WEST VIRGINIA LEGISLATURE
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ENROLLED
Com. Sub. for
HOUSE BILL No. 4371

(By Delegate's, Beane, Doyle, Jenkins,
and Walters)

Passed March 9, 1996
In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4371

(BY DELEGATES BEANE, DOYLE, JENKINS AND WALTERS)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend and reenact sections one hundred five and two hundred one, article one, chapter forty-six of said code; to further amend said chapter by adding thereto a new article, designated article two-a; to amend and reenact section one hundred thirteen, article nine of said chapter; to amend and reenact sections one hundred two, one hundred four, one hundred six, and one hundred seven, article one, chapter forty-six-a of said code; to amend article two, chapter forty-six-a of said code by adding thereto a new section, designated section one hundred three-a; to amend and reenact sections one hundred four, one hundred six, one hundred thirteen, one hundred fourteen, one hundred sixteen, one hundred seventeen, one hundred twenty-one, one hundred twenty-two, one hundred thirty, one hundred thirty-one, and one hundred thirty-six, article two, chapter forty-six-a of said code; to amend and reenact section one hundred two, article six of said chapter; and to
amend and reenact sections one hundred two and one hundred nine, article seven of said chapter, all relating to personal property leases which are not sales or security interests; territorial application of the uniform commercial code; parties' power to choose applicable law; definitions; adopting a new article in the uniform commercial code relating to leases; general provisions; short title; scope; definitions; leases subject to other laws; territorial application of article to goods covered by certificate of title; limitation on power of parties to consumer lease to choose applicable law and judicial forum; waiver or renunciation of claim or right after default; unconscionability; option to accelerate at will; formation and construction of lease contract; statute of frauds; final written expression; parol or extrinsic evidence; seals inoperative; formation in general; firm offers; offer and acceptance in formation of lease contract; course of performance or practical construction; modification, rescission and waiver; lessee under finance contract as beneficiary of supply contract; express warranties; warranties against interference and infringement; lessee's obligation against infringement; implied warranty of merchantability; implied warranty of fitness for particular purpose; exclusion or modification of warranties; cumulation and conflict of warranties express or implied; third-party beneficiaries of express and implied warranties; identification; insurance and proceeds; risk of loss; effect of default on risk of loss; casualty to identified goods; effect of lease contract; enforceability of lease contract; title to and possession of goods; alienability of parties' interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights; subsequent lease of goods by lessor; sale or sublease of goods by lessee; priority of certain liens arising by operation of law; priority of liens arising by attachment or levy on, security interests in and other claims to goods; special rights of creditors; parties' rights when goods become fixtures; parties' rights when goods become accessions; priority subject to subordination; performance of lease contract: repudiated, substituted and excused; insecurity; adequate assurance of performance; anticipatory repudiation; retraction of anticipatory repudiation; substituted performance; excused perfor-
mance; procedure on excused performance; irrevocable promises; finance leases; default; default procedure; notice after default; modification or impairment of rights and remedies; liquidation of damages; cancellation and termination and effect of cancellation, termination, rescission or fraud on rights and remedies; statute of limitations; proof of market rent; time and place; default by lessor; lessee's remedies; lessee's rights on improper delivery; rightful rejection; installment lease contracts; rejection and default; merchant lessee's duty as to rightfully rejected goods; lessee's duties as to rightfully rejected goods; cure by lessor of improper tender or delivery; replacement; waiver of lessee's objections; acceptance of goods; effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over; revocation of acceptance of goods; cover; substitute goods; lessee's damages for nondelivery, repudiation, default and breach of warranty in regard to accepted goods; lessee's incidental and consequential damages; lessee's right to specific performance or replevin; lessee's right to goods on lessor's insolvency; default by lessee; lessor's remedies; lessor's right to identify goods to lease contract; lessor's right to possession of goods; lessor's stoppage of delivery in transit or otherwise; lessor's rights to dispose of goods; lessor's damages for nonacceptance, failure to pay, repudiation or other default; lessor's action for rent; lessor's incidental damages; standing to sue third parties for injury to goods; lessor's rights to residual interest; secured transactions; sales of accounts and chattel paper; security interests arising under the article on sales or under the article on leases; West Virginia Consumer Credit and Protection Act; definitions; application of chapter; sales, leases or loans subject to chapter by agreement of parties; waiver of rights and benefits under chapter; consumer credit protection; lessor subject to claims and defenses arising from leases; notice to cosigners; notice of consumer's right to cure default; cure; acceleration; notice of assignment; receipts; statements of account; evidence of payment; assignment of earnings; authorization to confess judgment prohibited; no garnishment before judgment; unconscionability; inducement by unconscionable conduct;
definitions; limitation on garnishment; no discharge or repri-sal because of garnishment; personal property exemptions; general consumer protection; definitions; power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report; and injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

Be it enacted by the Legislature of West Virginia:

That article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen; that sections one hundred five and two hundred one, article one, chapter forty-six of said code be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article two-a; that section one hundred thirteen, article nine of said chapter be amended and reenacted; that sections one hundred two, one hundred four, one hundred six, and one hundred seven, article one, chapter forty-six-a of said code be amended and reenacted; that article two of said chapter be amended by adding thereto a new section, designated section one hundred three-a; that sections one hundred four, one hundred six, one hundred thirteen, one hundred fourteen, one hundred sixteen, one hundred seventeen, one hundred eighteen, one hundred twenty-one, one hundred twenty-two, one hundred thirty, one hundred thirty-one, and one hundred thirty-six, article two, chapter forty-six-a of said code be amended and reenacted; that section one hundred two, article six of said chapter be amended and reenacted; and that sections one hundred two and one hundred nine, article seven of said chapter be amended and reenacted, all to read as follows:

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.
§17A-4A-16. Vehicle leases which are not sales or security interests.

