

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3084

By: Morgan (Fred)

AS INTRODUCED

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 2A-102, 2A-103, as last amended by Section 2, Chapter 473, O.S.L. 2005, 2A-104, 2A-105, 2A-107, 2A-108, 2A-109, 2A-201, 2A-202, 2A-203, 2A-204, 2A-205, 2A-206, 2A-208, 2A-211, 2A-212, 2A-214, 2A-219, 2A-220, 2A-221, 2A-303, 2A-304, 2A-305, 2A-306, 2A-309, 2A-310, 2A-401, 2A-402, 2A-404, 2A-405, 2A-406, 2A-504, 2A-506, 2A-508, 2A-509, 2A-510, 2A-511, 2A-512, 2A-513, 2A-514, as amendeded by Section 54, Chapter 140, O.S.L. 2005, 2A-515, 2A-516, 2A-517, 2A-522, 2A-523, 2A-526, as amended by Section 55, Chapter 140, O.S.L. 2005, 2A-527, as amended by Section 32, Chapter 139, O.S.L. 2005, 2A-528, as amended by Section 33, Chapter 139, O.S.L. 2005, 2A-529, 2A-530, 2A-531 and Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Sections 2A-103, 2A-514, 2A-526, 2A-527, 2A-528 and 1-303), which relate to Article 2A of the Uniform Commercial Code, pertaining to leases; modifying scope of Article 2A, modifying definitions; clarifying law relating to leases subject to other law; modifying, limiting and superseding federal Electronic Signatures Act, with exception; providing for goods covered by certificate of title; modifying terminology to reflect inscription of information in medium other than written document; eliminating certain time restriction relating to statute of frauds; providing for explanation of terms in a record; stating rules regarding formation of lease contracts; providing for terms in later record or agreement; modifying warranties; providing requirements to exclude or modify implied warranty of merchantability; allowing certain limitations for remedies for breach of warranty; modifying risk of loss provision; providing for legal recognition of electronic contracts, records and signatures; providing for attribution of electronic record or contract to a person; providing effect of receipt of electronic communication; modifying terminology; providing for determination of repudiation; providing for determination of a term that limits but does not liquidate damages; modifying amount of restitution lessor is entitled to under certain circumstances; excluding consumer leases and actions for indemnity from certain statute of limitation provision; providing for right to specific performance or replevin or similar remedy; modifying remedies of lessee; modifying rejection rights of lessee; providing manner and effect of rejection; clarifying substantial impairment of value; modifying duties of lessee regarding rightfully rejected goods; modifying

manner and effect of cure of improper tender or delivery; modifying circumstances giving rise to waiver of objections by lessee; modifying effect of acceptance of goods; establishing rules if lessee uses good after a rightful rejection or justifiable revocation of acceptance; providing circumstances in which lessee may recover goods leased by a consumer; modifying remedies of lessor; providing for consequential damages in certain circumstances; modifying certain measure of damages; providing scope of consequential damages; prohibiting recovery of consequential damages by a lessor in a consumer lease contract; stating amendatory impact of act; providing scope and application of act; providing savings clause; amending Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 1-303), which relates to course of performance, course of dealing, and usage of trade; modifying statutory reference;; repealing 12A O.S. 2001, Section 2A-521, which relates to the lessee's right to specific performance or replevin; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12A O.S. 2001, Section 2A-102, is amended to read as follows:

Section 2A-102.

SCOPE

~~This~~ (1) Except as provided in subsection (2) of this section, this article applies to any transaction, regardless of form, that creates a lease of goods.

(2) If a transaction includes information and goods, this article does not apply to the part of the transaction involving the information, including informational rights in the transaction and creation or modification of the transaction, or to the media on which the information is contained. However, if a copy of a computer program or other information is contained in and leased as part of goods other than the media on which the information is contained, this article applies to the computer program unless:

(a) the goods are a computer or computer peripheral; or

(b) giving the lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type leased.

SECTION 2. AMENDATORY 12A O.S. 2001, Section 2A-103, as last amended by Section 2, Chapter 473, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-103), is amended to read as follows:

Section 2A-103.

DEFINITIONS AND INDEX OF DEFINITIONS

(1) In this article unless the context otherwise requires:

- (a) ~~"Buyer in the ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in the 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 acquiring 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.
- ~~(e)~~ (b) "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)~~ (c) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(d) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Whether a term is conspicuous or not is a decision for the court.
Conspicuous terms include the following:

(i) for a person:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size;
and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language; and

(ii) for a person or an electronic agent, a term that is so placed in a record or display that the

person or electronic agent cannot proceed without taking action with respect to the particular term.

- (e) "Consumer" means an individual who leases or contracts to lease goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family, or household purposes.
- ~~(f)~~ "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed Forty-five Thousand Dollars (\$45,000.00) consumer.
- ~~(f)~~ (g) "Delivery" means the voluntary transfer of physical possession or control of goods.
- (h) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (i) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
- (j) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- (k) "Fault" means wrongful act, omission, breach, or default.
- ~~(g)~~ (l) "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 or, in the case of goods that have been leased previously by the lessor and are not being leased to a consumer, in connection with another lease; and
- (iii) one of the following occurs:
 - (A) the lessee receives a copy of the ~~contract~~ agreement by which the lessor acquired, or proposes to acquire, the goods or the right to possession and use of the goods before signing the lease ~~contract~~ agreement;
 - (B) the lessee's approval of the ~~contract~~ agreement by which the lessor acquired, or proposes to acquire, the goods or the right to possession and use of the goods is a condition to effectiveness of the lease ~~contract~~ agreement;
 - (C) the lessee, before signing the lease ~~contract~~ agreement, 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~~ agreement, informs the lessee in ~~writing~~ (a) a record:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, ~~(b) ;~~

(II) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods ~~;~~ ; and ~~(c)~~

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them, or a statement of remedies.

