

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 899
Judiciary II Committee Substitute Adopted 5/12/93

Short Title: UCC Leases.

(Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

April 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT NEW ARTICLE 2A OF THE UNIFORM COMMERCIAL
3 CODE.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 25 of the General Statutes is amended by adding the
6 following new Article to read:

7 **"ARTICLE 2A.**

8 **"LEASES.**

9 **"PART 1.**

10 **"GENERAL PROVISIONS.**

11 **"§ 25-2A-101. Short title.**

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

14 **"§ 25-2A-102. Scope.**

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

16 **"§ 25-2A-103. Definitions and index of definitions.**

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

18 (a) 'buyer in ordinary course of business', means a person who in good faith and
19 without knowledge that the sale to him is in violation of the ownership rights or security
20 interest or leasehold interest of a third party in the goods buys in ordinary course from a
21 person in the business of selling goods of that kind but does not include a pawnbroker.
22 'Buying' may be for cash or by exchange of other property or on secured or unsecured
23 credit and includes receiving goods or documents of title under a preexisting contract

1 for sale but does not include a transfer in bulk or as security for or in total or partial
2 satisfaction of a money debt.

3 (b) 'cancellation' occurs when either party puts an end to the lease contract for
4 default by the other party.

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

11 (d) 'conforming' goods or performance under a lease contract means goods or
12 performance that are in accordance with the obligations under the lease contract.

13 (e) 'consumer lease' means a lease that a lessor regularly engaged in the business
14 of leasing or selling makes to a lessee who is an individual and who takes under the
15 lease primarily for a personal, family, or household purpose, if the total payments to be
16 made under the lease contract, excluding payments for options to renew or buy, do not
17 exceed twenty-five thousand dollars (\$25,000).

18 (f) 'fault' means wrongful act, omission, breach, or default.

19 (g) 'finance lease' means a lease with respect to which:

20 (i) the lessor does not select, manufacturer, or supply the goods;

21 (ii) the lessor acquires the goods or the right to possession and use of the goods in
22 connection with the lease; and

23 (iii) one of the following occurs:

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

26 (B) the lessee's approval of the contract by which the lessor acquired the goods or
27 the right to possession and use of the goods is a condition to effectiveness of the lease
28 contract;

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

35 (D) if the lease is not a consumer lease, the lessor, before the lessee signs the
36 lease contract, informs the lessee in writing (a) of the identity of the person supplying
37 the goods to the lessor, unless the lessee has selected that person and directed the lessor
38 to acquire the goods or the right to possession and use of the goods from that person, (b)
39 that the lessee is entitled under this Article to the promises and warranties, including
40 those of any third party, provided to the lessor by the person supplying the goods in
41 connection with or as part of the contract by which the lessor acquired the goods or the
42 right to possession and use of the goods, and (c) that the lessee may communicate with
43 the person supplying the goods to the lessor and receive an accurate and complete

1 statement of those promises and warranties, including any disclaimers and limitations of
2 them or of remedies.

3 (h) 'goods' means all things that are movable at the time of identification to the
4 lease contract, or are fixtures (G.S. 25-2A-309), but the term does not include money,
5 documents, instruments, accounts, chattel paper, general intangibles, or minerals or the
6 like, including oil and gas, before extraction. The term also includes the unborn young
7 of animals.

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

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

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

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

23 (m) 'leasehold interest' means the interest of the lessor or the lessee under a lease
24 contract.

25 (n) 'lessee' means a person who acquires the right to possession and use of goods
26 under a lease. Unless the context clearly indicates otherwise, the term includes a
27 sublessee.

28 (o) 'lessee in ordinary course of business' means a person who in good faith and
29 without knowledge that the lease to him is in violation of the ownership rights or
30 security interest or leasehold interest of a third party in the goods leases in ordinary
31 course from a person in the business of selling or leasing goods of that kind but does not
32 include a pawnbroker. 'Leasing' may be for cash or by exchange of other property or on
33 secured or unsecured credit and includes receiving goods or documents of title under a
34 preexisting lease contract but does not include a transfer in bulk or as security for or in
35 total or partial satisfaction of a money debt.

36 (p) 'lessor' means a person who transfers the right to possession and use of goods
37 under a lease. Unless the context clearly indicates otherwise, the term includes a
38 sublessor.

39 (q) 'lessor's residual interest' means the lessor's interest in the goods after
40 expiration, termination, or cancellation of the lease contract.

41 (r) 'lien' means a charge against or interest in goods to secure payment of a debt
42 or performance of an obligation, but the term does not include a security interest.

43 (s) 'lot' means a parcel or a single article that is the subject matter of a separate
44 lease or delivery, whether or not it is sufficient to perform the lease contract.

1 (t) 'merchant lessee' means a lessee that is a merchant with respect to goods of
2 the kind subject to the lease.

3 (u) 'present value' means the amount as of a date certain of one or more sums
4 payable in the future, discounted to the date certain. The discount is determined by the
5 interest rate specified by the parties if the rate was not manifestly unreasonable at the
6 time the transaction was entered into; otherwise, the discount is determined by a
7 commercially reasonable rate that takes into account the facts and circumstances of each
8 case at the time the transaction was entered into.

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

11 (w) 'sublease' means a lease of goods the right to possession and use of which was
12 acquired by the lessor as a lessee under an existing lease.

13 (x) 'supplier' means a person from whom a lessor buys or leases goods to be
14 leased under a finance lease.

15 (y) 'supply contract' means a contract under which a lessor buys or leases goods
16 to be leased.

17 (z) 'termination' occurs when either party pursuant to a power created by
18 agreement or law puts an end to the lease contract otherwise than for default.

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

21 'Accessions'. G.S. 25-2A-310(1).

22 'Construction mortgage'. G.S. 25-2A-309(1)(d).

23 'Encumbrance'. G.S. 25-2A-309(1)(e).

24 'Fixtures'. G.S. 25-2A-309(1)(a).

25 'Fixture filing'. G.S. 25-2A-309(1)(b).

26 'Purchase money lease'. G.S. 25-2A-309(1)(c).

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

28 'Account'. G.S. 25-9-106.

29 'Between merchants'. G.S. 25-2-104(3).

30 'Buyer'. G.S. 25-2-103(1)(a).

31 'Chattel paper'. G.S. 25-9-105(1)(b).

32 'Consumer goods'. G.S. 25-9-109(1).

33 'Document'. G.S. 25-9-105(1)(f).

34 'Entrusting'. G.S. 25-2-403(3).

35 'General intangibles'. G.S. 25-9-106.

36 'Good faith'. G.S. 25-2-103(1)(b).

