

D R A F T

FOR APPROVAL

**PROPOSED AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 2A – LEASES**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**PROPOSED AMENDMENTS TO
UNIFORM COMMERCIAL CODE ARTICLE 2A – LEASES**

WITH PREFATORY NOTE AND PROPOSED COMMENTS

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ON UNIFORM STATE LAWS

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COMMITTEE TO PREPARE AMENDMENTS TO UNIFORM COMMERCIAL CODE

ARTICLE 2A – LEASES

BORIS AUERBACH, 332 Ardon Lane, Wyoming, OH 45215, *Chair*

MARION W. BENFIELD, JR., 10 Overlook Circle, New Braunfels, TX 78132

AMELIA H. BOSS, Temple University, School of Law, 1719 N. Broad Street, Philadelphia, PA 19122, *American Law Institute Representative*

NEIL B. COHEN, Brooklyn Law School, Room 904A, 250 Joralemon Street, Brooklyn, NY 11201, *American Law Institute Representative*

HENRY DEEB GABRIEL, JR., Loyola University School of Law, 526 Pine Street, New Orleans, LA 70118, *National Conference Reporter*

BYRON D. SHER, State Capitol, Suite 2082, Sacramento, CA 95814, *Enactment Plan Coordinator*

JAMES J. WHITE, University of Michigan Law School, Room 300, 625 S. State Street, Ann Arbor, MI 48109-1215

LINDA J. RUSCH, Hamline University School of Law, 1536 Hewitt Ave., St. Paul, MN 55104, *Associate Reporter from 1996 to 1999*

RICHARD E. SPEIDEL, Northwestern University, School of Law, 357 E. Chicago Ave., Chicago, IL 60611, *Reporter from 1991 to 1999*

EX OFFICIO

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910, *President*

CARL LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

THOMAS J. MCCARTHY, 7 Southview Path, Chaddsford, PA 19317-9179

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Missouri-Columbia, School of Law, 313 Hulston Hall, Columbia, MO 65211, *Executive Director*

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, *Executive Director Emeritus*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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1 **PROPOSED AMENDMENTS TO**
2 **UNIFORM COMMERCIAL CODE ARTICLE 2A – LEASES**

3
4 **PART 1**

5 **GENERAL PROVISIONS**

6
7 **SECTION 2A–102. SCOPE.**

8 (a) This article applies to any transaction, regardless of its form, that creates a lease.

9 (b) Except as provided in subsection (d), in the case of a transaction involving both goods
10 and non-goods, a court may resolve a dispute by the application of this article to the entire
11 transaction, by the application of other law to the entire transaction, or by the application of this
12 article to part of the transaction and other law to part of the transaction. In making the
13 determination as to the law applicable to the transaction, the court shall take into consideration
14 the nature of the transaction and of the dispute.

15 (c) This article does not apply to transactions that do not involve goods.

16 (d) A transaction in a product consisting of computer information and goods that are
17 solely the medium containing the computer information is not a transaction in goods, but a court
18 is not precluded from applying provisions in this article to a dispute concerning whether the
19 goods conform to the contract.

20 (e) Nothing in this article alters, creates, or diminishes rights in intellectual property.
21

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

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

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

10 **Proposed Comment**

11
12 The definition of this term is in Article 1 (Section 1-201(9)). It was amended as part of the
13 Article 9 revision process, and revised Article 1 is consistent with the Article 9 amendment.
14

15
16 ~~(b)~~ (a) "Cancellation" occurs when either party puts an end to the lease contract for
17 default by the other party.

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

23 (c) "Computer information" means information in electronic form which is obtained
24 from or through the use of a computer or which is in a form capable of being processed by a

1 computer.

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

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

10 (i) with respect to a person:

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

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

17 (ii) with respect to a person or an electronic agent, a term that is so placed in a
18 record or display that the person or electronic agent cannot proceed without taking action with
19 respect to the particular term.

20 (f) "Consumer" means an individual who leases or contracts to lease goods that, at the
21 time of contracting, are intended by the individual to be used primarily for personal, family, or
22 household purposes.

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

6 *Legislative Note: Present Article 2A has a bracketed provision allowing States to insert a*
7 *dollar cap on leases designated as consumer leases, amended Article 2 defines "consumer*
8 *contract" and does not include a dollar cap in the definition. Some States have not included*
9 *a dollar cap in present Article 2A and States which have adopted a dollar cap have stated*
10 *varying amounts. If a State wishes to include a dollar cap, the cap should be inserted here.*
11 *Any cap probably should be set high enough to bring within the definition most automobile*
12 *leasing transactions for personal, family, or household use.*
13
14

15 (h) "Delivery" means the voluntary transfer of physical possession or control of
16 goods.

17 (i) "Electronic" means relating to technology having electrical, digital, magnetic,
18 wireless, optical, electromagnetic, or similar capabilities.

19 (j) "Electronic agent" means a computer program or an electronic or other automated
20 means used independently to initiate an action or respond to electronic records or performances
21 in whole or in part, without review or action by an individual.

22 (k) "Electronic record" means a record created, generated, sent, communicated,
23 received, or stored by electronic means.

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

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

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

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

3 (iii) ~~one of the following occurs:~~

4 (A) ~~the lessee receives a copy of the contract by which the lessor acquired the~~
5 ~~goods or the right to possession and use of the goods before signing the lease contract;~~

6 (B) ~~the lessee's approval of the contract by which the lessor acquired the~~
7 ~~goods or the right to possession and use of the goods is a condition to effectiveness of the lease~~
8 ~~contract;~~

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

15 (D) ~~if the lease is not a consumer lease, the lessor, before the lessee signs the~~
16 ~~lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods~~
17 ~~to the lessor, unless the lessee has selected that person and directed the lessor to acquire the~~
18 ~~goods or the right to possession and use of the goods from that person, (b) that the lessee is~~
19 ~~entitled under this Article to the promises and warranties, including those of any third party,~~
20 ~~provided to the lessor by the person supplying the goods in connection with or as part of the~~
21 ~~contract by which the lessor acquired the goods or the right to possession and use of the goods,~~
22 ~~and (c) that the lessee may communicate with the person supplying the goods to the lessor and~~

1 ~~receive an accurate and complete statement of those promises and warranties, including any~~
2 ~~disclaimers and limitations of them or of remedies.~~

3 (m) “Finance lease” means a lease with respect to which:

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

5 (ii) the lessor acquires the goods or the right to possession and use of the goods in
6 connection with the lease or, in the case of goods that have been leased previously by the lessor
7 and are not being leased to a consumer, in connection with another lease; and

8 (iii) one of the following occurs:

9 (A) the lessee receives a copy of the agreement by which the lessor acquired,
10 or proposes to acquire, the goods or the right to possession and use of the goods before signing
11 the lease agreement;

12 (B) the lessee’s approval of the agreement or of the general contractual terms
13 under which the lessor acquired or proposes to acquire the goods or the right to possession and
14 use of the goods is a condition to the effectiveness of the lease contract;

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

21 (D) if the lease is not a consumer lease, before the lessee signs the lease
22 agreement, the lessor informs the lessee in a record:

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

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

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

11 **Proposed Comment**

12 The definition has been amended to permit continuation of the status of “finance lease”
13 when, except when the new lease is a consumer lease, a finance lessor re-leases goods that
14 previously were subject to a finance lease.
15

16
17 (n) “Good faith” means honesty in fact and the observance of reasonable commercial
18 standards of fair dealing.

19 *Legislative Note: This definition should not be adopted if the jurisdiction has enacted revised*
20 *Article 1.*
21
22

23 ~~(h)~~ (o) "Goods" means all things that are movable at the time of identification to a
24 contract for sale. The term includes future goods, specially manufactured goods, the unborn
25 young of animals, growing crops, and other identified things attached to realty as described in

1 Section 2-107. The term does not include information, the money in which the price is to be
2 paid, investment securities under Article 8, and choses in action.