~~(h)~~ (m) Reserved.

(n) "Goods" means all things that are movable at the time of identification to the lease contract, or that are fixtures (Section 2A-309 of this title). The term

includes future goods, specially manufactured goods, and the unborn young of animals. The term does not include information, the money in which the price is to be paid, investment securities under Article 8 of the Uniform Commercial Code, ~~minerals or the like,~~ ~~including oil and gas, before extraction,~~ or choses in action.

~~(i)~~ (o) "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)~~ (p) "Lease" means a transfer of the right to possession and use of goods for a ~~term~~ period 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, or license of information is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

~~(k)~~ (q) "Lease agreement", as distinguished from "lease contract", means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or ~~by implication~~ inferred from other circumstances including course of performance, course of dealing ~~of,~~ or usage of trade ~~or course of performance~~ as provided in ~~this article~~ Section 1-303 of this title. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

~~(l)~~ (r) "Lease contract", as distinguished from "lease agreement", means the total legal obligation that results from the lease agreement as ~~affected by this article and~~ determined by the Uniform Commercial Code

as supplemented by any other applicable rules of law.
Unless the context clearly indicates otherwise, the term includes a sublease contract.

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

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

~~(o)~~ (u) "Lessee in the ordinary course of business" means a person ~~who~~ that leases goods in good faith ~~and,~~ without knowledge that the lease ~~to him is in violation~~ violates the rights of ~~the ownership rights or security interest or leasehold interest of a third party in the goods~~ leases another person, and in the ordinary course from a person, other than a pawnbroker, in the business of selling or leasing goods of that kind ~~but does not include a pawnbroker.~~ "Leasing" A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual or customary practices. A lessee in ordinary course of business may be lease for cash ~~or,~~ by exchange of other property, or on secured or unsecured credit, and includes acquiring may acquire goods or documents of title under a preexisting lease contract ~~but does not include.~~ Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor under this article may be a lessee in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or

partial satisfaction of a money debt is not a lessee in ordinary course of business.

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

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

~~(r)~~ (x) "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)~~ (y) "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)~~ (z) "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)~~ (aa) Reserved.

(bb) Reserved.

(cc) Reserved.

(dd) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(ee) "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)~~ (ff) "Supplier" means a person from ~~whom~~ which a lessor buys or leases goods to be leased under a finance lease.

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

~~(z)~~ (hh) "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". Subsection (1) of Section 2A-310 of this title.

"Construction mortgage". Paragraph (d) of subsection (1) of Section 2A-309 of this title.

"Encumbrance". Paragraph (e) of subsection (1) of Section 2A-309 of this title.

"Fixtures". Paragraph (a) of subsection (1) of Section 2A-309 of this title.

"Fixture filing". Paragraph (b) of subsection (1) of Section 2A-309 of this title.

"Purchase money lease". Paragraph (c) of subsection (1) of Section 2A-309 of this title.

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

~~"Account". Paragraph (2) of subsection (a) of Section 1-9-102 of this title.~~

"Between merchants". Subsection (3) of Section 2-104 of this title.

"Buyer". Paragraph (a) of subsection (1) of Section 2-103 of this title.

"Chattel paper". Paragraph (11) of subsection (a) of Section 1-9-102 of this title.

"Consumer goods". Paragraph (23) of subsection (a) of Section 1-9-102 of this title.

~~"Document". Paragraph (30) of subsection (a) of Section 1-9-102 of this title.~~

"Entrusting". Paragraph (3) of Section 2-403 of this title.

~~"General intangible". Paragraph (42) of subsection (a) of Section 1-9-102 of this title.~~

~~"Instrument". Paragraph (47) of subsection (a) of Section 1-9-102 of this title.~~

"Letter of credit". Paragraph 10 of subsection (a) of Section 5-102 of this title.

"Merchant". Subsection (1) of Section 2-104 of this title.

~~"Mortgage". Paragraph (55) of subsection (a) of Section 1-9-102 of this title.~~

~~"Pursuant to commitment". Paragraph (68) of subsection (a) of Section 1-9-102 of this title.~~

"Receipt of goods". ~~Subsection (e) Paragraph (b) of paragraph subsection~~ (1) of Section 2-103 of this title.

"Sale". ~~Paragraph~~ Subsection (1) of Section 2-106 of this title.

"Sale on approval". Section 2-326 of this title.

"Sale or return". Section 2-326 of this title.

"Seller". Subparagraph ~~(d)~~ of paragraph (1) of Section 2-103 of this title.

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

SECTION 3. AMENDATORY 12A O.S. 2001, Section 2A-104, is amended to read as follows:

Section 2A-104.

LEASES SUBJECT TO OTHER LAW

(1) A lease, ~~although~~ subject to this article, is also subject to any applicable:

- (a) certificate_of_title statute of this state;
- (b) certificate_of_title statute of another jurisdiction (Section 2A-105 of this title); or
- (c) ~~consumer protection statute of this state, or final consumer protection decision of a court of this state existing on January 1, 1992~~ rule of law that establishes a different rule for consumers.

(2) ~~In case of~~ To the extent there is a conflict between this article, other than Section 2A-105, subsection (3) of Section 2A-304, and subsection (3) of Section 2A-305 of this title, and a ~~statute or decision~~ law referred to in subsection (1) of this section, the statute or decision controls.

(3) ~~Failure to comply with an applicable law has only the effect specified therein~~ For purposes of this article, failure to comply with a law referred to in subsection (1) of this section has only the effect specified in that other law.

(4) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 2A-105, is amended to read as follows:

Section 2A-105.