37 'Instrument'. G.S. 25-9-105(1)(i).

38 'Merchant'. G.S. 25-2-104(1).

39 'Mortgage'. G.S. 25-9-105(1)(j).

40 'Pursuant to commitment'. G.S. 25-9-105(1)(k).

41 'Receipt'. G.S. 25-2-103(1)(c).

42 'Sale'. G.S. 25-2-106(1).

43 'Sale on approval'. G.S. 25-2-326.

44 'Sale or return'. G.S. 25-2-326.

1 'Seller'. G.S. 25-2-103(1)(d).

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

4 **"§ 25-2A-104. Leases subject to other law.**

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

6 (a) certificate of title statute of this State (G.S. 20-50, G.S. 75A-32 et seq.);

7 (b) certificate of title statute of another jurisdiction (G.S. 25-2A-105); or

8 (c) consumer protection statute of this State, or final consumer protection
9 decision of a court of this State existing on the effective date of this Article.

10 (2) In case of conflict between this Article, other than G.S. 2A-105, 2A-304(3),
11 and 2A-305(3), and a statute or decision referred to in subsection (1) of this section, the
12 statute or decision controls.

13 (3) Failure to comply with an applicable law has only the effect specified therein.

14 **"§ 25-2A-105. Territorial application of Article to goods covered by certificate of**
15 **title.**

16 Subject to the provisions of G.S. 25-2A-304(3) and G.S. 25-2A-305(3), with
17 respect to goods covered by a certificate of title issued under a statute of this State or of
18 another jurisdiction, compliance and the effect of compliance or noncompliance with a
19 certificate of title statute are governed by the law (including the conflict of laws rules)
20 of the jurisdiction issuing the certificate until the earlier of (a) surrender of the
21 certificate, or (b) four months after the goods are removed from that jurisdiction and
22 thereafter until a new certificate of title is issued by another jurisdiction.

23 **"§ 25-2A-106. Limitation on power of parties to consumer lease to choose**
24 **applicable law and judicial forum.**

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

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

31 **"§ 25-2A-107. Waiver or renunciation of claim or right after default.**

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

35 **"§ 25-2A-108. Unconscionability.**

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

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

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

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

7 (a) if the court finds unconscionability under subsection (1) or (2) of this section,
8 the court shall award reasonable attorneys' fees to the lessee.

9 (b) if the court does not find unconscionability and the lessee claiming
10 unconscionability has brought or maintained an action he knew to be groundless, the
11 court shall award reasonable attorneys' fees to the party against whom the claim is
12 made.

13 (c) in determining attorneys' fees, the amount of the recovery on behalf of the
14 claimant under subsections (1) and (2) of this section is not controlling.

15 **"§ 25-2A-109. Option to accelerate at will.**

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

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

25 **"PART 2.**

26 **"FORMATION AND CONSTRUCTION OF LEASE CONTRACT.**

27 **"§ 25-2A-201. Statute of frauds.**

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

29 (a) the total payments to be made under the lease contract, excluding payments
30 for options to renew or buy, are less than one thousand dollars (\$1,000); or

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

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

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

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

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

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

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

6 or

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

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

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

12 (b) if the party against whom enforcement is sought admits in that party's
13 pleading, testimony, or otherwise in court a lease term, the term so admitted;

14 (c) if there is other evidence of the parties' intent with regard to the lease term,
15 the term so intended; or

16 (d) in the absence of evidence of the parties' intent, a reasonable lease term.

17 **"§ 25-2A-202. Final written expression: parol or extrinsic evidence.**

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

23 (a) by course of dealing or usage of trade or by course of performance; and

24 (b) by evidence of consistent additional terms unless the court finds the writing to
25 have been intended also as a complete and exclusive statement of the terms of the
26 agreement.

27 **"§ 25-2A-203. Seals inoperative.**

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

31 **"§ 25-2A-204. Formation in general.**

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

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

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

39 **"§ 25-2A-205. Firm offers.**

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

1 **"§ 25-2A-206. Offer and acceptance in formation of lease contract.**

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

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

8 **"§ 25-2A-207. Course of performance or practical construction.**

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

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

18 (3) Subject to the provisions of G.S. 25-2A-208 on modification and waiver,
19 course of performance is relevant to show a waiver or modification of any term
20 inconsistent with the course of performance.

21 **"§ 25-2A-208. Modification, rescission and waiver.**

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

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

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

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

34 **"§ 25-2A-209. Lessee under finance lease as beneficiary of supply contract.**

35 (1) The benefit of a supplier's promises to the lessor under the supply contract
36 and of all warranties, whether express or implied, including those of any third party
37 provided in connection with or as part of the supply contract, extends to the lessee to the
38 extent of the lessee's leasehold interest under a finance lease related to the supply
39 contract, but is subject to the terms of the warranty and of the supply contract and all
40 defenses or claims arising therefrom.

41 (2) The extension of the benefit of a supplier's promises and of warranties to the
42 lessee (G.S. 25-2A-209(1)) does not: (i) modify the rights and obligations of the parties
43 to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty
44 or liability under the supply contract on the lessee.

1 (3) Any modification or rescission of the supply contract by the supplier and the
2 lessor is effective between the supplier and the lessee unless, before the modification or
3 rescission, the supplier has received notice that the lessee has entered into a finance
4 lease related to the supply contract. If the modification or rescission is effective
5 between the supplier and the lessee, the lessor is deemed to have assumed, in addition to
6 the obligations of the lessor to the lessee under the lease contract, promises of the
7 supplier to the lessor and warranties that were so modified or rescinded as they existed
8 and were available to the lessee before modification or rescission.

9 (4) In addition to the extension of the benefit of the supplier's promises and of
10 warranties to the lessee under subsection (1) of this section, the lessee retains all rights
11 that the lessee may have against the supplier which arise from an agreement between the
12 lessee and the supplier or under other law.

13 **"§ 25-2A-210. Express warranties.**

14 (1) Express warranties by the lessor are created as follows:

15 (a) any affirmation of fact or promise made by the lessor to the lessee which
16 relates to the goods and becomes part of the basis of the bargain creates an express
17 warranty that the goods will conform to the affirmation or promise.

18 (b) any description of the goods which is made part of the basis of the bargain
19 creates an express warranty that the goods will conform to the description.

20 (c) any sample or model that is made part of the basis of the bargain creates an
21 express warranty that the whole of the goods will conform to the sample or model.

22 (2) It is not necessary to the creation of an express warranty that the lessor use
23 formal words, such as 'warrant' or 'guarantee,' or that the lessor have a specific intention
24 to make a warranty, but an affirmation merely of the value of the goods or a statement
25 purporting to be merely the lessor's opinion or commendation of the goods does not
26 create a warranty.