1 In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a conditional sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

§46-1-105. Territorial application of the act; parties' power to choose applicable law.

1 (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this chapter applies to transactions bearing an appropriate relation to this state.

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

Sections 2A-105 and 2A-106, applicability of the article on leases.

Section 2-402, rights of creditors against sold goods.

Section 4-102, applicability of the article on bank deposits and collections.

Section 8-106, applicability of the article on investment securities.

Section 9-103, perfection provisions of the article on secured transactions.
PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

1. "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

2. "Aggrieved party" means a party entitled to resort to a remedy.

3. "Agreement" means the bargain of the parties 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 chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract").


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

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

7. "Branch" includes a separately incorporated foreign branch of a bank.
(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security 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. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "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.

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

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

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

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.
(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

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

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

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

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

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

(20) "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to the bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.
(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

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

(25) A person has "notice" of a fact when:
   (a) He has actual knowledge of it; or
   (b) He has received a notice or notification of it; or
   (c) From all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:
   (a) It comes to his or her attention; or
   (b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.
(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

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

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

(30) "Person" includes an individual or an organization (see section 1-102).

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

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

(33) "Purchaser" means a person who takes by purchase.
(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

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

(36) "Rights" includes remedies.

(37) "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 2-401) 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 nine. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article nine. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (section 2-326).

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, 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:

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

(ii) 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;

(iii) 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

(iv) 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.

(b) A transaction does not create a security interest merely because it provides that:

(i) 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;

(ii) 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;

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

(iv) 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

(v) 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.

(c) For purposes of this subsection (37):

(i) 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;
(ii) "Reasonably predictable" and "remaining econom-
ic life of the goods" are to be determined with reference to
the facts and circumstances at the time the transaction is
entered into; and
(iii) "Present value" means the amount as of a date
certain of one or more sums payable in the future, dis-
counted 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 en-
tered into; otherwise, the discount is determined by a com-
mercially reasonable rate that takes into account the facts
and circumstances of each case at the time the transaction
was entered into.
(38) "Send" in connection with any writing or notice
means to deposit in the mail or deliver for transmission by
any other usual means of communication with postage or
cost of transmission provided for and properly addressed
and in the case of an instrument to an address specified
thereon or otherwise agreed, or if there be none to any
address reasonable under the circumstances. The receipt
of any writing or notice within the time at which it would
have arrived if properly sent has the effect of a proper
sending.
(39) "Signed" includes any symbol executed or adopt-
ed by a party with present intention to authenticate a writ-
ing.
(40) "Surety" includes guarantor.
(41) "Telegram" includes a message transmitted by
radio, teletype, cable, any mechanical method of transmis-
sion, or the like.
(42) "Term" means that portion of an agreement which relates to a particular matter.

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

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209), a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

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

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

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

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.


1 This article shall be known and may be cited as the Uniform Commercial Code—Leases.


1 This article applies to any transaction, regardless of form, that creates a lease.
§46-2A-103. 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 him or her 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" shall have the same meaning as that ascribed to it in section one hundred two, article one, chapter forty-six-a of this code.

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

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

(i) The lessor does not select, manufacture or supply the goods;
(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) 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: (a) 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; (b) 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 use of the goods; and (c) 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 2A-309), 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 him or her 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 2A-310(1).


"Encumbrance." Section 2A-309(1)(e).

"Fixtures." Section 2A-309(1)(a).

"Fixture filing." Section 2A-309(1)(b).

"Purchase money lease." Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

"Account." Section 9-106.

"Between merchants." Section 2-104(3).

"Buyer." Section 2-103(1)(a).

"Chattel paper." Section 9-105(1)(b).

"Consumer goods." Section 9-109(1).

"Document." Section 9-105(1)(f).

"Entrusting." Section 2-403(3).
In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-2A-104. Leases subject to other law.

1. (1) A lease, although subject to this article, is also subject to any applicable:
2. (a) Certificate of title statute of this state: Section 17A-3-2;
3. (b) Certificate of title statute of another jurisdiction (section 2A-105); or
4. (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 article.
5. (2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.
6. (3) Failure to comply with an applicable law has only the effect specified therein.
§46-2A-105. Territorial application of article to goods covered by certificate of title.

Subject to the provisions of sections 2A-304(3) and 2A-305(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:

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

§46-2A-106. 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.

§46-2A-107. 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.


(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 he or she 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.

§46-2A-109. Option to accelerate at will.