TERRITORIAL APPLICATION OF ARTICLE TO GOODS

COVERED BY CERTIFICATE OF TITLE

(1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the lessee or lessor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the application fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) Subject to ~~the provisions of~~ subsections (3) of Sections ~~34~~ 2A-304 and ~~35~~ 2A-305 of this ~~act~~ title, 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 local 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 (4) months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is~~

~~issued by another jurisdiction~~ whose certificate of title covers the goods from the time the goods become covered by the certificate until the goods cease to be covered by the certificate of title.

SECTION 5. AMENDATORY 12A O.S. 2001, Section 2A-107, is amended to read as follows:

Section 2A-107.

WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT

~~Any~~ A 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 in a signed record.

SECTION 6. AMENDATORY 12A O.S. 2001, Section 2A-108, is amended to read as follows:

Section 2A-108.

UNCONSCIONABILITY

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

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

(3) Before making a finding of unconscionability under subsection (1) or (2) of this section, 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) of this section, the court shall award reasonable ~~attorney's~~ attorney fees to the lessee.

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

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

SECTION 7. AMENDATORY 12A O.S. 2001, Section 2A-109, is amended to read as follows:

Section 2A-109.

OPTION TO ACCELERATE AT WILL

(1) A term providing that one party or ~~his~~ that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he~~ the party deems ~~himself~~ itself insecure" or ~~in~~ words of similar import ~~must be construed to mean~~ means that ~~he~~ the party has power to do so only if ~~he~~ that party in good faith believes that the prospect of payment or performance is impaired.

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

SECTION 8. AMENDATORY 12A O.S. 2001, Section 2A-201, is amended to read as follows:

Section 2A-201.

STATUTE OF FRAUDS

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

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than One Thousand Dollars (\$1,000.00); or

(b) there is a ~~writing~~ record, signed by the party against ~~whom~~ which 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 paragraph (b) of subsection (1) of this section, whether or not it is specific, if it reasonably identifies what is described.

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

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

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that

reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

- (b) if the party against ~~whom~~ which enforcement is sought admits in ~~that~~ the party's pleading, or in the party's testimony or otherwise in court under oath that a lease contract was made, but the lease contract is not enforceable under this ~~provision~~ paragraph beyond the quantity of goods admitted; or
- (c) with respect to goods that have been received and accepted by the lessee.

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

- (a) if there is a ~~writing~~ record signed by the party against ~~whom~~ which enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
- (b) if the party against ~~whom~~ which enforcement is sought admits in ~~that~~ the party's pleading, or in the party's testimony, or otherwise in court under oath a lease term, the term so admitted; or
- (c) a reasonable lease term.

(6) A lease contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within one (1) year or any other period after its making.

SECTION 9. AMENDATORY 12A O.S. 2001, Section 2A-202, is amended to read as follows:

Section 2A-202.

FINAL ~~WRITTEN~~ EXPRESSION IN A RECORD; PAROL OR EXTRINSIC EVIDENCE

(1) Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their

agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be ~~explained or~~ supplemented by evidence of:

- (a) ~~by~~ course of performance, course of dealing or usage of trade ~~or by course of performance~~ (Section 1-303 of this title; and
- (b) ~~by evidence of~~ consistent additional terms unless the court finds the ~~writing~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.

(2) Terms in a record may be explained by evidence of course of performance, course of dealing, or usage of trade without a preliminary determination by the court that the language used is ambiguous.

SECTION 10. AMENDATORY 12A O.S. 2001, Section 2A-203, is amended to read as follows:

Section 2A-203.

SEALS INOPERATIVE

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

SECTION 11. AMENDATORY 12A O.S. 2001, Section 2A-204, is amended to read as follows:

Section 2A-204.

FORMATION IN GENERAL

(1) A lease contract may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of a lease contract, the interaction of electronic agents, and the interaction of an electronic agent and an individual.

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

(3) ~~Although~~ Even if 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.

(4) Except as otherwise provided in Sections 21 through 23 of this act, the following rules apply:

(a) A lease contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A lease contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A lease contract is formed if the individual takes actions that the individual is free to refuse to take or makes a statement, and the individual has reason to know that the actions or statement will:

(i) cause the electronic agent to complete the transaction or performance; or

(ii) indicate acceptance of an offer, regardless of other expressions or actions by the individual to which the electronic agent cannot react.

SECTION 12. AMENDATORY 12A O.S. 2001, Section 2A-205, is amended to read as follows:

Section 2A-205.

FIRM OFFERS

An offer by a merchant to lease goods to or from another person in a signed ~~writing~~ record 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 (3) months. Any such term of assurance ~~on~~ in a form supplied by the offeree must be separately signed by the offeror.

SECTION 13. AMENDATORY 12A O.S. 2001, Section 2A-206, is amended to read as follows:

Section 2A-206.

OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT

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

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

(3) The terms of a record may be adopted after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or in part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins. If terms are to be adopted by later agreement and the party receiving the later record had reason to believe the other party intended not to be bound unless the terms are so adopted, a contract is not formed if the party receiving the record does not agree to the terms.

SECTION 14. AMENDATORY 12A O.S. 2001, Section 2A-208, is amended to read as follows:

Section 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~~ record may not be otherwise

modified or rescinded, but, except as between merchants, such a requirement ~~on~~ in 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) of this section, it may operate as a waiver.

(4) A party ~~who~~ that 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.

SECTION 15. AMENDATORY 12A O.S. 2001, Section 2A-211, is amended to read as follows:

Section 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, a lessor 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~~ warrants that, except for claims by any person by way of infringement or the like, for the duration of the lease no person holds:

- a. a claim to or interest in the goods not attributable to the lessee's own act or omission which will

interfere with the lessee's enjoyment of its leasehold interest; or

- b. a colorable claim to or interest in the goods which will unreasonably expose the lessee to litigation.

(2) A finance lessor warrants that, except for claims by way of infringement or the like, for the duration of the lease no person holds:

- (a) a claim or interest in the goods that arose from an act or omission of the lessor which will interfere with the lessee's enjoyment of its leasehold interest;
or

- (b) a colorable claim to or interest in the goods that arose from an act or omission of the lessor which will unreasonably expose the lessee to litigation.