27 **"§ 25-2A-211. Warranties against interference and against infringement; lessee's**
28 **obligation against infringement.**

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

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

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

39 **"§ 25-2A-212. Implied warranty of merchantability.**

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

42 (2) Goods to be merchantable must be at least such as

43 (a) pass without objection in the trade under the description in the lease
44 agreement;

1 (b) in the case of fungible goods, are of fair average quality within the
2 description;

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

4 (d) run, within the variation permitted by the lease agreement, of even kind,
5 quality, 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
9 label.

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

11 **"§ 25-2A-213. Implied warranty of fitness for particular purpose.**

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

17 **"§ 25-2A-214. Exclusion or modification of warranties.**

18 (1) Words or conduct relevant to the creation of an express warranty and words
19 or conduct tending to negate or limit a warranty must be construed wherever reasonable
20 as consistent with each other; but, subject to the provisions of G.S. 25-2A-202 on parol
21 or extrinsic evidence, negation or limitation is inoperative to the extent that the
22 construction is unreasonable.

23 (2) Subject to subsection (3) of this section, to exclude or modify the implied
24 warranty of merchantability of any part of it the language must mention
25 'merchantability', by a writing, and be conspicuous. Subject to subsection (3) of this
26 section, to exclude or modify any implied warranty of fitness the exclusion must be by a
27 writing and be conspicuous. Language to exclude all implied warranties of fitness is
28 sufficient if it is in writing, is conspicuous and states, for example, 'There is no warranty
29 that the goods will be fit for a particular purpose.'

30 (3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of
31 this section,

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

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

40 (c) an implied warranty may also be excluded or modified by course of dealing,
41 course of performance, or usage of trade.

42 (4) To exclude or modify a warranty against interference or against infringement
43 (G.S. 25-2A-211) or any part of it, the language must be specific, be by a writing, and
44 be conspicuous, unless the circumstances, including course of performance, course of

1 dealing, or usage of trade, give the lessee reason to know that the goods are being leased
2 subject to a claim or interest of any person.

3 **"§ 25-2A-215. Cumulation and conflict of warranties express or implied.**

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

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

10 (b) a sample from an existing bulk displaces inconsistent general language of
11 description.

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

14 **"§ 25-2A-216. Third-party beneficiaries of express and implied warranties.**

15 A warranty to or for the benefit of a lessee under this Article, whether express or
16 implied, extends to any natural person who is in the family or household of the lessee or
17 who is a guest in the lessee's home if it is reasonable to expect that such person may use,
18 consume, or be affected by the goods and who is injured in person by breach of the
19 warranty. This section does not displace principles of law and equity that extend a
20 warranty to or for the benefit of a lessee to other persons. The operation of this section
21 may not be excluded, modified, or limited, but an exclusion, modification, or limitation
22 of the warranty, including any with respect to rights and remedies, effective against the
23 lessee is also effective against any beneficiary designated under this section.

24 **"§ 25-2A-217. Identification.**

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

28 (a) when the lease contract is made if the lease contract is for a lease of goods
29 that are existing and identified.

30 (b) when the goods are shipped, marked, or otherwise designated by the lessor as
31 goods to which the lease contract refers, if the lease contract is for a lease of goods that
32 are not existing and identified; or

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

35 **"§ 25-2A-218. Insurance and proceeds.**

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

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

42 (3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of
43 this section, the lessor retains an insurable interest until an option to buy has been
44 exercised by the lessee and risk of loss has passed to the lessee.

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

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

6 **"§ 25-2A-219. Risk of loss.**

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

10 (2) Subject to the provisions of this Article on the effect of default on risk of loss
11 (G.S. 25-2A-220), if risk of loss is to pass to the lessee and the time of passage is not
12 stated, the following 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
18 when the 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
20 of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to
21 possession of the goods.

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

26 **"§ 25-2A-220. Effect of default on risk of loss.**

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

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

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

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

40 **"§ 25-2A-221. Casualty to identified goods.**

41 If a lease contract requires goods identified when the lease contract is made, and the
42 goods suffer casualty without fault of the lessee, the lessor or the supplier before
43 delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to
44 the lease agreement or G.S. 25-2A-219, then:

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

8 (5) Subject to subsections (3) and (4) of this section:

9 (a) if a transfer is made which is made an event of default under a lease
10 agreement, the party to the lease contract not making the transfer, unless that party
11 waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-
12 2A-501(2);

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

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

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

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

35 **"§ 25-2A-304. Subsequent lease of goods by lessor.**

36 (1) Subject to G.S. 25-2A-303, a subsequent lessee from a lessor of goods under
37 an existing lease contract obtains, to the extent of the leasehold interest transferred, the
38 leasehold interest in the goods that the lessor had or had power to transfer, and except as
39 provided in subsection (2) of this section and G.S. 25-2A-527(4), takes subject to the
40 existing lease contract. A lessor with voidable title has power to transfer a good
41 leasehold interest to a good faith subsequent lessee for value, but only to the extent set
42 forth in the preceding sentence. If goods have been delivered under a transaction of
43 purchase, the lessor has that power even though:

44 (a) the lessor's transferor was deceived as to the identity of the lessor;

- 1 (b) the delivery was in exchange for a check which is later dishonored;
2 (c) it was agreed that the transaction was to be a 'cash sale'; or
3 (d) the delivery was procured through fraud punishable as larcenous under the
4 criminal law.

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

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

15 **"§ 25-2A-305. Sale or sublease of goods by lease.**

16 (1) Subject to the provisions of G.S. 25-2A-303, a buyer or sublessee from the
17 lessee of goods under an existing lease contract obtains, to the extent of the interest
18 transferred, the leasehold interest in the goods that the lessee had or had power to
19 transfer, and except as provided in subsection (2) of this section and G.S. 25-2A-511(4),
20 takes subject to the existing lease contract. A lessee with a voidable leasehold interest
21 has power to transfer a good leasehold interest to a good faith buyer for value or a good
22 faith sublessee for value, but only to the extent set forth in the preceding sentence.
23 When goods have been delivered under a transaction of lease, the lessee has that power
24 even though:

- 25 (a) the lessor was deceived as to the identity of the lessee;
26 (b) the delivery was in exchange for a check which is later dishonored; or
27 (c) the delivery was procured through fraud punishable as larcenous under the
28 criminal law.