(1) A term providing that one party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he or she deems himself or herself insecure" or in words of similar import must be construed to mean that he or she has power to do so only if he or she 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.


(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)(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)(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

28 that the goods are for the lessee, has made either a sub-
29 substantial beginning of their manufacture or commitments
30 for their procurement;
31    (b) If the party against whom enforcement is sought
32 admits in that party's pleading, testimony or otherwise in
33 court that a lease contract was made, but the lease contract
34 is not enforceable under this provision beyond the quanti-
35 ty of goods admitted; or
36    (c) With respect to goods that have been received and
37 accepted by the lessee.
38    (5) The lease term under a lease contract referred to in
39 subsection (4) is:
40    (a) If there is a writing signed by the party against
41 whom enforcement is sought or by that party's authorized
42 agent specifying the lease term, the term so specified;
43    (b) If the party against whom enforcement is sought
44 admits in that party's pleading, testimony, or otherwise in
45 court a lease term, the term so admitted; or
46    (c) A reasonable lease term.

§46-2A-202. Final written expression: Parol or extrinsic
evidence.

1 Terms with respect to which the confirmatory memo-
2 randa of the parties agree or which are otherwise set forth
3 in a writing intended by the parties as a final expression of
4 their agreement with respect to such terms as are included
5 therein may not be contradicted by evidence of any prior
6 agreement or of a contemporaneous oral agreement but
7 may be explained or supplemented:
8    (a) By course of dealing or usage of trade or by
9 course of performance; and
10    (b) By evidence of consistent additional terms unless
11 the court finds the writing to have been intended also as a
12 complete and exclusive statement of the terms of the
13 agreement.
§46-2A-203. 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.

§46-2A-204. 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.

§46-2A-205. 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.


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.
§46-2A-207. 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 2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

§46-2A-208. 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.
§46-2A-209. 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 (section 2A-209(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 lessee 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 lessee 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.


(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 "warrant" 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.

§46-2A-211. 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.
§46-2A-212. 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.

§46-2A-213. 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.


(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 2A-202 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 2A-211) 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.
§46-2A-215. 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:

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

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

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

§46-2A-216. 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 natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified or limited, 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 any beneficiary designated under this section.


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

(b) 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

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


(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.


(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 ef-
fect of default on risk of loss (section 2A-220), 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:

(i) 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

(ii) 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 subsection (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.


(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, he or she, to the extent of any deficiency in his or her 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 his or
her effective insurance coverage may treat the risk of loss
as resting on the lessee for a commercially reasonable
time.

§46-2A-221. Casualty to identified goods.

If a lease contract requires goods identified when the
lease contract is made, and the goods suffer casualty with-
out 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 2A-219, then:

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

(b) If the loss is partial or the goods have so deterio-
rated as to no longer conform to the lease contract, the
lessee may nevertheless demand inspection and at his or
her option either treat the lease contract as avoided or,
except in a finance lease that is not a consumer lease, ac-
cept 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.

§46-2A-301. Enforceability of lease contract.

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

§46-2A-302. Title to and possession of goods.

Except as otherwise provided in this article, each pro-
vision 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, not-
withstanding any statute or rule of law that possession or
the absence of possession is fraudulent.
§46-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

1 (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to article nine, secured transactions, by reason of section 9-102(1)(b).

2 (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 (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 (4) A provision in a lease agreement which: (i) Pro-
hibits 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 2A-501(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.

§46-2A-304. Subsequent lease of goods by lessor.

(1) Subject to section 2A-303, 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 2A-527(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 sub-
sequent 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.

§46-2A-305. Sale or sublease of goods by lessee.

1 (1) Subject to the provisions of section 2A-303, 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 2A-511(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:

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

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

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

2 (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.


If a person in the ordinary course of his or her 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.

§46-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(1) Except as otherwise provided in section 2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in sections 2A-306 and 2A-308, 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 9-303) 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 9-303) 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.

§46-2A-308. 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: (a) 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 (b) 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.
§46-2A-309. **Lessor's and lessee's rights when goods become fixtures.**

1. (1) In this section:

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

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

4. (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;

5. (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

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

7. (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.

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

9. (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:

10. (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.
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)(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, prior-
ity 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 con-
flicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the
lesser's residual interest, has priority over all conflicting
interests of all owners and encumbrancers of the real es-
teate, the lessor or the lessee may: (i) On default, expira-
tion, 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
lesser 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
lesser 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, includ-
ing 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 nine).
§46-2A-310. Lessor's and lessee's rights when goods become accessions.

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

2 (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 (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 (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:

5 (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

6 (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.

7 (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:

8 (a) 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 (b) if necessary to enforce his or her other rights and remedies under this article, remove the goods from the whole, free and clear of all interests in the whole, but he or she 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 diminu-
tion 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.

§46-2A-311. 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 EXCUSED.


(1) A lease contract imposes an obligation on each
party that the other's expectation of receiving due perfor-
mance 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 assur-
ance, if commercially reasonable the insecure party may
suspend any performance for which he or she has not
already received the agreed return.

(3) A repudiation of the lease contract occurs if assur-
ance of due performance adequate under the circumstanc-
es 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.