(3) Except in a finance lease, a lessor that is a merchant regularly dealing in goods of the kind warrants that the goods will be delivered free of the rightful claim of a third party by way of infringement or the like. However, a lessee who that furnishes specifications to a lessor or a supplier shall hold holds the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

(4) A warranty under this section may be excluded or modified only by specific language that is conspicuous and contained in a record, or by circumstances, including course of performance, course of dealing, or usage of trade, that give the lessee reason to know that the lessor purports to transfer only such right as the lessor or a third party may have, or that it is leasing subject to any claims of infringement or the like.

SECTION 16. AMENDATORY 12A O.S. 2001, Section 2A-212, is amended to read as follows:

Section 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~~ description 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.

SECTION 17. AMENDATORY 12A O.S. 2001, Section 2A-214, is amended to read as follows:

Section 2A-214.

EXCLUSION OR MODIFICATION OF WARRANTIES

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to ~~the provisions of~~ Section ~~11~~ 2A-202 of this ~~act on~~ ~~parol or extrinsic evidence~~ title, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must be in a record and be conspicuous. In a consumer

lease the language must state "The lessor undertakes no responsibility for the quality of the goods except as otherwise provided in this contract", and in any other contract the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify ~~any~~ the implied warranty of fitness the exclusion must be by a writing in a record and be conspicuous. Language to exclude all implied warranties of fitness in a consumer lease must state "The lessor assumes no responsibility that the goods will be fit for any particular purpose for which you may be leasing these goods, except as otherwise provided in the contract", and in any other contract the language is sufficient if it is in writing, is conspicuous and states, for example, "There is are no warranty warranties that the goods will be fit for a particular purpose extend beyond the description on the face hereof". Language that satisfies the requirements of this subsection for a consumer lease also satisfies its requirements for any other lease contract."

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

- (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~~ a record 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, after a demand by the lessor 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 20 of this act) 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.~~ Remedies for breach of warranty can be limited in accordance with Sections 2A-503 and 2A-504 of this title.

SECTION 18. AMENDATORY 12A O.S. 2001, Section 2A-219, is amended to read as follows:

Section 2A-219.

RISK OF LOSS

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

(2) ~~Subject to the provisions of this article on the effect of default on risk of loss (Section 29 of this act)~~ Section 2A-220 of this title, 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 to the lessee of the lessee's right to possession of the goods.
- (c) In any case not within paragraph (a) or (b) of this subsection, 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.~~

SECTION 19. AMENDATORY 12A O.S. 2001, Section 2A-220, is amended to read as follows:

Section 2A-220.

EFFECT OF DEFAULT ON RISK OF LOSS

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

- (a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.
- (b) If the lessee rightfully revokes acceptance, ~~he~~ the lessee, to the extent of any deficiency in ~~his~~ its 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~~ its effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

SECTION 20. AMENDATORY 12A O.S. 2001, Section 2A-221, is amended to read as follows:

Section 2A-221.

CASUALTY TO IDENTIFIED GOODS

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section ~~29~~ 2A-219 of this ~~act~~, then title:

- (a) if the loss is total, the lease contract is ~~avoided~~ terminated; and
- (b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at ~~his~~ the lessee's option either treat the lease contract as ~~avoided~~ terminated or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-222 of Title 12A, unless there is created a duplication in numbering, reads as follows:

LEGAL RECOGNITION OF ELECTRONIC CONTRACTS,

RECORDS AND SIGNATURES

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) This article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed by electronic means or in electronic form.

(4) A contract formed by the interaction of an individual and an electronic agent under paragraph (b) of subsection (4) of Section 2A-204 of Title 12A of the Oklahoma Statutes does not include terms provided by the individual if the individual had reason to know that the agent could not react to the terms as provided.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-223 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ATTRIBUTION

An electronic record or electronic signature is attributed to a person if it was the act of the person or the person's electronic agent or the person is otherwise legally bound by the act.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-224 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ELECTRONIC COMMUNICATION

(1) If the receipt of an electronic communication has a legal effect, it has that effect even if no individual is aware of its receipt.

(2) Receipt of an electronic acknowledgement of an electronic communication establishes that the communication was received but, in itself, does not establish that the content sent corresponds to the content received.

SECTION 24. AMENDATORY 12A O.S. 2001, Section 2A-303, is amended to read as follows:

Section 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) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this title, ~~Secured Transactions~~, by reason of paragraph (3) of subsection (a) of Section 1-9-109 of this title.

(2) ~~Except as provided in~~ Subject to subsection (3) of this section and except as provided in Section 1-9-407 of this title or as otherwise agreed, 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 (4) of this section, ~~but~~. However, a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits 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 of risk imposed on, the other party to the lease contract within ~~the purview of~~ subsection (4) of this section.

(4) Subject to subsection (3) of this section and Section 1-9-407 of this ~~article~~ title:

(a) if a transfer is made ~~which~~ that 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 subsection (2) of Section 2A-501 of this title; or

- (b) if paragraph (a) of this subsection 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.

(5) 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.

(6) 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.

(7) 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~~ record, and conspicuous.

SECTION 25. AMENDATORY 12A O.S. 2001, Section 2A-304, is amended to read as follows:

Section 2A-304.

SUBSEQUENT LEASE OF GOODS BY LESSOR

(1) Subject to Section 2A-303 of this title, 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) of this section and subsection (4) of Section 2A-527 of this title, 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~~ if:

- (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 criminal fraud ~~punishable as larcenous under the criminal law.~~

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

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

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

SECTION 26. AMENDATORY 12A O.S. 2001, Section 2A-305, is amended to read as follows:

Section 2A-305.