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

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

38 **"§ 25-2A-306. Priority of certain liens arising by operation of law.**

39 If a person in the ordinary course of his business furnishes services or materials with
40 respect to goods subject to a lease contract, a lien upon those goods in the possession of
41 that person given by statute or rule of law for those materials or services takes priority
42 over any interest of the lessor or lessee under the lease contract or this Article unless the
43 lien is created by statute and the statute provides otherwise or unless the lien is created
44 by rule of law and the rule of law provides otherwise.

1 **"§ 25-2A-307. Priority of liens arising by attachment or levy on, security interests**
2 **in, and other claims to goods.**

3 (1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes
4 subject to the lease contract.

5 (2) Except as otherwise provided in subsections (3) and (4) of this section and in
6 G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease
7 contract unless:

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

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

12 (c) the creditor holds a security interest in the goods which was perfected (G.S.
13 25-9-303) before the lease contract became enforceable.

14 (3) A lessee in the ordinary course of business takes the leasehold interest free of
15 a security interest in the goods created by the lessor even though the security interest is
16 perfected (G.S. 25-9-303) and the lessee knows of its existence.

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

23 **"§ 25-2A-308. Special rights of creditors.**

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

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

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

40 **"§ 25-2A-309. Lessor's and lessee's rights when goods become fixtures.**

41 (1) In this section:

42 (a) goods are 'fixtures' when they become so related to particular real estate that
43 an interest in them arises under real estate law;

1 (b) a 'fixture filing' is the filing, in the office where a mortgage on the real estate
2 would be filed or recorded, of a financing statement covering goods that are or are to
3 become fixtures and conforming to the requirements of G.S. 25-9-402(5);

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

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

10 (e) 'encumbrance' includes real estate mortgages and other liens on real estate
11 and all other rights in real estate that are not ownership interests.

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

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

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

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

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

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

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

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

37 (c) the encumbrancer or owner has consented in writing to the lease or has
38 disclaimed an interest in the goods as fixtures; or

39 (d) the lessee has a right to remove the goods as against the encumbrancer or
40 owner. If the lessee's right to remove terminates, the priority of the interest of the lessor
41 continues for a reasonable time.

42 (6) Notwithstanding subsection (4)(a) of this section but otherwise subject to
43 subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the
44 lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of

1 the real estate under a construction mortgage recorded before the goods become fixtures
2 if the goods become fixtures before the completion of the construction. To the extent
3 given to refinance a construction mortgage, the conflicting interest of an encumbrancer
4 of the real estate under a mortgage has this priority to the same extent as the
5 encumbrancer of the real estate under the construction mortgage.

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

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

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

28 **"§ 25-2A-310. Lessor's and lessee's rights when goods become accessions.**

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

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

33 (3) The interest of a lessor or a lessee under a lease contract entered into at the
34 time or after the goods became accessions is superior to all subsequently acquired
35 interests in the whole except as stated in subsection (4) of this section but is subordinate
36 to interests in the whole existing at the time the lease contract was made unless the
37 holders of such interests in the whole have in writing consented to the lease or
38 disclaimed an interest in the goods as part of the whole.

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

41 (a) a buyer in the ordinary course of business or a lessee in the ordinary course of
42 business of any interest in the whole acquired after the goods became accessions; or

1 (b) make demand pursuant to G.S. 25-2A-401 and await assurance of future
2 performance adequate under the circumstances of the particular case; or

3 (c) resort to any right or remedy upon default under the lease contract or this
4 Article, even though the aggrieved party has notified the repudiating party that the
5 aggrieved party would await the repudiating party's performance and assurance and has
6 urged retraction. In addition, whether or not the aggrieved party is pursuing one of the
7 foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved
8 party is the lessor, proceed in accordance with the provisions of this Article on the
9 lessor's right to identify goods to the lease contract notwithstanding default or to salvage
10 unfinished goods (G.S. 25-2A-524).

11 **"§ 25-2A-403. Retraction of anticipatory repudiation.**

12 (1) Until the repudiating party's next performance is due, the repudiating party
13 can retract the repudiation unless, since the repudiation, the aggrieved party has
14 cancelled the lease contract or materially changed the aggrieved party's position or
15 otherwise indicated that the aggrieved party considers the repudiation final.

16 (2) Retraction may be by any method that clearly indicates to the aggrieved party
17 that the repudiating party intends to perform under the lease contract and includes any
18 assurance demanded under G.S. 25-2A-401.

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

22 **"§ 25-2A-404. Substituted performance.**

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

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

30 (a) the lessor may withhold or stop delivery or cause the supplier to withhold or
31 stop delivery unless the lessee provides a means or manner of payment that is
32 commercially a substantial equivalent; and

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

36 **"§ 25-2A-405. Excused performance.**

37 Subject to G.S. 25-2A-404 on substituted performance, the following rules apply:

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

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

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

10 **"§ 25-2A-406. Procedure on excused performance.**

11 (1) If the lessee receives notification of a material or indefinite delay or an
12 allocation justified under G.S. 25-2A-405, the lessee may by written notification to the
13 lessor as to any goods involved, and with respect to all of the goods if under an
14 installment lease contract the value of the whole lease contract is substantially impaired
15 (G.S. 25-2A-510):

16 (a) terminate the lease contract (G.S. 25-2A-505(2)); or

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

21 (2) If, after receipt of a notification from the lessor under G.S. 25-2A-405, the
22 lessee fails so to modify the lease agreement within a reasonable time not exceeding 30
23 days, the lease contract lapses with respect to any deliveries affected.

24 **"§ 25-2A-407. Irrevocable promises: finance leases.**

25 (1) In the case of a finance lease that is not a consumer lease, the lessee's
26 promises under the lease contract become irrevocable and independent upon the lessee's
27 acceptance of the goods.

28 (2) A promise that has become irrevocable and independent under subsection (1)
29 of this section:

30 (a) is effective and enforceable between the parties, and by or against third
31 parties including assignees of the parties; and

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

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

37 **"PART 5.**

38 **"DEFAULT**

39 **"A. IN GENERAL.**

40 **"§ 25-2A-501. Default: procedure.**

41 (1) Whether the lessor or the lessee is in default under a lease contract is
42 determined by the lease agreement and this Article.

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

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

9 (4) Except as otherwise provided in G.S. 25-1-106(1) or this Article or the lease
10 agreement, the rights and remedies referred to in subsections (2) and (3) of this section
11 are cumulative.

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

16 **"§ 25-2A-502. Notice after default.**

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

20 **"§ 25-2A-503. Modification or impairment of rights and remedies.**

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

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

28 (3) Consequential damages may be liquidated under G.S. 25-2A-504, or may
29 otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion
30 is unconscionable. Limitation, alteration, or exclusion of consequential damages for
31 injury to the person in the case of consumer goods is **prima facie** unconscionable but
32 limitation, alteration, or exclusion of damages where the loss is commercial is not
33 **prima facie** unconscionable.