1 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:

(a) For a commercially reasonable time, await retrac-
tion of repudiation and performance by the repudiating
party;

(b) Make demand pursuant to section 2A-401 and
await assurance of future performance adequate under the
circumstances of the particular case; or

(c) 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 forego-
ing remedies, the aggrieved party may suspend perfor-


1 (1) Until the repudiating party's next performance is
due, the repudiating party can retract the repudiation un-
less, since the repudiation, the aggrieved party has canc-
celed the lease contract or materially changed the ag-
grieved 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 2A-401.

(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 repu-
diation.


(1) If without fault of the lessee, the lessor and the
supplier, the agreed berthing, loading or unloading facili-
ties fail or the agreed type of carrier becomes unavailable
or the agreed manner of delivery otherwise becomes com-
mercially 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 commer-
cially a substantial equivalent; and

(b) If delivery has already been taken, payment by the
means or in the manner provided by the regulation dis-
charges the lessee's obligation unless the regulation is
discriminatory, oppressive or predatory.


Subject to section 2A-404 on substituted performance,
the following rules apply:

(a) Delay in delivery or nondelivery, in whole or in
part, by a lessor or a supplier who complies with para-
graphs (b) and (c) 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 appli-
cable foreign or domestic governmental regulation or
order, whether or not the regulation or order later proves
to be invalid.

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

(c) 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 paragraph (b), of the estimated quota thus made available for the lessee.


(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under section 2A-405, 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 2A-510):

(a) Terminate the lease contract (section 2A-505(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 2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.


(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract be-
come 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.

(4) In the case of a consumer lease, the promises of each party are dependent on the promises of the other party or parties.

PART 5. DEFAULT.

A. IN GENERAL


(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 1-106(1) or 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.


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.

§46-2A-503. 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 2A-504, 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.

§46-2A-504. 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 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her 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.
§46-2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

1. (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 canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

2. (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. (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. (4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

5. (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.


1. (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. (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.

§46-2A-507. Proof of market rent; time and place.

(1) Damages based on market rent (section 2A-519 or 2A-528) 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 2A-519 and 2A-528.

(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 he or she 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


(1) If a lessor fails to deliver the goods in conformity to the lease contract (section 2A-509) or repudiates the lease contract (section 2A-402), or a lessee rightfully rejects the goods (section 2A-509) or justifiably revokes acceptance of the goods (section 2A-517), 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 2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (section 2A-505(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 2A-518 and 2A-520), or recover damages for nondelivery (sections 2A-519 and 2A-520);

(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 2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (section 2A-521).
(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 2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 2A-519(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 2A-527(5).

(6) Subject to the provisions of section 2A-407, 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.

§46-2A-509. Lessee's rights on improper delivery; rightful rejection.

(1) Subject to the provisions of section 2A-510 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.

§46-2A-510. 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.

§46-2A-511. Merchant lessee's duties as to rightfully rejected goods.

(1) Subject to any security interest of a lessee (section 2A-508(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 his or her 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 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 2A-512) disposes of goods, he or she 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 2A-512, 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 2A-512 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.

§46-2A-512. 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 2A-511) and subject to any security interest of a lessee (section 2A-508(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 reasonable 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 2A-511; 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.

§46-2A-513. 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

(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 2A-513); 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.


(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 2A-509(2)).

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

§46-2A-516. 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 2A-211) 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 seasonable receipt of the notice does come in and defend, that person is so bound;
(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 2A-211) 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 seasonable receipt of the demand does turn over control, the lessee is so barred.

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


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

§46-2A-518. Cover; substitute goods.

1. (1) After a default by a lessor under the lease contract of the type described in section 2A-508(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. (2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), 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. (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 2A-519 governs.

§46-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

1. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or
otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), 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 2A-518(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 2A-516(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.

§ 46-2A-520. 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.

§46-2A-521. 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.

§46-2A-522. 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 2A-217) 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


(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 2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (section 2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (section 2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (section 2A-525);

(d) Stop delivery of the goods by any bailee (section 2A-526);

(e) Dispose of the goods and recover damages (section 2A-527), or retain the goods and recover damages (section 2A-528), or in a proper case recover rent (section 2A-529);

(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).

§46-2A-524. 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 2A-523(1) or section 2A-523(3)(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 2A-527(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.

§46-2A-525. 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 con-
tract of the type described in section 2A-523(1) or 2A-523(3)(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 2A-527).

(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.

§46-2A-526. 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 re-
ceived from a person other than the consignor.

§46-2A-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract
of the type described in section 2A-523(1) or 2A-523
(3)(a) or after the lessor refuses to deliver or takes posses-
sion of goods (section 2A-525 or 2A-526), 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 dam-
ages liquidated in the lease agreement (section 2A-504) or
otherwise determined pursuant to agreement of the parties
(sections 1-102(3) and 2A-503), 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 then remaining
lease term of the original lease agreement minus the pres-
ent 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 dam-
ages allowed under section 2A-530, 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 sub-
section (2), or is by sale or otherwise, the lessor may re-
cover from the lessee as if the lessor had elected not to
dispose of the goods and section 2A-528 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 2A-508(5)).