3 (p) "Information" means data, text, images, sounds, mask works, computer programs,
4 software, databases, or the like, including collections and compilations. The term includes
5 computer information.

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

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

13 **Proposed Comment**

14 The phrase "for a period" replaces "for a term" in the first sentence. The use of "term" with
15 two different meanings in the same definition could cause confusion.
16

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

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

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

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

6 ~~(o)~~ "Lessee in ordinary course of business" means a person who in good faith and
7 without knowledge that the lease to him [or her] is in violation of the ownership rights or security
8 interest or leasehold interest of a third party in the goods, leases in ordinary course from a person
9 in the business of selling or leasing goods of that kind but does not include a pawnbroker.

10 "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and
11 includes receiving goods or documents of title under a pre-existing lease contract but does not
12 include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

13 (w) "Lessee in ordinary course of business" means a person that leases goods in good
14 faith, without knowledge that the lease violates the rights of another person, and in the ordinary
15 course from a person, other than a pawnbroker, in the business of selling or leasing goods of that
16 kind. A person leases in ordinary course if the lease to the person comports with the usual or
17 customary practices in the kind of business in which the lessor is engaged or with the lessor's
18 own usual or customary practices. A lessee in ordinary course of business may lease for cash, by
19 exchange of other property, or on secured or unsecured credit, and may acquire goods or
20 documents of title under a preexisting lease contract. Only a lessee that takes possession of the
21 goods or has a right to recover the goods from the lessor may be a lessee in ordinary course of
22 business. A person that acquires goods in a transfer in bulk or as security for or in total or partial

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

2 **Proposed Comment**

3 This definition conforms with amendments to Section 1-201(9)(buyer in ordinary course of
4 business) that were part of the Article 9 revision process (omitting only the reference to sales of
5 minerals).

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

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

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

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

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

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

1 ~~transaction was entered into; otherwise, the discount is determined by a commercially reasonable~~
2 ~~rate that takes into account the facts and circumstances of each case at the time the transaction~~
3 ~~was entered into.~~

4 **Proposed Comment**

5 The change is consistent with revised Article 1 (1-201(b)(28)).

6 *Legislative Note: This definition should not be adopted if the jurisdiction has enacted revised*
7 *Article 1.*
8

9
10 (v) (dd) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,
11 gift, or any other voluntary transaction creating an interest in goods.

12 *Legislative Note: This definition should not be adopted if the jurisdiction has enacted revised*
13 *Article 1.*
14

15
16 (ee) "Record" means information that is inscribed on a tangible medium or that is
17 stored in an electronic or other medium and is retrievable in perceivable form.

18 *Legislative Note: This definition should not be adopted if the jurisdiction has enacted revised*
19 *Article 1.*
20

21
22 (ff) "Sign" means, with present intent to authenticate or adopt a record,
23 (i) to execute or adopt a tangible symbol; or
24 (ii) to attach to or logically associate with the record an electronic sound, symbol,
25 or process.

26 **Proposed Comment**

27 This definition conforms to amended Article 2.

1
2
3 ~~(w)~~ (gg) "Sublease" means a lease of goods the right to possession and use of which
4 was acquired by the lessor as a lessee under an existing lease.

5 ~~(x)~~ (hh) "Supplier" means a person from ~~whom~~ which a lessor buys or leases goods to
6 be leased under a finance lease.

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

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

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

12 "Accessions". Section 2A-310(1).

13 "Construction mortgage". Section 2A-309(1)(d).

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

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

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

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

18
19 (3) The following definitions in other Articles apply to this Article:

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

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

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

23 "Entrusting". Section 2-403(3).

24 ~~"General intangibles". Section 9-106.~~

25 ~~"Good faith". Section 2-103(1)(j).~~

26 ~~"Letter of credit". Section 5-102(a)(10).~~

27 "Merchant". Section 2-104(1).

28 "Mortgage". Section ~~9-105(1)(j)~~ 9-102(a)(55).

29 " Pursuant to commitment". Section ~~9-105(1)(k)~~ 9-102(a)(68).

30 "Receipt of goods". Section 2-103(1)(k).

31 "Sale". Section 2-106(1).

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

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

34 "Seller". Section 2-103(1)(n).

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

Legislative Note: The cross-references to “mortgage” and “pursuant to commitment” in subsection (3) should not be changed if the jurisdiction has not adopted revised Article 9.

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: (list any certificate of title statutes covering automobiles, trailers, mobile homes, boats, farm tractors, and the like);

(b) certificate of title statute of another jurisdiction (Section 2A–105); or

(c) ~~consumer protection statute of this State, or final consumer protection decision of a court of this State existing on the effective date of this Article~~ rule of law that establishes a different rule for consumers.

(2) In case of conflict between this Article, other than Sections 2A–105, 2A–304(3), and 2A–305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(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) has only the effect specified in that 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.

1 **Proposed Comment**

2 Subsection (3) has been modified to conform to the style of amended Article 2. Subsection
3 (4) conforms to amended Article 2.

4
5 **SECTION 2A-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS**
6 **COVERED BY CERTIFICATE OF TITLE.**

7 ~~Subject to the provisions of Sections 2A-304(3) and 2A-305(3), with respect to goods~~
8 ~~covered by a certificate of title issued under a statute of this State or of another jurisdiction,~~
9 ~~compliance and the effect of compliance or noncompliance with a certificate of title statute are~~
10 ~~governed by the law (including the conflict of laws rules) of the jurisdiction issuing the~~
11 ~~certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods~~
12 ~~are removed from that jurisdiction and thereafter until a new certificate of title is issued by~~
13 ~~another jurisdiction.~~

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

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

22 (3) Subject to Sections 2A-304(c) and 2A-305(c), with respect to goods covered by a

1 certificate of title under a statute of this State or of another jurisdiction, compliance and the effect
2 of compliance or noncompliance with the certificate-of-title statute are governed by the local law
3 of the jurisdiction whose certificate covers the goods from the time the goods become covered by
4 the certificate until the goods cease to be covered by the certificate.

5
6 **Proposed Comment**

7 This section conforms with revised Article 9.
8

9 **SECTION 2A–107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER**
10 **DEFAULT.**

11 ~~Any~~ A claim or right arising out of an alleged default or breach of warranty may be
12 discharged in whole or in part without consideration by ~~a written waiver or renunciation signed~~
13 ~~and delivered by the aggrieved party~~ in a signed record.
14

15 **SECTION 2A–108. UNCONSCIONABILITY.**

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

21 (2) With respect to a consumer lease, if the court as a matter of law finds that a lease
22 contract or any clause of a lease contract has been induced by unconscionable conduct or that

1 unconscionable conduct has occurred in the collection of a claim arising from a lease contract,
2 the court may grant appropriate relief.

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

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

9 (A) If the court finds unconscionability under subsection (1) or (2), the court shall
10 award reasonable attorney's fees to the lessee.

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

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

17
18 **SECTION 2A-109. OPTION TO ACCELERATE AT WILL.**

19 (1) A term providing that one party or ~~his [or her]~~ the party's successor in interest may
20 accelerate payment or performance or require collateral or additional collateral "at will" or "when
21 ~~he [or she]~~ the party deems ~~himself [or herself]~~ itself insecure" or in words of similar import
22 must be construed to mean that ~~he [or she]~~ the party has power to do so only if ~~he [or she]~~ the

1 party in good faith believes that the prospect of payment or performance is impaired.