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

37 **"§ 25-2A-504. Liquidation of damages.**

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

43 (2) If the lease agreement provides for liquidation of damages, and such
44 provision does not comply with subsection (1) of this section, or such provision is an

1 exclusive or limited remedy that circumstances cause to fail of its essential purpose,
2 remedy may be had as provided in this Article.

3 (3) If the lessor justifiably withholds or stops delivery of goods because of the
4 lessee's default or insolvency (G.S. 25-2A-525 or G.S. 25-2A-526), the lessee is entitled
5 to restitution of any amount by which the sum of his payments exceeds:

6 (a) the amount to which the lessor is entitled by virtue of terms liquidating the
7 lessor's damages in accordance with subsection (1) of this section; or

8 (b) in the absence of those terms, twenty percent (20%) of the then present value
9 of the total rent the lessee was obligated to pay for the balance of the lease term, or, in
10 the case of a consumer lease, the lesser of such amount or five hundred dollars (\$500).

11 (4) A lessee's right to restitution under subsection (3) of this section is subject to
12 offset to the extent the lessor establishes:

13 (a) a right to recover damages under the provisions of this Article other than
14 subsection (1) of this section; and

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

17 **§ 25-2A-505. Cancellation and termination and effect of cancellation,**
18 **termination, rescission, or fraud on rights and remedies.**

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

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

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

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

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

33 **§ 25-2A-506. Statute of limitations.**

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

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

43 (3) If an action commenced within the time limited by subsection (1) of this
44 section is so terminated as to leave available a remedy by another action for the same

1 default or breach of warranty or indemnity, the other action may be commenced after
2 the expiration of the time limited and within six months after the termination of the first
3 action unless the termination resulted from voluntary discontinuance or from dismissal
4 for failure or neglect to prosecute.

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

7 **"§ 25-2A-507. Proof of market rent: time and place.**

8 (1) Damages based on market rent (G.S. 25-2A-519 or G.S. 25-2A-528) are
9 determined according to the rent for the use of the goods concerned for a lease term
10 identical to the remaining lease term of the original lease agreement and prevailing at
11 the times specified in G.S. 25-2A-519 and G.S. 25-2A-528.

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

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

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

29 **"B. DEFAULT BY LESSOR.**

30 **"§ 25-2A-508. Lessee's remedies.**

31 (1) If a lessor fails to deliver the goods in conformity to the lease contract (G.S.
32 25-2A-509) or repudiates the lease contract (G.S. 25-2A-402), or a lessee rightfully
33 rejects the goods (G.S. 25-2A-509) or justifiably revokes acceptance of the goods (G.S.
34 25-2A-517), then with respect to any goods involved, and with respect to all of the
35 goods if under an installment lease contract the value of the whole lease contract is
36 substantially impaired (G.S. 25-2A-510), the lessor is in default under the lease contract
37 and the lessee may:

38 (a) cancel the lease contract (G.S. 25-2A-505(1));

39 (b) recover so much of the rent and security as has been paid and is just under the
40 circumstances;

41 (c) cover and recover damages as to all goods affected whether or not they have
42 been identified to the lease contract (G.S. 25-2A-518 and G.S. 25-2A-520), or recover
43 damages for nondelivery (G.S. 25-2A-519 and G.S. 25-2A-520);

1 (d) exercise any other rights or pursue any other remedies provided in the lease
2 contract.

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

5 (a) if the goods have been identified, recover them (G.S. 25-2A-522); or

6 (b) in a proper case, obtain specific performance or replevy the goods (G.S. 25-
7 2A-521).

8 (3) If a lessor is otherwise in default under a lease contract, the lessee may
9 exercise the rights and pursue the remedies provided in the lease contract, which may
10 include a right to cancel the lease, and in G.S. 25-2A-519(3).

11 (4) If a lessor has breached a warranty, whether express or implied, the lessee
12 may recover damages (G.S. 25-2A-519(4)).

13 (5) On rightful rejection or justifiable revocation of acceptance, a lessee has a
14 security interest in goods in the lessee's possession or control for any rent and security
15 that has been paid and any expenses reasonably incurred in their inspection, receipt,
16 transportation, and care and custody and may hold those goods and dispose of them in
17 good faith and in a commercially reasonable manner, subject to G.S. 25-2A-527(5). A
18 lessee who has rightfully rejected the goods, or justifiably revoked acceptance of the
19 goods, shall account to the lessor for any excess over the amount of the lessee's security
20 interest.

21 (6) Subject to the provisions of G.S. 25-2A-407, a lessee, on notifying the lessor
22 of the lessee's intention to do so, may deduct all or any part of the damages resulting
23 from any default under the lease contract from any part of the rent still due under the
24 same lease contract.

25 **"§ 25-2A-509. Lessee's rights on improper delivery; rightful rejection.**

26 (1) Subject to the provisions of G.S. 25-2A-510 on default in installment lease
27 contracts, if the goods or the tender or delivery fail in any respect to conform to the
28 lease contract, the lessee may reject or accept the goods or accept any commercial unit
29 or units and reject the rest of the goods.

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

32 **"§ 25-2A-510. Installment lease contracts; rejection and default.**

33 (1) Under an installment lease contract a lessee may reject any delivery that is
34 nonconforming if the nonconformity substantially impairs the value of that delivery and
35 cannot be cured or the nonconformity is a defect in the required documents; but if the
36 nonconformity does not fall within subsection (2) of this section and the lessor or the
37 supplier gives adequate assurance of its cure, the lessee must accept that delivery.

38 (2) Whenever nonconformity or default with respect to one or more deliveries
39 substantially impairs the value of the installment lease contract as a whole there is a
40 default with respect to the whole. But, the aggrieved party reinstates the installment
41 lease contract as a whole if the aggrieved party accepts a nonconforming delivery
42 without seasonably notifying of cancellation or brings an action with respect only to
43 past deliveries or demands performance as to future deliveries.

44 **"§ 25-2A-511. Merchant lessee's duties as to rightfully rejected goods.**

1 (1) Subject to any security interest of a lessee (G.S. 25-2A-508(5)), if a lessor or
2 a supplier has no agent or place of business at the market of rejection, a merchant lessee,
3 after rejection of goods in his possession or control, shall follow any reasonable
4 instructions received from the lessor or the supplier with respect to the goods. In the
5 absence of those instructions, a merchant lessee shall make reasonable efforts to sell,
6 lease, or otherwise dispose of the goods for the lessor's account if they threaten to
7 decline in value speedily. Instructions are not reasonable if on demand indemnity for
8 expenses is not forthcoming.

