

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 899

Short Title: UCC Leases.

(Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

April 19, 1993

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

The General Assembly of North Carolina enacts:

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

**"ARTICLE 2A.**

**"LEASES.**

**"PART 1.**

**"GENERAL PROVISIONS.**

**"§ 25-2A-101. Short title.**

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

**"§ 25-2A-102. Scope.**

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

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

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

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

1 preexisting contract for sale but does not include a transfer in bulk or as security for or  
2 in total or partial 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 \$ \_\_\_\_].

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 [or her] is in violation of the ownership rights  
30 or 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: (list any certificate of title statutes  
7 covering automobiles, trailers, mobile homes, boats, farm tractors, and the like);

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

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

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

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

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

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

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

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

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

32 **"§ 25-2A-107. Waiver or renunciation of claim or right after default.**

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

36 **"§ 25-2A-108. Unconscionability.**

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

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

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

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

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

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

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

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

17 **"§ 25-2A-109. Option to accelerate at will.**

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

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

27 **"PART 2.**

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

29 **"§ 25-2A-201. Statute of frauds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **"§ 25-2A-202. Final written expression: parol or extrinsic evidence.**

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

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

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

30 **"§ 25-2A-203. Seals inoperative.**

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

34 **"§ 25-2A-204. Formation in general.**

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

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

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

42 **"§ 25-2A-205. Firm offers.**

43       An offer by a merchant to lease goods to or from another person in a signed writing  
44 that by its terms gives assurance it will be held open is not revocable, for lack of

1 consideration, during the time stated or, if no time is stated, for a reasonable time, but in  
2 no event may the period of irrevocability exceed three months. Any such term of  
3 assurance on a form supplied by the offeree must be separately signed by the offeror.

4 **"§ 25-2A-206. Offer and acceptance in formation of lease contract.**

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

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

11 **"§ 25-2A-207. Course of performance or practical construction.**

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

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

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

24 **"§ 25-2A-208. Modification, rescission and waiver.**

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

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

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

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

37 **"§ 25-2A-209. Lessee under finance lease as beneficiary of supply contract.**

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



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

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

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

17 **"§ 25-2A-210. Express warranties.**

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

19       (a) Any affirmation of fact or promise made by the lessor to the lessee which  
20 relates to the goods and becomes part of the basis of the bargain creates an express  
21 warranty that the goods will conform to the affirmation or promise.

22       (b) Any description of the goods which is made part of the basis of the bargain  
23 creates an express warranty that the goods will conform to the description.

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

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

31 **"§ 25-2A-211. Warranties against interference and against infringement; lessee's**  
32 **obligation against infringement.**

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

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

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

43 **"§ 25-2A-212. Implied warranty of merchantability.**

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

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

4       (a) pass without objection in the trade under the description in the lease  
5 agreement;

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

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

9       (d) run, within the variation permitted by the lease agreement, of even kind,  
10 quality, and quantity within each unit and among all units involved;

11       (e) are adequately contained, packaged, and labeled as the lease agreement may  
12 require; and

13       (f) conform to any promises or affirmations of fact made on the container or  
14 label.

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

16 **"§ 25-2A-213. Implied warranty of fitness for particular purpose.**

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

22 **"§ 25-2A-214. Exclusion or modification of warranties.**

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

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

35       (3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of  
36 this section,

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

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

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

3 (4) To exclude or modify a warranty against interference or against infringement  
4 (G.S. 25-2A-211) or any part of it, the language must be specific, be by a writing, and  
5 be conspicuous, unless the circumstances, including course of performance, course of  
6 dealing, or usage of trade, give the lessee reason to know that the goods are being leased  
7 subject to a claim or interest of any person.

8 **"§ 25-2A-215. Cumulation and conflict of warranties express or implied.**

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

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

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

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

19 **"§ 25-2A-216. Third-party beneficiaries of express and implied warranties.**

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

29 **"§ 25-2A-217. Identification.**

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

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

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

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

40 **"§ 25-2A-218. Insurance and proceeds.**

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

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

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

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

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

12 **"§ 25-2A-219. Risk of loss.**

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

16       (2) Subject to the provisions of this Article on the effect of default on risk of loss  
17 (G.S. 25-2A-220), if risk of loss is to pass to the lessee and the time of passage is not  
18 stated, the following rules apply:

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

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

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

25 **"§ 25-2A-219 Uniform commercial code.**

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

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

33 **"§ 25-2A-220. Effect of default on risk of loss.**

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

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

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

42       (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to  
43 conforming goods already identified to a lease contract repudiates or is otherwise in  
44 default under the lease contract, the lessor, or, in the case of a finance lease, the

1 supplier, to the extent of any deficiency in his [or her] effective insurance coverage may  
2 treat the risk of loss as resting on the lessee for a commercially reasonable time.

3 **"§ 25-2A-221. Casualty to identified goods.**

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

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

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

15 **"PART 3.**

16 **"EFFECT OF LEASE CONTRACT.**

17 **"§ 25-2A-301. Enforceability of lease contract.**

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

21 **"§ 25-2A-302. Title to and possession of goods.**

22 Except as otherwise provided in this Article, each provision of this Article applies  
23 whether the lessor or a third party has title to the goods, and whether the lessor, the  
24 lessee, or a third party has possession of the goods, notwithstanding any statute or rule  
25 of law that possession or the absence of possession is fraudulent.