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

7 **PART 2**

8 **FORMATION AND CONSTRUCTION OF LEASE CONTRACT; ELECTRONIC** 9 **CONTRACTING**

11 **SECTION 2A–201. STATUTE OF FRAUDS.**

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

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

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

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

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

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

3 (a) if the goods are to be specially manufactured or obtained for the lessee and are not
4 suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor,
5 before notice of repudiation is received and under circumstances that reasonably indicate that the
6 goods are for the lessee, has made either a substantial beginning of their manufacture or
7 commitments for their procurement;

8 (b) if the party against ~~whom~~ which enforcement is sought admits in that party's
9 pleading, ~~testimony or otherwise in court~~ or in the party's testimony or otherwise under oath that
10 a lease contract was made, but the lease contract is not enforceable under this provision beyond
11 the quantity of goods admitted; or

12 (c) with respect to goods that have been received and accepted by the lessee.

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

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

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

19 (c) a reasonable lease term.

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

1 **Proposed Comment**

2 The changes to this section conform to amended Article 2.

3
4 **SECTION 2A–202. FINAL ~~WRITTEN~~ EXPRESSION IN A RECORD: PAROL OR**
5 **EXTRINSIC EVIDENCE.**

6 (1) Terms with respect to which the confirmatory memoranda of the parties agree or
7 which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of
8 their agreement with respect to such terms as are included therein may not be contradicted by
9 evidence of any prior agreement or of a contemporaneous oral agreement but may be ~~explained~~
10 ~~or supplemented by evidence of~~:

11 (a) ~~by course of dealing or usage of trade or by course of performance~~ course of
12 performance, course of dealing or usage of trade (Section 1-303); and

13 (b) ~~by evidence of~~ consistent additional terms unless the court finds the ~~writing~~ record
14 to have been intended also as a complete and exclusive statement of the terms of the agreement.

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

18 **Proposed Comment**

19 The changes to this section conform to amended Article 2.

20
21 **SECTION 2A–203. SEALS INOPERATIVE.**

22 The affixing of a seal to a ~~writing~~ record evidencing a lease contract or an offer to enter into a

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

3
4 **SECTION 2A–204. FORMATION IN GENERAL.**

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

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

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

12 (4) Except as otherwise provided in Sections 2A-222 through 2A-224, the following rules
13 apply:

14 (a) A lease contract may be formed by the interaction of electronic agents. If the
15 interaction resulting from the electronic agents' engaging in operations shows an agreement
16 sufficient to constitute a lease contract under this section, a lease contract is formed.

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

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

22 (ii) indicate acceptance of an offer, regardless of other expressions or actions by

1 the individual to which the electronic agent cannot react.

2 **Proposed Comment**

3 The changes to this section conform to amended Article 2.

4
5 **SECTION 2A-205. FIRM OFFERS.** An offer by a merchant to lease goods to or from
6 another person in a signed ~~writing~~ record that by its terms gives assurance it will be held open is
7 not revocable, for lack of consideration, during the time stated or, if no time is stated, for a
8 reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such
9 term of assurance ~~on a form~~ in a form record supplied by the offeree must be separately signed by
10 the offeror.

11
12 **~~SECTION 2A-207. COURSE OF PERFORMANCE OR PRACTICAL~~**
13 **~~CONSTRUCTION RESERVED.~~**

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

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

1 ~~(3) Subject to the provisions of Section 2A-208 on modification and waiver, course of~~
2 ~~performance is relevant to show a waiver or modification of any term inconsistent with the~~
3 ~~course of performance.~~

4 **Proposed Comment**

5 This section has been moved to revised Article 1 (Section 1-303).

6 Legislative Note: This section should not be repealed if the jurisdiction has not adopted
7 revised Article 1.

8
9 **SECTION 2A-208. MODIFICATION, RESCISSION AND WAIVER.**

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

11 (2) A signed lease agreement that excludes modification or rescission except by a signed
12 ~~writing~~ record may not be otherwise modified or rescinded, but, except as between merchants,
13 such a requirement ~~on a form~~ in a form record supplied by a merchant must be separately signed
14 by the other party.

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

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

1 **SECTION 2A-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST**
2 **INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.**

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

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

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

13 (1) Except in a finance lease, a lessor in a lease contract warrants that, except for claims
14 by any person by way of infringement or the like, for the duration of the lease no person holds:

15 (a) a claim to or interest in the goods not attributable to the lessee's own act or
16 omission which will interfere with the lessee's enjoyment of its leasehold interest; or

17 (b) a colorable claim to or interest in the goods which will unreasonably expose the
18 lessee to litigation.

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

21 (a) a claim or interest in the goods that arose from an act or omission of the lessor
22 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 that furnishes specifications to the lessor holds the lessor harmless against any claim 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 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.

Proposed Comment

Subsections (1) and (2) are new. They parallel amended Article 2 in that they specifically provide for the doctrine of marketable title, but they differ from current law and amended Article 2 in that they are drafted to reflect the differences between a finance lease and other leases.

Subsection (3) is an amalgamation of two subsections in existing Article 2A. The changes conform to amended Article 2.

Subsection (4) has been moved from existing Section 2A-214(4). The change is consistent with amended Article 2.

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

- 1 (a) pass without objection in the trade under the description in the lease agreement;
- 2 (b) in the case of fungible goods, are of fair average quality within the description;
- 3 (c) are fit for the ordinary purposes for which goods of that ~~type~~ description are used;
- 4 (d) run, within the variation permitted by the lease agreement, of even kind, quality,
- 5 and quantity within each unit and among all units involved;
- 6 (e) are adequately contained, packaged, and labeled as the lease agreement may
- 7 require; and
- 8 (f) conform to any promises or affirmations of fact made on the container or label.
- 9 (3) Other implied warranties may arise from course of dealing or usage of trade.

10 **Proposed Comment**

11 The change to subsection (2)(c) conforms to amended Article 2. The comments will contain

12 the statement that appears in Proposed Comment 7 to Section 2-314 of amended Article 2

13 regarding the use of applicable state products liability law to determine whether goods are

14 merchantable when recovery is sought for injury to person or property.

15

16 **SECTION 2A–214. EXCLUSION OR MODIFICATION OF WARRANTIES.**

17 (1) Words or conduct relevant to the creation of an express warranty and words or

18 conduct tending to negate or limit a warranty must be construed wherever reasonable as

19 consistent with each other; but, subject to the provisions of Section 2A–202 on parol or extrinsic

20 evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

21 (2) Subject to subsection (3), to exclude or modify the implied warranty of

22 merchantability or any part of it the language must be in a record and be conspicuous. In a

23 consumer lease the language must state “The lessor undertakes no responsibility for the quality of

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

11 (3) Notwithstanding subsection (2):

12 (a) unless the circumstances indicate otherwise, all implied warranties are excluded
13 by expressions like “as is”, “with all faults” or other language which in common understanding
14 calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied
15 warranty if in ~~writing~~ a record and conspicuous;

16 (b) when the lessee before entering into the contract has examined the goods or the
17 sample or model as fully as ~~he~~ desired or has refused to examine the goods after a demand by the
18 lessor there is no implied warranty with regard to defects which an examination ought in the
19 circumstances to have revealed to ~~him~~ the lessee; and

20 (c) an implied warranty can also be excluded or modified by course of dealing or
21 course of performance or usage of trade.

22 (4) Remedies for breach of warranty may be limited in accordance with this article with

1 respect to liquidation or limitation of damages and contractual modification of remedy.

2 **Proposed Comment**

3 The changes conform to amended Article 2. Former subsection (4) has been moved to
4 Section 2-211.

7 **SECTION 2A–219. RISK OF LOSS.**

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

10 (2) Subject to the provisions of this Article on the effect of default on risk of loss (Section
11 2A–220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following
12 rules apply:

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

14 (i) and it does not require delivery at a particular destination, the risk of loss
15 passes to the lessee when the goods are ~~duly~~ delivered to the carrier; but

16 (ii) if it does require delivery at a particular destination and the goods are there
17 ~~duly~~ tendered while in the possession of the carrier, the risk of loss passes to the lessee when the
18 goods are there ~~duly~~ so tendered as to enable the lessee to take delivery.