§46-2A-528. 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 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-102(3) and 2A-503), 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 2A-527(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 2A-523(1) or 2A-523(3)(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 2A-530, 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 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§46-2A-529. Lessor's action for the rent.

(1) After default by the lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(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 repossessioned 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 2A-219): (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 2A-530, 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 2A-530, 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 2A-527 or section 2A-528, 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 2A-527 or 2A-528.

(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 2A-523(1) or section 2A-523(3)(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 2A-527 or section 2A-528.

§46-2A-530. 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.

§46-2A-531. 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: (a) The lessor has a right of action against the third party; and (b) the lessee also has a right of action against the third party if the lessee:

   (i) Has a security interest in the goods;

   (ii) Has an insurable interest in the goods; or
(iii) 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, his or her suit or settlement, subject to his or her 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.

§46-2A-532. 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.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-113. Security interests arising under article on sales or under article on leases.

A security interest arising solely under the article on sales (article two) or the article on leases (article two-a) 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 two) in the case of a security interest arising solely under such article; or (ii) by the article on leases (article two-a) in the case of a security interest arising solely under such article.
CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


In addition to definitions appearing in subsequent articles, in this chapter: (1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Agreement" means the bargain of the parties 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. A "consumer credit agreement" is an agreement where credit is granted.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the
seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;
(d) Official fees and fees for notarizing deeds and other documents;
(e) Appraisal fees; and
(f) Credit reports.

(8) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) "Commercial facsimile transmission" means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.

(10) "Commissioner" means the commissioner of banking of West Virginia.

(11) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease.

(13) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;

(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the
amount financed does not exceed forty-five thousand
dollars or the sale is of a factory-built home as defined in
section two, article fifteen, chapter thirty-seven of this
code.

(b) "Consumer credit sale" does not include a sale in
which the seller allows the buyer to purchase goods or
services pursuant to a lender credit card or similar ar-
rangement.

(14) (a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of
leasing makes to a person, other than an organization, who
takes under the lease primarily for a personal, family,
household or agricultural purpose;

(ii) In which the total of payments under the lease,
excluding payments for options to renew or buy, do not
exceed forty-five thousand dollars or in which the lease is
of a factory-built home as defined in section two, article
fifteen, chapter thirty-seven of this code; and

(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made
pursuant to a lender credit card or similar arrangement.

(15) "Consumer loan" is a loan made by a person
regularly engaged in the business of making loans in
which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, fam-
ily, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan
finance charge is made; and

(d) Either the principal does not exceed forty-five
thousand dollars or the debt is secured by an interest in
land or a factory-built home as defined in section two,
article fifteen, chapter thirty-seven of this code.

(16) "Cosigner" means a natural person who assumes
liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer's obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit obligation.

(17) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(19) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer
receives a solicitation of the sale at a place other than the
seller's business establishment at a fixed location and the
buyer's agreement or offer to purchase is there given to
the seller or a person acting for the seller. The term does
not include a sale made pursuant to a preexisting
open-end credit account with the seller in existence for at
least three months prior to the transaction, a sale made
pursuant to prior negotiations between the parties at the
seller's business establishment at a fixed location, a sale of
motor vehicles, mobile homes or farm equipment or a sale
which may be rescinded under the Federal Truth in Lend-
ing Act (being Title I of the Federal Consumer Credit
Protection Act). A sale which would be a home solicita-
tion sale if credit were extended by the seller is a home
solicitation sale although the goods or services are paid
for, in whole or in part, by a consumer loan in which the
creditor is subject to claims and defenses arising from the
sale.

(23) Except as otherwise provided, "lender" includes
an assignee of the lender's right to payment but use of the
term does not in itself impose on an assignee any obliga-
tion of the lender.

(24) "Lender credit card or similar arrangement"
means an arrangement or loan agreement, other than a
seller credit card, pursuant to which a lender gives a debtor
the privilege of using a credit card, letter of credit, or other
credit confirmation or identification in transactions out of
which debt arises:

(a) By the lender's honoring a draft or similar order
for the payment of money drawn or accepted by the con-
sumer;

(b) By the lender's payment or agreement to pay the
consumer's obligations; or

(c) By the lender's purchase from the obligee of the
consumer's obligations.

(25) "Loan" includes:
(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(c) The creation of debt pursuant to a lender credit card or similar arrangement; and

(d) The forbearance of debt arising from a loan.

(26) (a) "Loan finance charge" means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.
(28) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(29) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) Two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "payable in installments."

(31) "Person" or "party" includes a natural person or an individual, and an organization.

(32) "Person related to" with respect to an individual means (a) The spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his
spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(33) "Precomputed loan." A loan, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance; or

(B) The loan is expressed in terms of the principal amount; the loan installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the loan or at its final payment as a result of the actual installment payment dates.

(34) "Precomputed sale." A sale, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance; or

(B) The debt is expressed in terms of the principal amount; the debt installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the debt or at its final payment as a result of the actual installment payment dates.
(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) Additional charges permitted by this chapter.