SALE OR SUBLEASE OF GOODS BY LESSEE

(1) Subject to ~~the provisions of~~ Section ~~33~~ 2A-303 of this ~~act~~ title, 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) of this section and subsection (4) of Section ~~58~~ 2A-511 of this ~~act~~ title, 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 provided for a buyer or sublessee from the lessee of goods under an existing lease contract. ~~When~~ If goods have been delivered under a transaction of lease the lessee has that power even ~~though~~ if:

- (a) the lessor was deceived as to the identity of the lessee;
- (b) the delivery was in exchange for a check which is later dishonored; or

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

(2) A buyer in ~~the~~ ordinary course of business or a sublessee in ~~the~~ ordinary course of business from a lessee ~~who~~ that is a merchant dealing in goods of that kind to ~~whom~~ which 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.

SECTION 27. AMENDATORY 12A O.S. 2001, Section 2A-306, is amended to read as follows:

Section 2A-306.

PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW

If a person in the ordinary course of ~~his~~ its 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.

SECTION 28. AMENDATORY 12A O.S. 2001, Section 2A-309, is amended to read as follows:

Section 2A-309.

LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES

(1) In this section:

- (a) goods are "fixtures" ~~when~~ if they become so related to particular real ~~estate~~ property that an interest in them arises under real ~~estate~~ property law;
- (b) a "fixture filing" is the filing, in the office where a mortgage on the real ~~estate~~ property would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of subsections (a) and (b) of Section 1-9-502 of this title, as applicable;
- (c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
- (d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if ~~the~~ a recorded ~~writing~~ record of the mortgage so indicates; and
- (e) "encumbrance" includes real ~~estate~~ property mortgages and other liens on real ~~estate~~ property and all other rights in real ~~estate~~ property that are not ownership interests.

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

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

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

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

(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 property 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 property, 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 property obtained by legal or equitable proceedings after the lease contract is enforceable; or
- (c) the encumbrancer or owner has consented in writing a record 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, but if~~ the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, 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~~ property 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~~ property under a mortgage has this priority to the same extent as the encumbrancer of the real ~~estate~~ property under the construction mortgage.

(7) In cases ~~other than those described in~~ not covered by subsections ~~(1)~~ (3) through (6) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real ~~estate~~ property that is not the lessee is determined by the priority rules governing conflicting interests in real ~~estate~~ property.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real ~~estate~~ property, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real ~~estate~~ property, free and

clear of all conflicting interests of all owners and encumbrancers of the real ~~estate~~ property, but the lessor or lessee must reimburse any encumbrancer or owner of the real ~~estate~~ property that is not the lessee and ~~who~~ that has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real ~~estate~~ property 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~~ if the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Article 9 of the Uniform Commercial Code ~~—Secured Transactions~~.

SECTION 29. AMENDATORY 12A O.S. 2001, Section 2A-310, is amended to read as follows:

Section 2A-310.

LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS

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

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

(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) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in

writing consented to the lease or disclaimed an interest in the goods as part of the whole.

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

- (a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;
or
- (b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3), and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee:

- (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~~ other rights and remedies under this article,

may remove the goods from the whole, free and clear of all interests in the whole, but ~~he~~ the lessor or the lessee must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

SECTION 30. AMENDATORY 12A O.S. 2001, Section 2A-401, is amended to read as follows:

Section 2A-401.

INSECURITY; ADEQUATE ASSURANCE OF PERFORMANCE

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

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in ~~writing~~ a record adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which ~~he~~ the insecure party has not already received the agreed return.

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

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

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

SECTION 31. AMENDATORY 12A O.S. 2001, Section 2A-402, is amended to read as follows:

Section 2A-402.

ANTICIPATORY REPUDIATION

(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 retraction of repudiation and performance by the repudiating party;
- (b) make demand pursuant to Section 41 2A-401 of this ~~act~~ title 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~~ if 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.

(2) In addition, whether or not the aggrieved party is pursuing one of the remedies provided for in subsection (1) of this section, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods ~~(under Section 71 2A-524 of this ~~act~~)~~ title.

(3) Repudiation includes language that a reasonable person would interpret to mean that the other person will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that would appear to a reasonable party to make a future performance by the other party impossible.

SECTION 32. AMENDATORY 12A O.S. 2001, Section 2A-404, is amended to read as follows:

Section 2A-404.

SUBSTITUTED PERFORMANCE

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed

manner of ~~delivery~~ performance otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

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

- (a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
- (b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

SECTION 33. AMENDATORY 12A O.S. 2001, Section 2A-405, is amended to read as follows:

Section 2A-405.

EXCUSED PERFORMANCE

Subject to Section ~~44~~ 2A-404 of this ~~act~~ title on substituted performance, the following rules apply:

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

- (b) If the causes mentioned in paragraph (a) of this section affect only part of the lessor's or the supplier's capacity to perform, ~~he~~ the lessor or supplier shall allocate production and deliveries among ~~his~~ customers but at ~~his~~ the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as ~~his~~ the lessor's or supplier's own requirements for further manufacture. ~~He~~ The lessor or supplier 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~~ nonperformance and, if allocation is required under paragraph (b) of this section, of the estimated quota thus made available for the lessee.

SECTION 34. AMENDATORY 12A O.S. 2001, Section 2A-406, is amended to read as follows:

Section 2A-406.

PROCEDURE ON EXCUSED PERFORMANCE

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section ~~45~~ 2A-405 of this ~~act~~ title, the lessee, by ~~written~~ notification in a record 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 ~~57~~ 2A-510 of this ~~act~~ title) may:

- (a) terminate the lease contract (subsection (2) of Section ~~52~~ 2A-505 of this ~~act~~ title); 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 ~~45~~ 2A-405 of this ~~act~~ title, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract ~~lapses~~ is terminated with respect to any ~~deliveries~~ performance affected.