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

22 (c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on
23 the lessee's receipt of the goods ~~if the lessor, or, in the case of a finance lease, the supplier, is a~~

1 ~~merchant; otherwise the risk passes to the lessee on tender of delivery.~~

2 **Proposed Comment**

3 The changes conform to amended Article 2.

4
5 **SECTION 2A–220. EFFECT OF DEFAULT ON RISK OF LOSS.**

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

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

10 (b) If the lessee rightfully revokes acceptance, ~~he [or she]~~ the lessee, to the extent of
11 any deficiency in ~~his [or her]~~ its effective insurance coverage, may treat the risk of loss as having
12 remained with the lessor from the beginning.

13 (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods
14 already identified to a lease contract repudiates or is otherwise in default under the lease contract,
15 the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in ~~his [or~~
16 ~~her]~~ its effective insurance coverage may treat the risk of loss as resting on the lessee for a
17 commercially reasonable time.

18
19 **SECTION 2A–221. CASUALTY TO IDENTIFIED GOODS.**

20 (1) If a lease contract requires goods identified when the lease contract is made, and the
21 goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the
22 goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or

1 Section 2A–219, then:

2 (a) if the loss is total, the lease contract is ~~avoided~~ terminated; and

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

8 **Proposed Comment**

9 The change in paragraph (b) conforms to amended Article 2.

10
11
12 **SECTION 2A–222. LEGAL RECOGNITION OF ELECTRONIC CONTRACTS,**
13 **RECORDS AND SIGNATURES.**

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

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

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

21 (4) A contract formed by the interaction of an individual and an electronic agent under
22 Section 2A-204(4)(b) does not include terms provided by the individual if the individual had

1 reason to know that the agent could not react to the terms as provided.

2 **Proposed Comment**

3 This section conforms to amended Article 2.

4

5 **SECTION 2A–223. ATTRIBUTION.** An electronic record or electronic signature is
6 attributed to a person if the record was created by or the signature was the act of the person or the
7 person’s electronic agent or the person is otherwise bound by the act under the law.

8 **Proposed Comment**

9 This section conforms to amended Article 2.

10

11 **SECTION 2A–224. ELECTRONIC COMMUNICATION.**

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

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

17 **Proposed Comment**

18 This section conforms to amended Article 2.

19

20 **PART 3**

21 **EFFECT OF LEASE CONTRACT**

1 **SECTION 2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE**
2 **CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION**
3 **OF PERFORMANCE; TRANSFER OF RIGHTS.**

4 (1) As used in this section, "creation of a security interest" includes the sale of a lease
5 contract that is subject to Article 9, Secured Transactions, by reason of Section 9-102(1)(b). 9-
6 109(a)(3).

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

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

1 ~~imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent~~
2 ~~that, there is an actual delegation of a material performance of the lessor.~~

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

10 ~~(5) Subject to subsections (3) and (4):~~

11 ~~(a) if a transfer is made which is made an event of default under a lease agreement,~~
12 ~~the party to the lease contract not making the transfer, unless that party waives the default or~~
13 ~~otherwise agrees, has the rights and remedies described in Section 2A-501(2);~~

14 ~~(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited~~
15 ~~under a lease agreement or (ii) materially impairs the prospect of obtaining return performance~~
16 ~~by, materially changes the duty of, or materially increases the burden or risk imposed on, the~~
17 ~~other party to the lease contract, unless the party not making the transfer agrees at any time to the~~
18 ~~transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is~~
19 ~~liable to the party not making the transfer for damages caused by the transfer to the extent that~~
20 ~~the damages could not reasonably be prevented by the party not making the transfer and (ii) a~~
21 ~~court having jurisdiction may grant other appropriate relief, including cancellation of the lease~~
22 ~~contract or an injunction against the transfer.~~

1 (2) Except as otherwise provided in subsection (c) and Section 9-407 or otherwise agreed,
2 a term in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a
3 transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or
4 other judicial process, of an interest of a party under the lease contract or of the lessor's residual
5 interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and
6 remedies provided in subsection (d). However, a transfer that is prohibited or is an event of
7 default under the lease agreement is otherwise effective.

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

15 (4) Subject to subsection (c) and Section 9-407:

16 (a) if a transfer is made that is an event of default under a lease agreement, the party to
17 the lease contract not making the transfer, unless that party waives the default or otherwise
18 agrees, has the rights and remedies described in Section 2A-501(b);

19 (b) if paragraph (1) is not applicable and if a transfer is made that (i) is prohibited
20 under a lease agreement or (ii) materially impairs the prospect of obtaining return performance
21 by, materially changes the duty of, or materially increases the burden or risk imposed on, the
22 other party to the lease contract, unless the party not making the transfer agrees at any time to the

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

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

12 ~~(7)~~ (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance
13 does not relieve the transferor as against the other party of any duty to perform or of any liability
14 for default.

15 ~~(8)~~ (7) In a consumer lease, to prohibit the transfer of an interest of a party under the
16 lease contract or to make a transfer an event of default, the language must be specific, by a
17 writing record, and conspicuous.

18 **Proposed Comment**

19 This changes to this section conform to revised Article 9.

20
21 Legislative Note: Former subsection (3) was stricken to be replaced by the rules of revised
22 Section 9-407. If a jurisdiction adopting this Act has not adopted revised Article 9, the
23 following additional subsection should be incorporated into this section:

24
25 A term of a lease agreement which prohibits the creation or enforcement of a security

1 interest in an interest of a party under the lease contract or in the lessor's residual
2 interest in the goods, or which makes such a transfer an event of default, is enforceable
3 only to the extent that there is a transfer by the lessee of the lessee's right of possession
4 or use of the goods in violation of the provision or a delegation of a material
5 performance of either party to the lease contract in violation of the provision. Neither
6 the granting nor the enforcement of a security interest in the lessor's interest under the
7 lease contract, or the lessor's residual interest in the goods, is a transfer that materially
8 impairs the prospect of obtaining return performance by, materially changes the duty of,
9 or materially increases the burden or risk imposed on, the lessee within the meaning of
10 subsection (e) unless, and only to the extent that, there is a delegation of a material
11 performance of the lessor.
12
13

14 **SECTION 2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.**

15 (1) Subject to Section 2A-303, a subsequent lessee from a lessor of goods under an
16 existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold
17 interest in the goods that the lessor had or had power to transfer, and except as provided in
18 subsection (2) and Section 2A-527(4), takes subject to the existing lease contract. A lessor with
19 voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for
20 value, but only to the extent set forth in the preceding sentence. If goods have been delivered
21 under a transaction of purchase, the lessor has that power even though:

- 22 (a) the lessor's transferor was deceived as to the identity of the lessor;
23 (b) the delivery was in exchange for a check which is later dishonored;
24 (c) it was agreed that the transaction was to be a "cash sale"; or
25 (d) the delivery was procured through ~~fraud punishable as larcenous under the~~
26 ~~criminal law~~ criminal fraud.

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

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

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

8 **Proposed Comment**

9 The change in subsection (1)(d) conforms to amended Article 2.

11 **SECTION 2A–305. SALE OR SUBLEASE OF GOODS BY LESSEE.**

12 (1) Subject to the provisions of Section 2A–303, a buyer or sublessee from the lessee of
13 goods under an existing lease contract obtains, to the extent of the interest transferred, the
14 leasehold interest in the goods that the lessee had or had power to transfer, and except as
15 provided in subsection (2) and Section 2A–511(4), takes subject to the existing lease contract. A
16 lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good
17 faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the
18 preceding sentence. When goods have been delivered under a transaction of lease the lessee has
19 that power even though:

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

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

22 (c) the delivery was procured through ~~fraud punishable as larcenous under the~~

1 ~~criminal law~~ criminal fraud.