(37) "Revolving charge account" means an agreement between a seller and a buyer by which (a) The buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(38) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

(39) "Sale of goods" includes any agreement in the
form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Sales finance charge" means the sum of (a) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(43) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.
"Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

"Services" includes (a) Work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

"Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

"Supervised lender" means a person authorized to make or take assignments of supervised loans.

"Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.
§46A-1-104. Application.

1 (1) This chapter applies if a consumer, who is a resident of this state, is induced to enter into a consumer credit sale made pursuant to a revolving charge account, to enter into a revolving charge account, to enter into a consumer loan made pursuant to a revolving loan account, or to enter into a consumer lease, by personal or mail solicitation, and the goods, services or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state.

2 (2) With respect to consumer credit sales or consumer loans consummated in another state, a creditor may not collect in an action brought in this state a sales finance charge or loan finance charge in excess of that permitted by this chapter.

§46A-1-106. Sales, leases or loans subject to chapter by agreement of parties.

1 The parties to any sale, lease or loan, other than a consumer credit sale, consumer lease or consumer loan, may agree in writing signed by the parties that the sale, lease or loan is subject to the provisions of this chapter applying to consumer credit sales, consumer leases or consumer loans. If the parties so agree, the sale, lease or loan is subject to this chapter.


1 Except as otherwise provided in this chapter, a consumer may not waive or agree to forego rights or benefits under this chapter or under article two-a, chapter forty-six of this code.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-103a. Lessor subject to claims and defenses arising from leases.

1 (a) The following provisions shall be applicable to claims and defenses of lessees arising from finance leases which are consumer leases or arising from sale and lease back agreements which include consumer leases:
(1) A lessor, other than the issuer of a credit card who, with respect to a particular transaction, makes a consumer lease for the purpose of enabling a lessee to lease goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the lessee against the supplier arising from that specific lease of goods or services if the lessor participates in or is connected with the lease transaction. A lessor is considered to be connected with the lease transaction if:

(A) The lessor and the supplier have arranged for a commission or brokerage or referral fee for the agreement to lease by the lessor;

(B) The lessor is a person related to the supplier unless the relationship is remote or is not a factor in the transaction;

(C) The supplier guarantees the payments or otherwise assumes the risk of loss by the lessor upon the lease other than a risk of loss arising solely from the lessor's failure to perfect a lien if necessary;

(D) The lessor directly supplies the supplier with documents used by the lessee to evidence the transaction, or the supplier directly supplies the lessor with documents used by the lessee to evidence the transaction;

(E) The lease is conditioned upon the lessee's lease of the goods or services from the particular supplier, but the lessor's payment of proceeds of the lease to the supplier does not in itself establish that the lease was so conditioned;

(F) The supplier in such sale has specifically recommended such lessor by name to the lessee, and the lessor has made ten or more leases to lessees within a period of twelve months, within which period the lease in question was made, for goods or services supplied by the supplier or a person related to the supplier, if in connection with such other ten or more leases, the supplier also specifically recommended such lessor by name to the lessees involved; or
(G) The supplier was the issuer of a credit card other than a lender credit card which may be used by the lessee in the transaction as a result of a prior agreement between the issuer and the supplier.

(b) The total of all claims and defenses which a lessee is permitted to assert against a lessor under the provisions of this section shall not exceed the sums due to the lessor for that lease, except (1) As to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud, the total sought shall not exceed the total sum due or payable under the lease, and (2) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(c) An agreement may not limit or waive the claims and defenses of a lessee under this section.

(d) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using the credit card in transactions which entitle the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:

(1) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(2) By the lender's payment or agreement to pay the consumer's obligation; or

(3) By the lender's purchase from the obligee of the consumer's obligations.

(e) A claim or defense which a lessee may assert against a lessor under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lessor: Provided, That if a lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or set off against a claim which is asserted by the lessor, then the lessee shall
have the right to institute and maintain an action or pro-
ceeding seeking to obtain the cancellation, in whole or in
part, of the obligation evidenced by the lease agreement or
the release, in whole or in part, of any lien upon real or
personal property securing the payment thereof: Provided,
however, That any claim or defense founded in fraud,
lack or failure of consideration, or in a violation of the
provisions of this chapter as specified in section one hun-
dred one, article five of this chapter, may be asserted by a
lessee at any time, subject to the provisions of this code
relating to limitation of actions.

(f) Nothing contained in this section shall be con-
strued in any manner as affecting any transaction entered
into prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a
lessor shall not be subject to any claim or defense arising
from or growing out of personal injury or death resulting
therefrom, or damage to property.

(h) Nothing contained in this section shall be con-
strued as affecting any lessee's right of action, claim or
defense which is otherwise provided in this code or at
common law.

§46A-2-104. Notice to cosigners.

(a) No person shall be held liable as cosigner, or be
charged with personal liability for payment in a consumer
credit sale, consumer lease or consumer loan unless that
person, in addition to and before signing any instrument
evidencing the transaction, signs and receives a separate
notice which clearly explains his liability in the event of
default by the consumer and also receives a copy of any
disclosure required by the "Federal Consumer Credit Pro-
tection Act."