SECTION 35. AMENDATORY 12A O.S. 2001, Section 2A-504, is amended to read as follows:

Section 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. Section 2A-503 of this title determines the enforceability of a term that limits but does not liquidate damages.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, 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 or stops performance because of the lessee's default or insolvency (~~Section 72 or 73 of this act~~), the lessee is entitled to restitution of any amount by which the sum of ~~his~~ the lessee's payments exceeds:

~~(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or~~
~~(b) in the absence of those terms, twenty percent (20%) 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 (\$500.00).~~

(4) A lessee's right to restitution under subsection (3) of this section 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) of this section; and
- (b) the amount of value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

SECTION 36. AMENDATORY 12A O.S. 2001, Section 2A-506, is amended to read as follows:

Section 2A-506.

STATUTE OF LIMITATIONS

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. ~~By~~ Except in a consumer lease or an action for indemnity, the original lease ~~contract~~ parties agreement may reduce the period of limitation to not less than one (1) year.

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

based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section 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 (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(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.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-507A of Title 12A, unless there is created a duplication in numbering, reads as follows:

RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN OR THE LIKE

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances. In a contract other than a consumer lease, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.

(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 or similar remedy 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

or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

SECTION 38. AMENDATORY 12A O.S. 2001, Section 2A-508, is amended to read as follows:

Section 2A-508.

LESSEE'S REMEDIES

(1) If a lessor fails to deliver the goods in conformity to the lease contract ~~(Section 2A-509 of this title)~~ or repudiates the lease contract ~~(Section 2A-402 of this title)~~, or a lessee rightfully rejects the goods ~~(Section 2A-509 of this title)~~ or justifiably revokes acceptance of the goods ~~(Section 2A-517 of this title)~~, ~~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 of this title)~~, the lessor is in default under the lease contract and the lessee may do one or more of the following:

- (a) cancel the lease contract ~~(under~~ subsection (1) of Section 2A-505 of this title);
- (b) recover so much of the rent and security as has been paid and is just under the circumstances;
- (c) cover and ~~recover~~ obtain damages ~~as to all goods affected whether or not they have been identified to the lease contract (Sections under Section 2A-518 and 2A-520 of this title)~~, ~~or~~;
- (d) recover damages for nondelivery ~~(Sections under subsection (1) of Section 2A-519 and 2A-520 of this title)~~;
- ~~(d)~~ (e) if an acceptance of goods has not been justifiably revoked, recover damages for default with regard to accepted goods under subsections (3) and (4) of Section 2A-519 of this title;

- (f) enforce a security interest under subsection (4) of this section;
- (g) recover identified goods under Section 2A-522 of this title;
- (h) obtain specific performance or obtain the goods by replevin or similar remedy under Section 37 of this act;
- (i) recover liquidated damages under Section 2A-504 of this title;
- (j) enforce limited remedies under Section 2A-503 of this title; and
- (k) 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 of this title); or~~
- ~~(b) in a proper case, obtain specific performance or replevy the goods (Section 2A-521 of this title).~~

~~(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 subsection (3) of Section 2A-519 of this title.~~

~~(4) (3) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection (4) of Section 2A-519 of this title).~~

~~(5) (4) On rightful rejection or justifiable revocation or 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 subsection (5) of Section 2A-527 of this title.

~~(6)~~ (5) Subject to the provisions of Section 2A-407 of this title, 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.

SECTION 39. AMENDATORY 12A O.S. 2001, Section 2A-509, is amended to read as follows:

Section 2A-509.

LESSEE'S RIGHTS ON IMPROPER DELIVERY;

~~RIGHTFUL~~ MANNER AND EFFECT OF REJECTION

(1) Subject to ~~the provisions of Section 58 of this act, a lessee, on default in installment lease contracts~~ Sections 2A-503, 2A-504, and 2A-510 of this title, if the goods or the tender ~~or~~ of delivery fail in any respect to conform to the lease contract, the lessee may:

- (a) reject ~~or~~ the whole;
- (b) accept the ~~goods~~ whole; or
- (c) accept any commercial unit or units and reject the rest ~~of the goods~~.

(2) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless ~~it is within a reasonable time after tender or delivery of the goods and the lessee~~ seasonably notifies the lessor or supplier.

(3) Subject to Sections 2A-511, 2A-512, and subsection (6) of Section 2A-517 of this title:

- (a) after rejection any use by the lessee with respect to any commercial unit is wrongful as against the lessor or supplier; and

- (b) if the lessee has before rejection taken physical possession of goods in which the lessee does not have a security interest under subsection (4) of Section 2A-508 of this title, the lessee is under a duty after rejection to hold them with reasonable care at the lessor's or supplier's disposition for a time sufficient to permit the lessor or supplier to remove them; but
- (c) the lessee has no further obligations with regard to goods rightfully rejected.

The lessor's or supplier's remedies with respect to goods wrongfully rejected are governed by Section 2A-523 of this title.

SECTION 40. AMENDATORY 12A O.S. 2001, Section 2A-510, is amended to read as follows:

Section 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~~ to the lessee or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) ~~Whenever~~ If 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.

SECTION 41. AMENDATORY 12A O.S. 2001, Section 2A-511, is amended to read as follows:

Section 2A-511.

MERCHANT LESSEE'S DUTIES AS TO
RIGHTFULLY REJECTED GOODS

(1) Subject to any security interest of a lessee (subsection ~~(5)~~ (4) of Section ~~55~~ 2A-508 of this ~~act~~ title), 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~~ the lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. ~~Instructions~~ In the case of a rightful rejection, instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (Section ~~59~~ 2A-512 of this ~~act~~ title) disposes of goods following a rightful rejection, ~~he~~ the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.