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

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

10 **Proposed Comment**

11 The change in subsection (1)(c) conforms to amended Article 2.

12
13 **SECTION 2A-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF**
14 **LAW.**

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

1 **SECTION 2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY**
2 **ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.**

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

5 ~~(2) Except as otherwise provided in subsections (3) and (4) and in Sections 2A-306 and~~
6 ~~2A-308, a creditor of a lessor takes subject to the lease contract unless:~~

7 ~~(a) the creditor holds a lien that attached to the goods before the lease contract became~~
8 ~~enforceable;~~

9 ~~(b) the creditor holds a security interest in the goods and the lessee did not give value~~
10 ~~and receive delivery of the goods without knowledge of the security interest; or~~

11 ~~(c) the creditor holds a security interest in the goods which was perfected (Section~~
12 ~~9-303) before the lease contract became enforceable.~~

13 ~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a~~
14 ~~security interest in the goods created by the lessor even though the security interest is perfected~~
15 ~~(Section 9-303) and the lessee knows of its existence.~~

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

22 (1) Except as otherwise provided in Section 2A-306, a creditor of a lessee takes subject

1 to the lease contract.

2 (2) Except as otherwise provided in subsection (3) and Sections 2A-306 and 2A-308, a
3 creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached
4 to the goods before the lease contract became enforceable.

5 (3) Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a
6 leasehold interest subject to a security interest held by a creditor of the lessor.

7 **Proposed Comment**

8 This section conforms with revised Article 9.

9
10 Legislative Note: Subsections (2)(b), (2)(c), (3), and (4) of former Section 2A-307 were
11 placed in revised Article 9. Section 9-317 covers rights of third parties against unperfected
12 security interests. Section 9-321 covers lessees in ordinary course of business. Section
13 9-323 covers rights of third parties as against future advances made under perfected security
14 interests. If a jurisdiction adopting this Act has not adopted revised Article 9, the deleted
15 subsections of former Section 2A-307 set out below should be inserted as follows:

16
17 (2) Except as otherwise provided in subsections (3) and (4) and Sections 2A-306 and
18 2A-308, a creditor of a lessor takes subject to the lease contract unless:

19 (a) the creditor holds a lien that attached to the goods before the lease contract
20 became enforceable;

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

23 (c) the creditor holds a security interest in the goods which was perfected under
24 Article 9 before the lease contract became enforceable.

25 (3) A lessee in the ordinary course of business takes the leasehold interest free of a
26 security interest in the goods created by the lessor even if the security interest is perfected
27 under Article 9 and the lessee knows of its existence.

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

1 **SECTION 2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME**
2 **FIXTURES.**

3 (1) In this section:

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

6 (b) a "fixture filing" is the filing, in the office where a mortgage on the real estate
7 would be filed or recorded, of a financing statement covering goods that are or are to become
8 fixtures and conforming to the requirements of Section ~~9-402(5)~~ 9-502(a);

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

11 (d) a mortgage is a "construction mortgage" to the extent it secures an obligation
12 incurred for the construction of an improvement on land including the acquisition cost of the
13 land, if ~~the recorded writing~~ a recorded record of the mortgage so indicates; and

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

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

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

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

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

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

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

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

15 (b) the conflicting interest is a lien on the real estate obtained by legal or equitable
16 proceedings after the lease contract is enforceable; or

17 (c) the encumbrancer or owner has consented in ~~writing~~ a record to the lease or has
18 disclaimed an interest in the goods as fixtures; or

19 (d) ~~the lessee has a right to remove the goods as against the encumbrancer or owner.~~
20 ~~If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a~~
21 ~~reasonable time~~ the lessee has a right to remove the goods as against the encumbrancer or owner,
22 but if the lessee's right to remove terminates, the priority of the interest of the lessor continues

1 for a reasonable time.

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

9 (7) ~~In cases not within the preceding subsections~~ In cases not covered by subsections (3)
10 through (6), priority between the interest of a lessor of fixtures, including the lessor's residual
11 interest, and the conflicting interest of an encumbrancer or owner of the real estate ~~who~~ that is
12 not the lessee is determined by the priority rules governing conflicting interests in real estate.

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

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

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

7 **Proposed Comment**

8 The change from “real estate” to “real property” conforms to revised Article 9, as does the
9 changed cross-reference in subsection (1)(b). The changes in subsections (5) and (7) are for
10 clarification.

11
12 *Legislative Note: The reference in subsection (1)(b) should be to 9-402(5) in a jurisdiction*
13 *that has not adopted revised Article 9.*
14
15

16 **PART 4**

17 **PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND** 18 **EXCUSED**

19 20 **SECTION 2A–401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.**

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

23 (2) If reasonable grounds for insecurity arise with respect to the performance of either
24 party, the insecure party may demand in ~~writing~~ a record adequate assurance of due performance.
25 Until the insecure party receives that assurance, if commercially reasonable the insecure party

1 may suspend any performance for which ~~he~~ ~~for she~~ the insecure party has not already received
2 the agreed return.

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

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

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

10
11 **SECTION 2A-402. ANTICIPATORY REPUDIATION.**

12 (1) If either party repudiates a lease contract with respect to a performance not yet due
13 under the lease contract, the loss of which performance will substantially impair the value of the
14 lease contract to the other, the aggrieved party may:

15 (a) for a commercially reasonable time, await retraction of repudiation and
16 performance by the repudiating party;

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

19 (c) resort to any right or remedy upon default under the lease contract or this Article,
20 even though the aggrieved party has notified the repudiating party that the aggrieved party would
21 await the repudiating party's performance and assurance and has urged retraction. In addition,
22 whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party

1 may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the
2 provisions of this Article on the lessor's right to identify goods to the lease contract
3 notwithstanding default or to salvage unfinished goods (Section 2A–524).

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

8 **Proposed Comment**

9 The addition of subsection (2) conforms to amended Article 2.

11 **SECTION 2A–405. EXCUSED PERFORMANCE.**

12 Subject to Section 2A–404 on substituted performance, the following rules apply:

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

19 (b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the
20 supplier's capacity to perform, ~~he [or she]~~ the lessor or supplier shall allocate production and
21 deliveries among ~~his [or her]~~ customers but at ~~his [or her]~~ the lessor's or supplier's option may
22 include regular customers not then under contract for sale or lease as well as ~~his [or her]~~ the

1 lessor's or supplier's own requirements for further manufacture. ~~he~~ [or she] The lessor or
2 supplier may so allocate in any manner that is fair and reasonable.

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

7 **Proposed Comment**

8 The change in paragraph (a) conforms to amended Article 2.
9

10 **SECTION 2A-406. PROCEDURE ON EXCUSED PERFORMANCE.**

11 (1) If the lessee receives notification of a material or indefinite delay or an allocation
12 justified under Section 2A-405, the lessee may by ~~written~~ notification in a record to the lessor as
13 to any goods involved, and with respect to all of the goods if under an installment lease contract
14 the value of the whole lease contract is substantially impaired (Section 2A-510):

15 (a) terminate the lease contract (Section 2A-505(2)); or

16 (b) except in a finance lease that is not a consumer lease, modify the lease contract by
17 accepting the available quota in substitution, with due allowance from the rent payable for the
18 balance of the lease term for the deficiency but without further right against the lessor.