9 (2) If a merchant lessee (subsection (1) of this section) or any other lessee (G.S.
10 25-2A-512) disposes of goods, he is entitled to reimbursement either from the lessor or
11 the supplier or out of the proceeds for reasonable expenses of caring for and disposing
12 of the goods and, if the expenses include no disposition commission, to such
13 commission as is usual in the trade, or if there is none, to a reasonable sum not
14 exceeding ten percent (10%) of the gross proceeds.

15 (3) In complying with this section or G.S. 25-2A-512, the lessee is held only to
16 good faith. Good faith conduct hereunder is neither acceptance or conversion nor the
17 basis of an action for damages.

18 (4) A purchaser who purchases in good faith from a lessee pursuant to this
19 section or G.S. 25-2A-512 takes the goods free of any rights of the lessor and the
20 supplier even though the lessee fails to comply with one or more of the requirements of
21 this Article.

22 **"§ 25-2A-512. Lessee's duties as to rightfully rejected goods.**

23 (1) Except as otherwise provided with respect to goods that threaten to decline in
24 value speedily (G.S. 25-2A-511) and subject to any security interest of a lessee (G.S.
25 25-2A-508(5)):

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

29 (b) if the lessor or the supplier gives no instructions within a reasonable time
30 after notification of rejection, the lessee may store the rejected goods for the lessor's or
31 the supplier's account or ship them to the lessor or the supplier or dispose of them for
32 the lessor's or the supplier's account with reimbursement in the manner provided in G.S.
33 25-2A-511; but

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

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

37 **"§ 25-2A-513. Cure by lessor of improper tender or delivery; replacement.**

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

43 (2) If the lessee rejects a nonconforming tender that the lessor or the supplier had
44 reasonable grounds to believe would be acceptable with or without money allowance,

1 the lessor or the supplier may have a further reasonable time to substitute a conforming
2 tender if he seasonably notifies the lessee.

3 **"§ 25-2A-514. Waiver of lessee's objections.**

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

7 (a) if, stated seasonably, the lessor or the supplier could have cured it (G.S. 25-
8 2A-513); or

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

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

15 **"§ 25-2A-515. Acceptance of goods.**

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

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

21 (b) the lessee fails to make an effective rejection of the goods (G. 25-2A-509(2)).

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

23 **"§ 25-2A-516. Effect of acceptance of goods; notice of default; burden of**
24 **establishing default after acceptance; notice of claim or litigation to**
25 **person answerable over.**

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

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

35 (3) If a tender has been accepted:

36 (a) within a reasonable time after the lessee discovers or should have discovered
37 any default, the lessee shall notify the lessor and the supplier, if any, or be barred from
38 any remedy against the party not notified;

39 (b) except in the case of a consumer lease, within a reasonable time after the
40 lessee receives notice of litigation for infringement or the like (G.S. 25-2A-211) the
41 lessee shall notify the lessor or be barred from any remedy over for liability established
42 by the litigation; and

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

1 (4) If a lessee is sued for breach of a warranty or other obligation for which a
2 lessor or a supplier is answerable over the following apply:

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

9 (b) the lessor or the supplier may demand in writing that the lessee turn over
10 control of the litigation including settlement if the claim is one for infringement or the
11 like (G.S. 25-2A-211) or else be barred from any remedy over. If the demand states that
12 the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment,
13 then unless the lessee after seasonable receipt of the demand does turn over control the
14 lessee is so barred.

15 (5) Subsections (3) and (4) of this section apply to any obligation of a lessee to
16 hold the lessor or the supplier harmless against infringement or the like (G.S. 25-2A-
17 211).

18 **"§ 25-2A-517. Revocation of acceptance of goods.**

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

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

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

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

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

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

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

38 **"§ 25-2A-518. Cover; substitute goods.**

39 (1) After a default by a lessor under the lease contract of the type described in
40 G.S. 25-2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover
41 by making any purchase or lease of or contract to purchase or lease goods in
42 substitution for those due from the lessor.

43 (2) Except as otherwise provided with respect to damages liquidated in the lease
44 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the

1 parties (G.S. 25-1-102(3) and G.S. 25-2A-503), if a lessee's cover is by a lease
2 agreement substantially similar to the original lease agreement and the new lease
3 agreement is made in good faith and in a commercially reasonable manner, the lessee
4 may recover from the lessor as damages (i) the present value, as of the date of the
5 commencement of the term of the new lease agreement, of the rent under the new lease
6 agreement applicable to that period of the new lease term which is comparable to the
7 then remaining term of the original lease agreement minus the present value as of the
8 same date of the total rent for the then remaining lease term of the original lease
9 agreement, and (ii) any incidental or consequential damages, less expenses saved in
10 consequence of the lessor's default.

11 (3) If a lessee's cover is by lease agreement that for any reason does not qualify
12 for treatment under subsection (2) of this section, or is by purchase or otherwise, the
13 lessee may recover from the lessor as if the lessee had elected not to cover and G.S. 25-
14 2A-519 governs.

15 **§ 25-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach**
16 **of warranty in regard to accepted goods.**

17 (1) Except as otherwise provided with respect to damages liquidated in the lease
18 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
19 parties (G.S. 25-1-102(3) and G.S. 25-2A-503), if a lessee elects not to cover or a lessee
20 elects to cover and the cover is by lease agreement that for any reason does not qualify
21 for treatment under G.S. 25-2A-518(2), or is by purchase or otherwise, the measure of
22 damages for nondelivery or repudiation by the lessor or for rejection or revocation of
23 acceptance by the lessee is the present value, as of the date of the default, of the then
24 market rent minus the present value as of the same date of the original rent, computed
25 for the remaining lease term of the original lease agreement, together with incidental
26 and consequential damages, less expenses saved in consequence of the lessor's default.

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

29 (3) Except as otherwise agreed, if the lessee has accepted goods and given
30 notification (G.S. 25-2A-516(3)), the measure of damages for nonconforming tender or
31 delivery or other default by a lessor is the loss resulting in the ordinary course of events
32 from the lessor's default as determined in any manner that is reasonable together with
33 incidental and consequential damages, less expenses saved in consequence of the
34 lessor's default.

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

41 **§ 25-2A-520. Lessee's incidental and consequential damages.**

42 (1) Incidental damages resulting from a lessor's default include expenses
43 reasonably incurred in inspection, receipt, transportation, and care and custody of goods
44 rightfully rejected or goods the acceptance of which is justifiably revoked, any

1 commercially reasonable charges, expenses or commissions in connection with
2 effecting cover, and any other reasonable expense incident to the default.