(3) In complying with this section or Section ~~59~~ 2A-512 of this ~~act~~ title, 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~~ that purchases in good faith from a lessee pursuant to this section or Section ~~59~~ 2A-512 of this ~~act~~ title

takes the goods free of any rights of the lessor and the supplier even ~~though~~ if the lessee fails to comply with one or more of the requirements of this article.

SECTION 42. AMENDATORY 12A O.S. 2001, Section 2A-512, is amended to read as follows:

Section 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 58 of this act) and subject to any security interest of a lessee (subsection (5) of Section 55 of this act):~~

~~(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 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 58 of this act; but~~

~~(c) the lessee has no further obligations with regard to goods rightfully rejected 2A-511 of this title.~~

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

SECTION 43. AMENDATORY 12A O.S. 2001, Section 2A-513, is amended to read as follows:

Section 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~~ the lessee rejects goods or a tender of delivery under Section 2A-509 or 2A-510 of this title or, except in a consumer contract, justifiably revokes acceptance under paragraph (b) of subsection (1) of Section 2A-517 of this title and the agreed time for performance has not yet expired, the a lessor or the a supplier that has performed in good faith, upon reasonable notice to the lessee, and at the lessor's or supplier's own expense, may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make the default by making a conforming tender of delivery within the agreed time provided in the lease contract.

~~(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee~~ goods or a tender of delivery under Section 2A-509 or 2A-510 of this title or, except in a consumer lease, justifiably revokes acceptance under paragraph (b) of subsection (1) of Section 2A-517 of this title and the agreed time for performance has expired, a lessor or supplier that has performed in good faith may, upon reasonable notice to the lessee and at the lessor's or supplier's own expense, cure the default, if the cure is appropriate and timely under the circumstances, by making a tender of conforming goods. The lessor or supplier shall compensate the lessee for all of the lessee's reasonable expenses caused by the lessor's or supplier's default and subsequent cure.

SECTION 44. AMENDATORY 12A O.S. 2001, Section 2A-514, as amended by Section 54, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-514), is amended to read as follows:

Section 2A-514.

WAIVER OF LESSEE'S OBJECTIONS

(1) ~~In rejecting goods, a~~ A lessee's failure to state in connection with rejection a particular defect ~~that is ascertainable by reasonable inspection~~ or in connection with revocation of acceptance a defect that justifies revocation precludes the lessee from relying on the unstated defect to justify rejection or ~~to establish default~~ revocation of acceptance if the defect is ascertainable by reasonable inspection:

(a) ~~if, stated seasonably,~~ the lessor or ~~the~~ supplier had a right to cure the defect and could have cured it ~~(Section 2A-213 of this title)~~ if stated seasonably; or

(b) between merchants if the lessor or the supplier after rejection or revocation of acceptance has made a request in writing a record for a full and final ~~written~~ statement in a record 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 in the documents.

SECTION 45. AMENDATORY 12A O.S. 2001, Section 2A-515, is amended to read as follows:

Section 2A-515.

ACCEPTANCE OF GOODS

(1) Acceptance of goods occurs ~~after~~ when 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~~ after a reasonable opportunity to inspect the goods signifies to the lessor or ~~the~~ supplier that the goods are conforming or ~~that the lessee will take or retain them~~ will be taken or retained in spite of their nonconformity; ~~or~~

(b) ~~the lessee~~ fails to make an effective rejection ~~of the goods~~ (under subsection (2) of Section ~~56~~ 2A-509 of

this ~~act~~ title, but such acceptance does not occur until the lessee has had a reasonable opportunity to inspect them; or

(c) subject to subsection (6) of Section 2A-517 of this title, uses the goods in any manner that is inconsistent with the lessor's or supplier's rights.

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

SECTION 46. AMENDATORY 12A O.S. 2001, Section 2A-516, is amended to read as follows:

Section 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~~ may not 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;~~

however, failure to give timely notice bars the lessee from remedy only to the extent that the lessor or supplier is prejudiced by the failure;

(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 of this title) 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 indemnity, breach of a warranty or other obligation for which ~~a lessor or a supplier~~ another party is answerable over the following rules apply:

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

(b) the ~~lessor or the supplier~~ other party may demand in ~~writing~~ a record that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A-211 of this title) or else be barred from any remedy over. If the demand states that the ~~lessor or the supplier~~ other party agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

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

SECTION 47. AMENDATORY 12A O.S. 2001, Section 2A-517, is amended to read as follows:

Section 2A-517.

REVOCATION OF ACCEPTANCE OF GOODS

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

- (a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
- (b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

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

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

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

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

(6) If a lessee uses the goods after a rightful rejection or justifiable revocation of acceptance, the following rules apply:

- a. Any use by the lessee which is unreasonable under the circumstances is wrongful as against the lessor or supplier and is an acceptance only if ratified by the lessor or supplier under paragraph (c) of subsection (1) of Section 2-515 of this title.
- b. Any use of the goods which is reasonable under the circumstances is not wrongful as against the lessor or supplier and is not an acceptance, but in an appropriate case the lessee shall be obligated to the lessor or supplier for the value of the use to the lessee.

SECTION 48. AMENDATORY 12A O.S. 2001, Section 2A-522, is amended to read as follows:

Section 2A-522.

LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY

(1) Subject to subsection (2) of this section and even ~~though~~ if the goods have not been shipped, a lessee ~~who~~ that has paid a part or all of the rent and security for goods identified to a lease contract (Section ~~26~~ 2A-217 of this ~~act~~ title) 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:

- (a) in the case of goods leased by a consumer, the lessor repudiates or fails to deliver as required by the lease contract; or

(b) in all cases, the lessor becomes insolvent within ten (10) days after receipt of the first installment ~~of~~ on their 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.

SECTION 49. AMENDATORY 12A O.S. 2001, Section 2A-523, is amended to read as follows:

Section 2A-523.