19 (2) If, after receipt of a notification from the lessor under Section 2A-405, the lessee fails
20 so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease
21 contract lapses with respect to any deliveries affected.
22

1
2 **PART 5**

3 **DEFAULT**

4 **A. IN GENERAL**

5 **SECTION 2A-504. LIQUIDATION OF DAMAGES.**

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

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

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

16 ~~(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's~~
17 ~~default or insolvency (Section 2A-525 or 2A-526), the lessee is entitled to restitution of any~~
18 ~~amount by which the sum of his [or her] payments exceeds:~~

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

21 ~~(b) in the absence of those terms, 20 percent of the then present value of the total rent~~
22 ~~the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer~~

1 ~~lease, the lesser of such amount or \$500.~~

2 (3) If the lessor justifiably withholds or stops performance because of the lessee's default
3 or insolvency, the lessee is entitled to restitution of any amount by which the sum of the lessee's
4 payments exceeds the amount to which the lessor is entitled by virtue of terms liquidating the
5 lessor's damages in accordance with subsection (1).

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

8 (a) a right to recover damages under the provisions of this Article other than
9 subsection (1); and

10 (b) the amount or value of any benefits received by the lessee directly or indirectly by
11 reason of the lease contract.

12 **Proposed Comment**

13 The changes conform to amended Article 2.

14
15 **SECTION 2A-506. STATUTE OF LIMITATIONS.**

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

21 (2) A cause of action for default accrues when the act or omission on which the default or
22 breach of warranty is based is or should have been discovered by the aggrieved party, or when

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

4 (3) If an action commenced within the time limited by subsection (1) is so terminated as
5 to leave available a remedy by another action for the same default or breach of warranty or
6 indemnity, the other action may be commenced after the expiration of the time limited and within
7 6 months after the termination of the first action unless the termination resulted from voluntary
8 discontinuance or from dismissal for failure or neglect to prosecute.

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

11 **Proposed Comment**

12 The change to subsection (a) conforms to amended Article 2.
13

14 **SECTION 2A-507A. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR** 15 **REPLEVIN OR THE LIKE.**

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

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

(3) A lessee has a right of replevin, ~~detinue, sequestration, claim and delivery,~~ or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing or the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Proposed Comment

1. This provision has been moved from its former location, Section 2A-521, because it has been amended in such a manner that it is available to both lessors and lessees. Section 2A-521 is in Part B (Default by Lessor).

2. The changes conform to amended Article 2.

3. The word “lessee” has been removed from the title to make it clear that either the lessor or the lessee may obtain a decree of specific performance in an appropriate circumstance.

Legislative Note: To maintain its relative position in this Act, Section 2A-507A may have to be renumbered according to the convention used by a particular state. For example, in some states it may be designated as 2A-507.1.

B. DEFAULT BY LESSOR

SECTION 2A-508. LESSEE’S REMEDIES.

~~(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A-509) or repudiates the lease contract (Section 2A-402), or a lessee rightfully rejects the goods (Section 2A-509) or justifiably revokes acceptance of the goods (Section 2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510); the lessor is in default under the lease contract and the lessee may:~~

1 ~~(a) cancel the lease contract (Section 2A-505(1));~~
2 ~~(b) recover so much of the rent and security as has been paid and is just under the~~
3 ~~circumstances;~~
4 ~~(c) cover and recover damages as to all goods affected whether or not they have been~~
5 ~~identified to the lease contract (Sections 2A-518 and 2A-520), or recover damages for~~
6 ~~nondelivery (Sections 2A-519 and 2A-520);~~
7 ~~(d) exercise any other rights or pursue any other remedies provided in the lease~~
8 ~~contract.~~

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

11 ~~(a) if the goods have been identified, recover them (Section 2A-522); or~~
12 ~~(b) in a proper case, obtain specific performance or replevy the goods (Section~~
13 ~~2A-521).~~

14 (1) If the lessor fails to deliver the goods in conformity to the lease contract or repudiates
15 the contract, or a lessee rightfully rejects the goods or justifiably revokes acceptance of the
16 goods, the lessor is in default under the lease contract, and the lessee may do one or more of the
17 following:

18 (a) cancel the lease contract under Section 2A-505(1);
19 (b) recover so much of the rent and security as has been paid and is just under the
20 circumstances;
21 (c) cover and obtain damages under Section 2A-518;
22 (d) recover damages for nondelivery under Section 2A-519(1);

1 (e) if an acceptance of goods has not been justifiably revoked, recover damages for
2 default with regard to accepted goods under Section 2A-519(3) and (4);
3 (f) enforce a security interest under subsection (4);
4 (g) recover identified goods under Section 2A-522;
5 (h) obtain specific performance under Section 2A-507A;
6 (i) recover liquidated damages under Section 2A-504;
7 (j) enforce limited remedies under Section 2A-503; or
8 (k) exercise any other rights or pursue any other remedy provided in the lease
9 contract.

10 ~~(3)~~ (2) If a lessor is otherwise in default under a lease contract, the lessee may exercise
11 the rights and pursue the remedies provided in the lease contract, which may include a right to
12 cancel the lease, and in Section 2A-519(3).

13 ~~(4)~~ (3) If a lessor has breached a warranty, whether express or implied, the lessee may
14 recover damages (Section 2A-519(4)).

15 ~~(5)~~ (4) On rightful rejection or justifiable revocation of acceptance, a lessee has a security
16 interest in goods in the lessee's possession or control for any rent and security that has been paid
17 and any expenses reasonably incurred in their inspection, receipt, transportation, and care and
18 custody and may hold those goods and dispose of them in good faith and in a commercially
19 reasonable manner, subject to Section 2A-527(5).

20 ~~(6)~~ (5) Subject to the provisions of Section 2A-407, a lessee, on notifying the lessor of
21 the lessee's intention to do so, may deduct all or any part of the damages resulting from any
22 default under the lease contract from any part of the rent still due under the same lease contract.

1 **Proposed Comment**

2 This section is revised along the lines of amended Article 2 to give a more complete list of
3 remedies.
4
5

6 **SECTION 2A-509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; ~~RIGHTFUL~~**
7 **MANNER AND EFFECT OF REJECTION.**

8 ~~(1) Subject to the provisions of Section 2A-510 on default in installment lease contracts,~~
9 ~~if the goods or the tender or delivery fail in any respect to conform to the lease contract, the~~
10 ~~lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of~~
11 ~~the goods.~~

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

14 (1) Subject to Sections 2A-503, 2A-504, and 2A-510, if the goods or the tender of
15 delivery fail in any respect to conform to the contract, the lessee may:

16 (a) reject the whole;

17 (b) accept the whole; or

18 (c) accept any commercial unit or units and reject the rest.

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

21 (3) Subject to Sections 2A-511, 2A-512, and 2A-517(6):

22 (a) after rejection any use by the lessee with respect to any commercial unit is
23 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 Section 2A-508(4), 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.

(d) The lessor's or supplier's remedies with respect to goods wrongfully rejected are governed by Section 2A-523.

Proposed Comment

This section conforms with amended Article 2, except that its provisions are contained in two sections in amended Article 2.

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

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of

1 cancellation or brings an action with respect only to past deliveries or demands performance as to
2 future deliveries.

3 **Proposed Comment**

4 The changes conform to amended Article 2.

5
6 **SECTION 2A-511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY**
7 **REJECTED GOODS.**

8 (1) Subject to any security interest of a lessee (Section 2A-508(4)), if a lessor or a
9 supplier has no agent or place of business at the market of rejection, a merchant lessee, after
10 rejection of goods in ~~his [or her]~~ the lessee's possession or control, shall follow any reasonable
11 instructions received from the lessor or the supplier with respect to the goods. In the absence of
12 those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise
13 dispose of the goods for the lessor's account if they threaten to decline in value speedily.

14 ~~Instructions~~ In the case of a rightful rejection instructions are not reasonable if on demand
15 indemnity for expenses is not forthcoming.

16 (2) If a merchant lessee (subsection (1)) or any other lessee (Section 2A-512) disposes of
17 goods following a rightful rejection, ~~he [or she]~~ the lessee is entitled to reimbursement either
18 from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and
19 disposing of the goods and, if the expenses include no disposition commission, to such
20 commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10
21 percent of the gross proceeds.