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

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

7 (b) injury to person or property proximately resulting from any breach of
8 warranty.

9 **"§ 25-2A-521. Lessee's right to specific performance or replevin.**

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

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

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

18 **"§ 25-2A-522. Lessee's right to goods on lessor's insolvency.**

19 (1) Subject to subsection (2) of this section and even though the goods have not
20 been shipped, a lessee who has paid a part or all of the rent and security for goods
21 identified to a lease contract (G.S. 25-2A-217) on making and keeping good a tender of
22 any unpaid portion of the rent and security due under the lease contract may recover the
23 goods identified from the lessor if the lessor becomes insolvent within 10 days after
24 receipt of the first installment of rent and security.

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

27 **"C. DEFAULT BY LESSEE.**

28 **"§ 25-2A-523. Lessor's remedies.**

29 (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make
30 a payment when due or repudiates with respect to a part or the whole, then, with respect
31 to any goods involved, and with respect to all of the goods if under an installment lease
32 contract the value of the whole lease contract is substantially impaired (G.S. 25-2A-
33 510), the lessee is in default under the lease contract and the lessor may:

34 (a) cancel the lease contract (G.S. 25-2A-505(1));

35 (b) proceed respecting goods not identified to the lease contract (G.S. 25-2A-
36 524);

37 (c) withhold delivery of the goods and take possession of goods previously
38 delivered (G.S. 25-2A-525);

39 (d) stop delivery of the goods by any bailee (G.S. 25-2A-526);

40 (e) dispose of the goods and recover damages (G.S. 25-2A-527), or retain the
41 goods and recover damages (G.S. 25-2A-528), or in a proper case recover rent (G.S. 25-
42 2A-529);

43 (f) exercise any other rights or pursue any other remedies provided in the lease
44 contract.

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

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

10 (a) if the default substantially impairs the value of the lease contract to the lessor,
11 the lessor may exercise the rights and pursue the remedies provided in subsections (1) or
12 (2) of this section; or

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

15 **"§ 25-2A-524. Lessor's right to identify goods to lease contract.**

16 (1) After default by the lessee under the lease contract of the type described in
17 G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a) or, if agreed, after other default by the
18 lessee, the lessor may:

19 (a) identify to the lease contract conforming goods not already identified if at the
20 time the lessor learned of the default they were in the lessor's or the supplier's
21 possession or control; and

22 (b) dispose of goods (G.S. 25-2A-527(1)) that demonstrably have been intended
23 for the particular lease contract even though those goods are unfinished.

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

29 **"§ 25-2A-525. Lessor's right to possession of goods.**

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

32 (2) After a default by the lessee under the lease contract of the type described in
33 G.S. 25-2A-523(1) or G.S. 25-2A-523(3) (a) or, if agreed, after other default by the
34 lessee, the lessor has the right to take possession of the goods. If the lease contract so
35 provides, the lessor may require the lessee to assemble the goods and make them
36 available to the lessor at a place to be designated by the lessor which is reasonably
37 convenient to both parties. Without removal, the lessor may render unusable any goods
38 employed in trade or business, and may dispose of goods on the lessee's premises (G.S.
39 25-2A-527).

40 (3) The lessor may proceed under subsection (2) of this section without judicial
41 process if it can be done without breach of the peace or the lessor may proceed by
42 action.

43 **"§ 25-2A-526. Lessor's stoppage of delivery in transit or otherwise.**

1 (1) A lessor may stop delivery of goods in the possession of a carrier or other
2 bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload,
3 truckload, planeload, or larger shipments of express or freight if the lessee repudiates or
4 fails to make a payment due before delivery, whether for rent, security or otherwise
5 under the lease contract, or for any other reason the lessor has a right to withhold or take
6 possession of the goods.

7 (2) In pursuing its remedies under subsection (1) of this section, the lessor may
8 stop delivery until

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

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

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

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

16 (b) after notification, the bailee shall hold and deliver the goods according to the
17 directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or
18 damages.

19 (c) a carrier who has issued a nonnegotiable bill of lading is not obliged to obey a
20 notification to stop received from a person other than the consignor.

21 **"§ 25-2A-527. Lessor's rights to dispose of goods.**

22 (1) After a default by a lessee under the lease contract of the type described in
23 G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a) or after the lessor refuses to deliver or takes
24 possession of goods (G.S. 25-2A-525 or G.S. 25-2A-526), or, if agreed, after other
25 default by a lessee, the lessor may dispose of the goods concerned or the undelivered
26 balance thereof by lease, sale, or otherwise.

27 (2) Except as otherwise provided with respect to damages liquidated in the lease
28 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
29 parties (G.S. 25-1-102(3) and G.S. 25-2A-503), if the disposition is by lease agreement
30 substantially similar to the original lease agreement and the new lease agreement is
31 made in good faith and in a commercially reasonable manner, the lessor may recover
32 from the lessee as damages (i) accrued and unpaid rent as of the date of the
33 commencement of the term of the new lease agreement, (ii) the present value, as of the
34 same date, of the total rent for the then remaining lease term of the original lease
35 agreement minus the present value, as of the same date, of the rent under the new lease
36 agreement applicable to that period of the new lease term which is comparable to the
37 then remaining term of the original lease agreement, and (iii) any incidental damages
38 allowed under G.S. 25-2A-530, less expenses saved in consequence of the lessee's
39 default.

40 (3) If the lessor's disposition is by lease agreement that for any reason does not
41 qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the
42 lessor may recover from the lessee as if the lessor had elected not to dispose of the
43 goods and G.S. 25-2A-528 governs.

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

5 (5) The lessor is not accountable to the lessee for any profit made on any
6 disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall
7 account to the lessor for any excess over the amount of the lessee's security interest
8 (G.S. 25-2A-508(5)).

9 **"§ 25-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or**
10 **other default.**

11 (1) Except as otherwise provided with respect to damages liquidated in the lease
12 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the
13 parties (G.S. 25-1-102(3) and G.S. 25-2A-503), if a lessor elects to retain the goods or a
14 lessor elects to dispose of the goods and the disposition is by lease agreement that for
15 any reason does not qualify for treatment under G.S. 25-2A-527(2), or is by sale or
16 otherwise, the lessor may recover from the lessee as damages for a default of the type
17 described in G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a), or if agreed, for other default
18 of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never
19 taken possession of the goods, or, if the lessee has taken possession of the goods, as of
20 the date the lessor repossesses the goods or an earlier date on which the lessee makes a
21 tender of the goods to the lessor, (ii) the present value as of the date determined under
22 clause (i) of the total rent for the then remaining lease term of the original lease
23 agreement minus the present value as of the same date of the market rent at the place
24 where the goods are located computed for the same lease term, and (iii) any incidental
25 damages allowed under G.S. 25-2A-530, less expenses saved in consequence of the
26 lessee's default.