(b) Such notice shall be sufficient in a consumer credit
sale or consumer loan if it appears under the conspicuous
caption "NOTICE TO COSIGNER" and contains substan-
tially the following language:
"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract that makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

(c) Such notice shall be sufficient in a consumer lease transaction if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount if the lessee does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the lessee. The creditor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your
wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract which makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

After a consumer has been in default on any installment obligation or any other secured obligation for five days for failure to make a scheduled payment or otherwise perform pursuant to such a consumer credit sale, consumer lease or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. A copy of the notice required by this section shall be (i) Retained by the creditor, (ii) certified in the manner prescribed by this section by an officer or other authorized representative of such creditor, and (iii) notarized by a person licensed as a notary under the laws of the state of West Virginia or any other state or territory of the United States. The certification required by this section shall substantially conform to the following language:
"I, ___________________________ (name of person certifying),
the _______________________________ (title of person certifying)
of _______________________________ (creditor's name),
hereby certify that the notice of the consumer's right to
cure default on which this certification appears (or to
which this certification is attached) was on this ________
day of ________________, 19_____, mailed to the per-
son(s) whose name(s) appear herein (therein) at the ad-
dress(es) set forth herein (therein).

_________________ (Signature)

Except as hereinafter provided in this section, after a
default on any installment obligation or any other secured
obligation other than with respect to a covenant to provide
insurance for or otherwise to protect and preserve the
property covered by a security interest or lease, a creditor
may not accelerate maturity of the unpaid balance of any
such installment obligation or any other such secured
obligation, commence any action or demand or take pos-
session of collateral on account of default until ten days
after notice has been given to the consumer of his right to
cure such default. Until such period expires, the consum-
er shall have the right to cure any default by tendering the
amount of all unpaid sums due at the time of the tender,
without acceleration, plus any unpaid delinquency or
deferral charges and by tendering any other performance
necessary to cure such default. Any such cure shall re-
store a consumer to all his rights under the agreement the
same as if there had been no default. A consumer who
has been in default three or more times on the same obli-
gation and who has been given notice of such fact three or
more times shall not have the right to cure a default under
this section even though previous defaults have been cured
and his creditor's right to proceed against him and his
collateral shall not be impaired or limited in any way by
this section. There shall be no acceleration of the maturi-
ity of all or part of any amount owing in such a consumer
credit sale, consumer lease or consumer loan, except where
nonperformance specified in the agreement as constituting
default has occurred.


1 A consumer is authorized to pay the original creditor
2 until he receives notification of assignment of rights to
3 payment pursuant to a consumer credit sale, consumer
4 lease or a consumer loan and that payment is to be made
to the assignee. A notification which does not reasonably
6 identify the rights assigned is ineffective. If requested by
7 the consumer, the assignee must seasonably furnish rea-
8 sonable proof that the assignment has been made and
9 unless he does so the consumer may pay the original cred-
10 itor.

§46A-2-114. Receipts; statements of account; evidence of pay-

1 (1) The creditor shall deliver or mail to the consumer,
2 without request, a written receipt for each payment by coin
3 or currency on an obligation pursuant to a consumer
4 credit sale, consumer lease or consumer loan. A periodic
5 statement showing a payment received complies with this
6 subsection.

7 (2) Upon written request of a consumer, the person to
8 whom an obligation is owed pursuant to a consumer credit
9 sale, consumer lease or consumer loan, other than one
10 pursuant to a revolving charge account or revolving loan
11 account, shall provide a written statement of the dates and
12 amounts of payments made within the past twelve months
13 and the total amount unpaid. The requested statement
14 shall be provided without charge once during each year of
15 the term of the sale, lease or loan. If additional statements
16 are requested the creditor may charge not in excess of
17 three dollars for each additional statement.

18 (3) After a consumer has fulfilled all obligations with
19 respect to a consumer credit sale, consumer lease or con-
sumer loan, other than one pursuant to a revolving charge account or revolving loan account, the person to whom the obligation was owed shall, upon the request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.


1 (1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales, consumer leases or consumer loans, or one or more sales as defined in section one hundred two, article six of this chapter, may not exceed twenty-five percent of his disposable earnings for that week.

2 (2) As used in this section:

3 (a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

4 (b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of section three, article five, chapter twenty-one of this code, except deductions for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and hospitalization and medical insurance.

5 (3) Any assignment of earnings and any deduction under said section three, article five, chapter twenty-one of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

6 (4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.
§46A-2-117. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit sale, consumer lease or a consumer loan. An authorization in violation of this section is void. The provisions of this section shall not be construed as in any way impliedly authorizing a confession of judgment in any other type of transaction.

§46A-2-118. No garnishment before judgment.

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, consumer lease or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings. The provisions of this section shall not be construed as in any way impliedly authorizing garnishment before judgment in any other type of transaction.

§46A-2-121. Unconscionability; inducement by unconscionable conduct.

(1) With respect to a transaction which is or gives rise to a consumer credit sale, consumer lease or consumer loan, if the court as a matter of law finds:

(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, pur-
pose and effect to aid the court in making the determina-
(3) For the purpose of this section, a charge or prac-
tice expressly permitted by this chapter is not unconscio-
nable.

§46A-2-122. Definitions.