22 (3) In complying with this section or Section 2A-512, the lessee is held only to good

1 faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an
2 action for damages.

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

6 **Proposed Comment**

7 The changes conform to amended Article 2.

8
9 **SECTION 2A–512. LESSEE’S DUTIES AS TO ~~RIGHTFULLY~~ REJECTED GOODS.**

10 (1) ~~Except as otherwise provided with respect to goods that threaten to decline in value~~
11 ~~speedily (Section 2A–511) and subject to any security interest of a lessee (Section 2A–508(4));~~

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

15 ~~(b) if the lessor or the supplier gives no instructions within a reasonable time after~~
16 ~~notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's~~
17 ~~account or ship them to the lessor or the supplier or dispose of them for the lessor's or the~~
18 ~~supplier's account with reimbursement in the manner provided in Section 2A–511; but~~

19 ~~(c) the lessee has no further obligations with regard to goods rightfully rejected.~~

20 (1) If the lessor or the supplier gives no instructions within a reasonable time after
21 notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's
22 account or ship them to the lessor or the supplier or dispose of them for the lessor's or the

1 supplier's account with reimbursement in the manner provided in Section 2A-511.

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

3 **Proposed Comment**

4 The change in the title conforms to amended Article 2. Original subsections (1)(a) and (c)
5 have been moved to Section 2A-509(3).

6
7
8 **SECTION 2A-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY;**
9 **REPLACEMENT.**

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

14 ~~(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had~~
15 ~~reasonable grounds to believe would be acceptable with or without money allowance, the lessor~~
16 ~~or the supplier may have a further reasonable time to substitute a conforming tender if he [or she]~~
17 ~~seasonably notifies the lessee.~~

18 (1) Where the lessee rejects goods or a tender of delivery under Section 2A-509 or 2A-
19 510 or except in a consumer contract justifiably revokes acceptance under Section 2A-517(1)(b)
20 and the agreed time for performance has not expired, a lessor or the supplier that has performed
21 in good faith, upon seasonable notice to the lessee and at the lessor's or supplier's own expense,
22 may cure the default by making a conforming tender of delivery within the agreed time. The
23 lessor or supplier shall compensate the lessee for all of the lessee's reasonable expenses caused

1 by the lessor's or supplier's default and subsequent cure.

2 (2) Where the lessee rejects goods or a tender of delivery under Section 2A-509 or 2A-
3 510 or except in a consumer lease justifiably revokes acceptance under Section 2A-517(1)(b) and
4 the agreed time for performance has expired, a lessor or supplier that has performed in good faith
5 may, upon seasonable notice to the lessee and at the lessor's or supplier's own expense, cure the
6 default if the cure is appropriate and timely under the circumstances, by making a tender of
7 conforming goods. The lessor or supplier shall compensate the lessee for all of the lessee's
8 reasonable expenses caused by the lessor's or supplier's default and subsequent cure.

9 **Proposed Comment**

10 The changes conform to amended Article 2.

11
12 **SECTION 2A-514. WAIVER OF LESSEE'S OBJECTIONS.**

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

16 ~~(a) if, stated seasonably, the lessor or the supplier could have cured it (Section~~
17 ~~2A-513); or~~

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

20 (1) The lessee's failure to state in connection with rejection a particular defect or in
21 connection with revocation of acceptance a defect which justifies revocation precludes the lessee
22 from relying on the unstated defect to justify rejection or revocation of acceptance if the defect is

ascertainable by reasonable inspection

(a) where the lessor had a right to cure the defect and could have cured it if stated seasonably; or

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

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

Proposed Comment

The changes conform to amended Article 2.

SECTION 2A-515. ACCEPTANCE OF GOODS.

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

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

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

(1) Acceptance of goods occurs when the lessee:

(a) after a reasonable opportunity to inspect the goods signifies to the lessor or

1 supplier that the goods are conforming or will be taken or retained in spite of their
2 nonconformity;

3 (b) fails to make an effective rejection under Section 2A–509(2), but such acceptance
4 does not occur until the lessee has had a reasonable opportunity to inspect them; or

5 (c) except as otherwise provided in Section 2A-517(6), uses the goods in any manner
6 that is inconsistent with the lessor’s or supplier’s rights; but if such act is ratified by the seller it
7 is an acceptance.

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

9 **Proposed Comment**

10 The changes conform to amended Article 2.

11
12 **SECTION 2A–516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF**
13 **DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE;**
14 **NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.**

15 (1) A lessee must pay rent for any goods accepted in accordance with the lease contract;
16 ~~with due allowance for goods rightfully rejected or not delivered.~~

17 (2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case
18 of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked
19 because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot
20 be revoked because of it unless the acceptance was on the reasonable assumption that the

1 nonconformity would be seasonably cured. Acceptance does not of itself impair any other
2 remedy provided by this Article or the lease agreement for nonconformity.

3 (3) If a tender has been accepted:

4 (a) within a reasonable time after the lessee discovers or should have discovered any
5 default, the lessee shall notify the lessor and the supplier, if any, ~~or be barred from any remedy~~
6 ~~against the party not notified~~ ;however, failure to give timely notice bars the lessee from a
7 remedy only to the extent that the lessor or supplier is prejudiced by the failure;

8 (b) except in the case of a consumer lease, within a reasonable time after the lessee
9 receives notice of litigation for infringement or the like (Section 2A-211) the lessee shall notify
10 the lessor or be barred from any remedy over for liability established by the litigation; and

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

12 (4) If a lessee is sued for indemnity, breach of a warranty or other obligation for which a
13 ~~lessor or a supplier~~ another party is answerable over the following rules apply:

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

20 (b) The ~~lessor or the supplier~~ other party may demand in ~~writing~~ a record that the
21 lessee turn over control of the litigation including settlement if the claim is one for infringement

1 or the like (Section 2A–211) or else be barred from any remedy over. If the demand states that
2 the ~~lessor or the supplier~~ other party agrees to bear all expense and to satisfy any adverse
3 judgment, then unless the lessee after seasonable receipt of the demand does turn over control the
4 lessee is so barred.

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

7 **Proposed Comment**

8 The changes conform to amended Article 2.

9
10 **SECTION 2A–517. REVOCATION OF ACCEPTANCE OF GOODS.**

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

13 (a) except in the case of a finance lease, on the reasonable assumption that its
14 nonconformity would be cured and it has not been seasonably cured; or

15 (b) without discovery of the nonconformity if the lessee's acceptance was reasonably
16 induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty
17 of discovery before acceptance.

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

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

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

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

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

11 (a) Any use by the lessee that is unreasonable under the circumstances is wrongful as
12 against the lessor or supplier and is an acceptance only if ratified by the lessor or supplier under
13 Section 2-515(1)(c).

14 (b) Any use of the goods that is reasonable under the circumstances is not wrongful as
15 against the lessor or supplier and is not an acceptance, but in an appropriate case the lessee shall
16 be obligated to the lessor or supplier for the value of the use to the lessee.

17 **Proposed Comment**

18 The addition of subsection (6) conforms to amended Article 2.
19

1 **SECTION 2A-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OF**
2 **REPLEVIN RESERVED.**

3 **Proposed Comment**

4 The section on specific performance has been moved to Section 2A-507A because it has been
5 amended so that the remedy is available to both lessors and lessees. Section 2A-521 is in Part B
6 (Default by Lessor).

7
8
9
10 **SECTION 2A-522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INVENTORY.**

11 (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee
12 ~~who~~ that has paid a part or all of the rent and security for goods identified to a lease contract
13 (Section 2A-217) on making and keeping good a tender of any unpaid portion of the rent and
14 security due under the lease contract may recover the goods identified from the lessor if ~~the~~
15 ~~lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.~~

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

18 (b) in all cases, the lessor becomes insolvent within 10 days after receipt of the first
19 installment on their rent and security.

