effective rejection of the goods (section 554.13509, subsection 2).

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Sec. 68. NEW SECTION. 554.13516 EFFECT OF ACCEPTANCE OF GOODS -- NOTICE OF DEFAULT -- BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE -- NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.

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

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

3. If a tender has been accepted:

a. within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

b. except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 554.1321i) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

c. the burden is on the lessee to establish any default.

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

a. The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after reasonable 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 554.1321i) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable 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 554.1321i).

Sec. 69. NEW SECTION. 554.13517 REVOCATION OF ACCEPTANCE OF GOODS.

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

a. except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

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

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

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

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

Sec. 70. NEW SECTION. 554.13518 COVER -- SUBSTITUTE GOODS.

1. After a default by a lessor under the lease contract of the type described in section 554.13508, subsection 1, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner,

the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 554.13519 governs.

Sec. 71. NEW SECTION. 554.13519 LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 554.13518, subsection 2, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

3. Except as otherwise agreed, if the lessee has accepted goods and given notification (section 554.13516, subsection 3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

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

Sec. 72. NEW SECTION. 554.13520 LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

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

2. Consequential damages resulting from a lessor's default include:

- a. any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- b. injury to person or property proximately resulting from any breach of warranty.

Sec. 73. NEW SECTION. 554.13521 LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

1. Specific performance may be decreed if the goods are unique or in other proper circumstances.
2. A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.
3. A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Sec. 74. NEW SECTION. 554.13522 LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.

1. Subject to subsection 2 and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 554.13217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

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

C. DEFAULT BY LESSEE

Sec. 75. NEW SECTION. 554.13523 LESSOR'S REMEDIES.

1. If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510), the lessee is in default under the lease contract and the lessor may:

a. cancel the lease contract (section 554.13505, subsection 1);

- b. proceed respecting goods not identified to the lease contract (section 554.13524);
- c. withhold delivery of the goods and take possession of goods previously delivered (section 554.13525);
- d. stop delivery of the goods by any bailee (section 554.13526);
- e. dispose of the goods and recover damages (section 554.13527), or retain the goods and recover damages (section 554.13528), or in a proper case recover rent (section 554.13529);
- 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, less expenses saved in consequence of the lessee's default.

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

a. if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection 1 or 2; or

b. if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection 2.

Sec. 76. NEW SECTION. 554.13524 LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1 or section 554.13523, subsection 3, paragraph "a" or, if agreed, after other default by the lessee, the lessor may:

a. identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

b. dispose of goods (section 554.13527, subsection 1) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

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

Sec. 77. NEW SECTION. 554.13525 LESSOR'S RIGHT TO POSSESSION OF GOODS.

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

2. After a default by the lessee under the lease contract of the type described in section 554.13523, subsection 1 or section 554.13523, subsection 3, paragraph "a" or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 554.13527).

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

Sec. 78. NEW SECTION. 554.13526 LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the

lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

2. In pursuing its remedies under subsection 1, the lessor may stop delivery until

a. receipt of the goods by the lessee;

b. acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

c. such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

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

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

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

Sec. 79. NEW SECTION. 554.13527 LESSOR'S RIGHTS TO DISPOSE OF GOODS.

1. After a default by a lessee under the lease contract of the type described in section 554.13523, subsection 1 or section 554.13523, subsection 3, paragraph "a" or after the lessor refuses to deliver or takes possession of goods (section 554.13525 or 554.13526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or

otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 554.13528 governs.

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

5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 554.13508, subsection 5).

Sec. 80. NEW SECTION. 554.13528 LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or

otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 554.13527, subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph "a", or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. If the measure of damages provided in subsection 1 is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 554.13530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Sec. 81. NEW SECTION. 554.13529 LESSOR'S ACTION FOR THE RENT.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1 or section 554.13523, subsection 3, paragraph "a" or, if agreed, after other default by the lessee, if the lessor complies with

subsection 2, the lessor may recover from the lessee as damages:

a. for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 554.13219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default; and

b. for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

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

3. The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection 1. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 554.13527 or 554.13528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 554.13527 or 554.13528.

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

5. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1 or section 554.13523, subsection 3, paragraph "a" or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under section 554.13527 or section 554.13528.

Sec. 82. NEW SECTION. 554.13530 LESSOR'S INCIDENTAL DAMAGES.

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

Sec. 83. NEW SECTION. 554.13531 STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.

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

- a. has a security interest in the goods;
- b. has an insurable interest in the goods; or
- c. bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

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

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

Sec. 84. NEW SECTION. 554.13532 LESSOR'S RIGHTS TO RESIDUAL INTEREST.

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

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2321, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 8, 1994

TERRY E. BRANSTAD
Governor