LESSOR'S REMEDIES

(1) If a lessee wrongfully rejects or ~~revokes~~ attempts to revoke 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 of this title),~~ the lessee is in default under the lease contract with respect to any goods involved and the lessor may do one or more of the following:

- ~~(a) cancel the lease contract (subsection (1) of Section 2A-505 of this title);~~
- ~~(b) proceed respecting goods not identified to the lease contract (Section 2A-524 of this title);~~
- ~~(c) withhold delivery of the goods and take possession of goods previously delivered (under Section 2A-525 of this title);~~
- ~~(d) (b) stop delivery of the goods by any bailee (under Section 2A-526 of this title);~~
- (c) proceed under Section 2A-524 of this title with respect to goods still unidentified to the lease contract or unfinished;
- (d) obtain specific performance under Section 37 of this act or recover the rent under Section 2A-529 of this title;

- (e) dispose of the goods and recover damages ~~under~~ Section 2A-527 of this title~~, or retain the goods and recover damages under Section 2A-528 of this title,~~ or in a proper case recover rent (Section 2A-529 of this title); ~~or~~
- (f) cancel the lease contract under subsection (1) of Section 2A-505 of this title;
- (g) recover liquidated damages under Section 2A-504 of this title;
- (h) enforce limited remedies under Section 2A-503 of this title; and
- (i) exercise any other rights or pursue any other remedies provided in the lease ~~contract~~ agreement.

(2) If a lessee becomes insolvent but is not in default of the lease contract under subsection (1) or (4) of this section, the lessor may:

- (a) refuse to deliver the goods under subsection (1) of Section 2A-525 of this title;
- (b) take possession of the goods under subsection (2) of Section 2A-525 of this title; or
- (c) stop delivery of the goods by any bailee or carrier under subsection (1) of Section 2A-526 of this title.

(3) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, 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 or consequential damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.

~~(3)~~ (4) 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) of this section; 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) of this section.

SECTION 50. AMENDATORY 12A O.S. 2001, Section 2A-526, as amended by Section 55, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-526), is amended to read as follows:

Section 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~~ or 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) of this section, the lessor may stop delivery until:

- (a) receipt of the goods by the lessee;
- (b) acknowledgement 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 a warehouse.

- (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~~ that has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

SECTION 51. AMENDATORY 12A O.S. 2001, Section 2A-527, as amended by Section 32, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-527), is amended to read as follows:

Section 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 subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection ~~(3)~~ (4) of Section 2A-523 of this title or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526 of this title), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (~~subsection (c) of Section 15 of this act and Section~~ Sections 1-302 and 2A-503 of this title), 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 present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and
- (iii) any incidental or consequential damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 2A-528 of this title 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~~ if 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~~ that has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection ~~(5)~~ (4) of Section 2A-508 of this title).

SECTION 52. AMENDATORY 12A O.S. 2001, Section 2A-528, as amended by Section 33, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 2A-528), is amended to read as follows:

Section 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 of this title) or otherwise determined pursuant to agreement of the parties (~~subsection (c) of Section 15 of this act and Section~~ Sections 1-302 and 2A-503 of this title), 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 subsection (2) of Section 2A-527 of this title, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection ~~(3)~~ (4) of Section 2A-523, 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 this subsection 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 or consequential damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section 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 of this title, ~~due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.~~

SECTION 53. AMENDATORY 12A O.S. 2001, Section 2A-529, is amended to read as follows:

Section 2A-529.

LESSOR'S ACTION FOR THE RENT

(1) After default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection ~~(3)~~ (4) of Section 2A-523 of this title, or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

- (a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219 of this title):
 - (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 or consequential damages allowed under Section 2A-530 of this title, 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 or consequential damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, 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) of this section. 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 2A-528 of this title, 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 of this title.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section 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 either subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection ~~(3)~~ (4) of Section 2A-523 of this title 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 ~~Sections~~ Section 2A-527 or 2A-528 of this title.

SECTION 54. AMENDATORY 12A O.S. 2001, Section 2A-530, is amended to read as follows:

Section 2A-530.

LESSOR'S INCIDENTAL AND CONSEQUENTIAL DAMAGES

(1) 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.

(2) Consequential damages resulting from a lessee's default include any loss resulting from general or particular requirements and needs of which the lessee at the time of contracting had reason to know and which could not reasonably be prevented by disposition under Section 2A-527 of this title or otherwise.

(3) In a consumer lease contract, a lessor may not recover consequential damages from a consumer.

SECTION 55. AMENDATORY 12A O.S. 2001, Section 2A-531, is amended to read as follows:

Section 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~~ the party plaintiff's suit or settlement, subject to ~~his~~ the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

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

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-601 of Title 12A, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-602 of Title 12A, unless there is created a duplication in numbering, reads as follows:

This act amends Article 2A of the Uniform Commercial Code.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-603 of Title 12A, unless there is created a duplication in numbering, reads as follows:

(1) This act applies to a transaction within its scope that is entered into on or after January 1, 2007.

(2) This act does not apply to a transaction that is entered into before January 1, 2007, even if the transaction would be subject to this act if it had been entered into after January 1, 2007.

(3) This act does not apply to a cause of action that has accrued before January 1, 2007.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-604 of Title 12A, unless there is created a duplication in numbering, reads as follows:

SAVINGS CLAUSE

A transaction entered into before January 1, 2007, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

SECTION 60. AMENDATORY Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2005, Section 1-303), is amended to read as follows:

Section 1-303.

Course of Performance, Course of Dealing, and Usage of Trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the agreement of the parties, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 2-209 and Section 2A-208 of ~~Title 12A of the Oklahoma Statutes~~ this title, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

SECTION 61. REPEALER 12A O.S. 2001, Section 2A-521, is hereby repealed.

SECTION 62. This act shall become effective January 1, 2007.

50-2-8329 SD 01/19/06