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

22 **Proposed Comment**

23 The changes conform to amended Article 2.

1 C. DEFAULT BY LESSEE

2 **SECTION 2A-523. LESSOR'S REMEDIES.**

3 ~~(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a~~
4 ~~payment when due or repudiates with respect to a part or the whole, then, with respect to any~~
5 ~~goods involved, and with respect to all of the goods if under an installment lease contract the~~
6 ~~value of the whole lease contract is substantially impaired (Section 2A-510), the lessee is in~~
7 ~~default under the lease contract and the lessor may:~~

- 8 ~~(a) cancel the lease contract (Section 2A-505(1));~~
- 9 ~~(b) proceed respecting goods not identified to the lease contract (Section 2A-524);~~
- 10 ~~(c) withhold delivery of the goods and take possession of goods previously delivered~~
11 ~~(Section 2A-525);~~
- 12 ~~(d) stop delivery of the goods by any bailee (Section 2A-526);~~
- 13 ~~(e) dispose of the goods and recover damages (Section 2A-527), or retain the goods~~
14 ~~and recover damages (Section 2A-528), or in a proper case recover rent (Section 2A-529);~~
- 15 ~~(f) exercise any other rights or pursue any other remedies provided in the lease~~
16 ~~contract.~~

17 (1) If the lessee wrongfully rejects or revokes acceptance of goods or fails to make a
18 payment when due or repudiates with respect to a part or the whole, the lessee is in default under
19 the lease contract with respect to any goods involved and the lessor may do one or more of the
20 following:

1 (a) withhold delivery of the goods and take possession of goods previously delivered
2 under section 2A-525;

3 (b) stop delivery of the goods by any carrier or bailee under Section 2A-526;

4 (c) proceed under Section 2A-524 with respect to goods still unidentified to the lease
5 contract or unfinished;

6 (d) obtain specific performance under Section 2A-507A or recover the rent under
7 Section 2A-529;

8 (e) dispose of the goods and recover damages under Section 2A-527 or retain the
9 goods and recover damages under Section 2A-528;

10 (f) cancel the lease contract under Section 2A-505(1);

11 (g) recover liquidated damages under Section 2A-504;

12 (h) enforce limited remedies under Section 2A-503;

13 (i) exercise any other rights or pursue any other remedies provided in the lease
14 agreement.

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

17 (a) refuse to deliver the goods under subsection (1) of Section 2A-525;

18 (b) take possession of the goods under subsection (2) of Section 2A-525; or

19 (c) stop delivery of the goods by any bailee or carrier under subsection (1) of Section
20 2A-526.

(2) (3) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental or consequential damages allowed under Section 2A-530, 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 subsections (1) or (2); or

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

Proposed Comment

Subsection (1) is revised along the lines of amended Article 2 to give a more complete list of remedies. Also in accord with amended Article 2, subsection (2) now states the lessor's remedies upon the lessee's insolvency.

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, planload,

1 ~~or larger shipments of express or freight if~~ when the lessee repudiates or fails to make a payment
2 due before delivery, whether for rent, security or otherwise under the lease contract, or for any
3 other reason the lessor has a right to withhold or take possession of the goods.

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

5 (a) receipt of the goods by the lessee;

6 (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the
7 bailee holds the goods for the lessee; or

8 (c) such an acknowledgment to the lessee by a carrier via reshipment or as
9 warehouseman.

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

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

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

16 **Proposed Comment**

17 The change in subsection (1) conforms to amended Article 2.

18
19 **SECTION 2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.**

20 (1) After a default by a lessee under the lease contract of the type described in Section

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

4 (2) Except as otherwise provided with respect to damages liquidated in the lease
5 agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties
6 (Section ~~1-102(3)~~ 1-302 and 2A-503), if the disposition is by lease agreement substantially
7 similar to the original lease agreement and the new lease agreement is made in good faith and in
8 a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued
9 and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii)
10 the present value, as of the same date, of the total rent for the then remaining lease term of the
11 original lease agreement minus the present value, as of the same date, of the rent under the new
12 lease agreement applicable to that period of the new lease term which is comparable to the then
13 remaining term of the original lease agreement, and (iii) any incidental or consequential damages
14 allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

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

18 (4) A subsequent buyer or lessee ~~who~~ that buys or leases from the lessor in good faith for
19 value as a result of a disposition under this section takes the goods free of the original lease
20 contract and any rights of the original lessee even though the lessor fails to comply with one or
21 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 (Section 2A-508(4)).

Legislative Note: The cross-reference in subsection (2) should not be changed if the jurisdiction has not adopted revised Article 1.

SECTION 2A-528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Sections 1-302) and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 2A-523(1) or 2A-523(4)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental or consequential damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

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

Proposed Comment

The changes conform to amended Article 2.

SECTION 2A-529. LESSOR'S ACTION FOR THE RENT.

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

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

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort

1 will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the
2 lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of
3 the lease agreement, and (iii) any incidental or consequential damages allowed under Section
4 2A–530, less expenses saved in consequence of the lessee's default.

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

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

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

17 (5) After default by the lessee under the lease contract of the type described in Section
18 2A–523(1) or Section 2A–523(4)(a) or, if agreed, after other default by the lessee, a lessor ~~who~~
19 that is held not entitled to rent under this section must nevertheless be awarded damages for
20 non-acceptance under Section 2A–527 or Section 2A–528.

1 **Proposed Comment**

2 The changes conform to amended Article 2.

3
4 **SECTION 2A–530. LESSOR’S INCIDENTAL AND CONSEQUENTIAL DAMAGES.**

5 (1) Incidental damages to an aggrieved lessor include any commercially reasonable
6 charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and
7 custody of goods after the lessee's default, in connection with return or disposition of the goods,
8 or otherwise resulting from the default.

9 (2) Consequential damages resulting from a lessee's default include any loss resulting
10 from general or particular requirements and needs of which the lessee at the time of contracting
11 had reason to know and which could not reasonably be prevented by disposition under Section
12 2A-527 or otherwise.

13 (3) In a consumer lease contract, a lessor cannot recover consequential damages from a
14 consumer.

15 **Proposed Comment**

16 The changes conform to amended Article 2.

17
18 **SECTION 2A–531. STANDING TO SUE THIRD PARTIES FOR INJURY TO**
19 **GOODS.**

20 (1) If a third party so deals with goods that have been identified to a lease contract as to

1 cause actionable injury to a party to the lease contract (a) the lessor has a right of action against
2 the third party, and (b) the lessee also has a right of action against the third party if the lessee:

3 (a) has a security interest in the goods;

4 (b) has an insurable interest in the goods; or

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

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

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

14 PART 6

15 TRANSITION PROVISIONS

17 SECTION 2A-601. EFFECTIVE DATE.

18 This [Act] shall become effective on _____, 20__.
19

1 **SECTION 2A-602. AMENDMENT OF EXISTING ARTICLE 2A.**

2 This [Act] amends [insert citation to existing Article 2A].

4 **SECTION 2A-603. APPLICABILITY.**

5 This [Act] applies to a transaction within its scope that is entered into on or after the
6 effective date of this [Act]. This [Act] does not apply to a transaction that is entered into before
7 the effective date of this [Act] even if the transaction would be subject to this [Act] if it had been
8 entered into after the effective date of this [Act]. This [Act] does not apply to a cause of action
9 that has accrued before the effective date of this [Act].

11 **SECTION 2A-604. SAVINGS CLAUSE.**

12 A transaction entered into before the effective date of this [Act] and the rights,
13 obligations, and interests flowing from that transaction are governed by any statute or other law
14 amended or repealed by this [Act] as if amendment or repeal had not occurred and may be
15 terminated, completed, consummated, or enforced under that statute or other law.

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