For the purposes of this section and sections one hun-
dred twenty-three, one hundred twenty-four, one hundred
twenty-five, one hundred twenty-six, one hundred
twenty-seven, one hundred twenty-eight, one hundred
twenty-nine, and one hundred twenty-nine-a of this article,
the following terms shall have the following meanings:

(a) "Consumer" means any natural person obligated or
allegedly obligated to pay any debt.

(b) "Claim" means any obligation or alleged obliga-
tion of a consumer to pay money arising out of a transac-
tion in which the money, property, insurance or service
which is the subject of the transaction is primarily for
personal, family or household purposes, whether or not
such obligation has been reduced to judgment.

(c) "Debt collection" means any action, conduct or
practice of soliciting claims for collection or in the collec-
tion of claims owed or due or alleged to be owed or due
by a consumer.

(d) "Debt collector" means any person or organization
engaging directly or indirectly in debt collection. The
term includes any person or organization who sells or
offers to sell forms which are, or are represented to be, a
collection system, device or scheme, and are intended or
calculated to be used to collect claims.

§46A-2-130. Limitation on garnishment.

(1) For the purposes of the provisions in this chapter
relating to garnishment:

(a) "Disposable earnings" means that part of the earn-
ings of an individual remaining after the deduction from
those earnings of amounts required by law to be withheld;
and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

(a) Twenty percent of his disposable earnings for that week, or

(b) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b), subsection (2) of this section.

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale, consumer lease or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he resides to reduce or temporarily or permanently remove such execution upon his earnings on the grounds that such execution causes or will cause undue hardship to him or his family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.
(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

§46A-2-131. No discharge or reprisal because of garnishment.

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease or consumer loan.


Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from consumer credit transactions or consumer leases, except for the purchase money due on such property, in such amounts as follows: Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of two hundred dollars; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of one thousand dollars; children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of one thousand dollars; and any policy of life or endowment insurance which is payable to the spouse or children.
of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon. When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the owner had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the creditor or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

When used in this article the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article, except where the context indicates a different meaning:

(a) "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any
person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

(b) "Consumer" means a natural person to whom a sale or lease is made in a consumer transaction, and a "consumer transaction" means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose.

(c) "Merchantable" means, in addition to the qualities prescribed in section three hundred fourteen, article two, chapter forty-six of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time. (d) "Sale" includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

(e) "Trade" or "commerce" means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.

(f) "Unfair methods of competition and unfair or deceptive acts or practices" means and includes, but is not limited to, any one or more of the following:

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by another;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;
Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

Representing that any person has won a prize, one of a group of prizes or any other thing of value, if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or sales presentation at the seller's place of business or any other location: Provided, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person's obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; or

Violating any provision or requirement of article six-b of this chapter.

"Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter forty-six of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will perform in a described manner.

§46A-7-102. Power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report.
(1) In addition to other powers granted by this chapter, the attorney general within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter or commence proceedings on his own initiative;

(b) Counsel persons and groups on their rights and duties under this chapter;

(c) Establish programs for the education of consumers with respect to credit and leasing practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

(e) Adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and

(f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the attorney general and for whose acts he shall be responsible.

(2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the attorney general or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the attorney general in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(3) Except for refund of an excess charge, in any
action brought pursuant to the provisions of this chapter, it shall be a defense that the act or omission complained of was in conformity with a published opinion of the attorney general issued in compliance with section one, article three, chapter five of this code or in conformity with an examination report issued by the commissioner to the person against whom the action is brought pursuant to section six, article two, chapter thirty-one-a of this code, or a declaratory ruling issued to the person against whom the action is brought pursuant to subdivision (9), subsection (c), section four of said article.

(4) On or before the first day of December of each year, the attorney general and commissioner shall jointly or separately submit a report or reports to the governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection problems in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making such report or reports, the attorney general and commissioner are authorized to conduct research and make appropriate studies. The report or reports shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit and consumer protection problems of both creditors and consumers which have come to their attention through their examinations and investigations and the disposition of them under existing law, and a general statement of the activities of their offices and of others to promote the purposes of this chapter.

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The attorney general may bring a civil action to
restrain a creditor or a person acting in his behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases or consumer loans;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit sales, consumer leases or consumer loans; or

(c) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit or lease transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time consumer credit sales, consumer leases or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) In the case of consumer credit sales, knowledge by the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of consumer credit sales, gross disparity between the price of the property or services sold and
the value of the property or services measured by the price
at which similar property or services are readily obtainable
in credit transactions by like buyers;

(d) The fact that the creditor contracted for or re-
ceived separate charges for insurance with respect to con-
sumer credit sales, consumer leases or consumer loans with
the effect of making the sales or loans, considered as a
whole, unconscionable; and

(e) The fact that the respondent has knowingly taken
advantage of the inability of the debtor reasonably to
protect his interests by reason of physical or mental infir-
mities, ignorance, illiteracy or inability to understand the
language of the agreement, or similar factors.

(4) In an action brought pursuant to this chapter, a
charge or practice expressly permitted by this chapter is
not unconscionable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 15th day of April, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/11/96
Time 11:12 AM