27 (2) If the measure of damages provided in subsection (1) of this section, is
28 inadequate to put a lessor in as good a position as performance would have, the measure
29 of damages is the present value of the profit, including reasonable overhead, the lessor
30 would have made from full performance by the lessee, together with any incidental
31 damages allowed under G.S. 25-2A-530, due allowance for costs reasonably incurred
32 and due credit for payments or proceeds of disposition.

33 **"§ 25-2A-529. Lessor's action for the rent.**

34 (1) After default by the lessee under the lease contract of the type described in
35 G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a) or, if agreed, after other default by the
36 lessee, if the lessor complies with subsection (2) of this section, the lessor may recover
37 from the lessee as damages:

38 (a) for goods accepted by the lessee and not repossessed by or tendered to the
39 lessor, and for conforming goods lost or damaged within a commercially reasonable
40 time after risk of loss passes to the lessee (G.S. 25-2A-219), (i) accrued and unpaid rent
41 as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the
42 same date of the rent for the then remaining lease term of the lease agreement, and (iii)
43 any incidental damages allowed under G.S. 25-2A-530, less expenses saved in
44 consequence of the lessee's default; and

1 **(b)** for goods identified to the lease contract if the lessor is unable after
2 reasonable effort to dispose of them at a reasonable price or the circumstances
3 reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the
4 date of entry of judgment in favor of the lessor, (ii) the present value as of the same date
5 of the rent for the then remaining lease term of the lease agreement, and (iii) any
6 incidental damages allowed under G.S. 25-2A-530, less expenses saved in consequence
7 of the lessee's default.

8 **(2)** Except as provided in subsection (3) of this section, the lessor shall hold for
9 the lessee for the remaining lease term of the lease agreement any goods that have been
10 identified to the lease contract and are in the lessor's control.

11 **(3)** The lessor may dispose of the goods at any time before collection of the
12 judgment for damages obtained pursuant to subsection (1) of this section. If the
13 disposition is before the end of the remaining lease term of the lease agreement, the
14 lessor's recovery against the lessee for damages is governed by G.S. 25-2A-527 or G.S.
15 25-2A-528, and the lessor will cause an appropriate credit to be provided against a
16 judgment for damages to the extent that the amount of the judgment exceeds the
17 recovery available pursuant to G.S. 25-2A-527 or G.S. 25-2A-528.

18 **(4)** Payment of the judgment for damages obtained pursuant to subsection (1) of
19 this section, entitles the lessee to the use and possession of the goods not then disposed
20 of for the remaining lease term of and in accordance with the lease agreement.

21 **(5)** After a default by the lessee under the lease contract of the type described in
22 G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a) or, if agreed, after other default by the
23 lessee, a lessor who is held not entitled to rent under this section must nevertheless be
24 awarded damages for nonacceptance under G.S. 25-2A-527 or G.S. 25-2A-528.

25 **"§ 25-2A-530. Lessor's incidental damages.**

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

30 **"§ 25-2A-531. Standing to sue third parties for injury to goods.**

31 **(1)** If a third party so deals with goods that have been identified to a lease
32 contract as to cause actionable injury to a party to the lease contract then (a) the lessor
33 has a right of action against the third party, and (b) the lessee also has a right of
34 action against the third party if the lessee:

35 **(i)** has a security interest in the goods;

36 **(ii)** has an insurable interest in the goods; or

37 **(iii)** bears the risk of loss under the lease contract or has since the injury assumed
38 that risk as against the lessor and the goods have been converted or destroyed.

39 **(2)** If at the time of the injury the party plaintiff did not bear the risk of loss as
40 against the other party to the lease contract and there is no arrangement between them
41 for disposition of the recovery, his suit or settlement, subject to his own interest, is as a
42 fiduciary for the other party to the lease contract.

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

1 **"§ 25-2A-532. Lessor's rights to residual interest.**

2 In addition to any other recovery permitted by this Article or other law, the lessor
 3 may recover from the lessee an amount that will fully compensate the lessor for any loss
 4 of or damage to the lessor's residual interest in the goods caused by the default of the
 5 lessee."

6 Sec. 2. G.S. 25-1-201(37) reads as rewritten:

7 "(37) 'Security interest' means an interest in personal property or fixtures
 8 which secures payment or performance of an obligation. The
 9 retention or reservation of title by a seller of goods notwithstanding
 10 shipment or delivery to the buyer (G.S. 25-2-401) is limited in
 11 effect to a reservation of a 'security interest'. The term also includes
 12 any interest of a buyer of accounts or chattel paper which is subject
 13 to ~~article 9.~~ Article 9 of this Chapter. The special property interest
 14 of a buyer of goods on identification of ~~such~~ those goods to a
 15 contract for sale under G.S. 25-2-401 is not a 'security interest,' but
 16 a buyer may also acquire a 'security interest' by complying with
 17 ~~article 9.~~ Article 9 of this Chapter. Unless a lease or consignment is
 18 intended as security, reservation of title thereunder is not a 'security
 19 interest' but a consignment is in any event subject to the provisions
 20 on consignment sales (G.S. 25-2-326). ~~Whether a lease is intended as~~
 21 ~~security is to be determined by the facts of each case; however, (a) the~~
 22 ~~inclusion of an option to purchase does not of itself make the lease one~~
 23 ~~intended for security, and (b) an agreement that upon compliance with~~
 24 ~~the terms of the lease the lessee shall become or has the option to~~
 25 ~~become the owner of the property for no additional consideration or for a~~
 26 ~~nominal consideration does make the lease one intended for security.~~

27 (a) Whether a transaction creates a lease or security interest is
 28 determined by the facts of each case; however, a transaction
 29 creates a security interest if the consideration the lessee is to
 30 pay the lessor for the right to possession and use of the goods is
 31 an obligation for the term of the lease not subject to termination
 32 by the lessee, and

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

35 (ii) The lessee is bound to renew the lease for the
 36 remaining economic life of the goods or is bound to
 37 become the owner of the goods.

38 (iii) The lessee has an option to renew the lease for the
 39 remaining economic life of the goods for no
 40 additional consideration or nominal additional
 41 consideration upon compliance with the lease
 42 agreement, or

43 (iv) The lessee has an option to become the owner of the
 44 goods for no additional consideration or nominal