26 **"§ 25-2A-303. Alienability of party's interest under lease contract or of lessor's**  
27 **residual interest in goods; delegation of performance; transfer of rights.**

28 (1) As used in this section, 'creation of a security interest' includes the sale of a  
29 lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by  
30 reason of G.S. 25-9-102(1)(b).

31 (2) Except as provided in subsections (3) and (4) of this section, a provision in a  
32 lease agreement which (i) prohibits the voluntary or involuntary transfer, including a  
33 transfer by sale, sublease, creation or enforcement of a security interest, or attachment,  
34 levy, or other judicial process, of an interest of a party under the lease contract or of the  
35 lessor's residual interest in the goods; or (ii) makes such a transfer an event of default,  
36 gives rise to the rights and remedies provided in subsection (5) of this section, but a  
37 transfer that is prohibited or is an event of default under the lease agreement is  
38 otherwise effective.

39 (3) A provision in a lease agreement which (i) prohibits the creation or  
40 enforcement of a security interest in an interest of a party under the lease contract or in  
41 the lessor's residual interest in the goods, or (ii) makes such a transfer an event of  
42 default, is not enforceable unless, and then only to the extent that, there is an actual  
43 transfer by the lessee of the lessee's right of possession or use of the goods in violation  
44 of the provision or an actual delegation of a material performance of either party to the

1 lease contract in violation of the provision. Neither the granting nor the enforcement of  
2 a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's  
3 residual interest in the goods is a transfer that materially impairs the prospect of  
4 obtaining return performance by, materially changes the duty of, or materially increases  
5 the burden or risk imposed on, the lessee within the purview of subsection (5) of this  
6 section unless, and then only to the extent that, there is an actual delegation of a material  
7 performance of the lessor.

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

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

16 (a) if a transfer is made which is made an event of default under a lease  
17 agreement, the party to the lease contract not making the transfer, unless that party  
18 waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-  
19 2A-501(2);

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

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

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

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

42 **"§ 25-2A-304. Subsequent Lease of Goods by Lessor.**

43 (1) Subject to G.S. 25-2A-303, a subsequent lessee from a lessor of goods under  
44 an existing lease contract obtains, to the extent of the leasehold interest transferred, the

1 leasehold interest in the goods that the lessor had or had power to transfer, and except as  
2 provided in subsection (2) of this section and G.S. 25-2A-527(4), takes subject to the  
3 existing lease contract. A lessor with voidable title has power to transfer a good  
4 leasehold interest to a good faith subsequent lessee for value, but only to the extent set  
5 forth in the preceding sentence. If goods have been delivered under a transaction of  
6 purchase, the lessor has that power even though:

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

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

9 (c) it was agreed that the transaction was to be a 'cash sale'; or

10 (d) the delivery was procured through fraud punishable as larcenous under the  
11 criminal law.

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

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

22 **"§ 25-2A-305. Sale or sublease of goods by lease.**

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

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

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

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

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

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

1 **"§ 25-2A-306. Priority of certain liens arising by operation of law.**

2 If a person in the ordinary course of his (or her) business furnishes services or  
3 materials with respect to goods subject to a lease contract, a lien upon those goods in the  
4 possession of that person given by statute or rule of law for those materials or services  
5 takes priority over any interest of the lessor or lessee under the lease contract or this  
6 Article unless the lien is created by statute and the statute provides otherwise or unless  
7 the lien is created by rule of law and the rule of law provides otherwise.

8 **"§ 25-2A-307. Priority of liens arising by attachment or levy on, security interests**  
9 **in, and other claims to goods.**

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

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

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

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

19 (c) the creditor holds a security interest in the goods which was perfected (G.S.  
20 25-9-303) before the lease contract became enforceable.

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

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

30 **"§ 25-2A-308. Special rights of creditors.**

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

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

41 (3) A creditor of a seller may treat a sale or an identification of goods to a  
42 contract for sale as void if as against the creditor retention of possession by the seller is  
43 fraudulent under any statute or rule of law, but retention of possession of the goods  
44 pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in



1 connection with the sale or identification of the goods is not fraudulent if the buyer  
2 bought for value and in good faith.

3 **"§ 25-2A-309. Lessor's and lessee's rights when goods become fixtures.**

4 (1) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **"§ 25-2A-310. Lessor's and lessee's rights when goods become accessions.**

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

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

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

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

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

5       (b)   a creditor with a security interest in the whole perfected before the lease  
6 contract was made to the extent that the creditor makes subsequent advances without  
7 knowledge of the lease contract.

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

11       (a)   on default, expiration, termination, or cancellation of the lease contract by the  
12 other party but subject to the provisions of the lease contract and this Article, or

13       (b)   if necessary to enforce his (or her) other rights and remedies under this  
14 Article, remove the goods from the whole, free and clear of all interests in the whole,  
15 but he (or she) must reimburse any holder of an interest in the whole who is not the  
16 lessee and who has not otherwise agreed for the cost of repair of any physical injury but  
17 not for any diminution in value of the whole caused by the absence of the goods  
18 removed or by any necessity for replacing them. A person entitled to reimbursement  
19 may refuse permission to remove until the party seeking removal gives adequate  
20 security for the performance of this obligation.

#### 21   "PART 4.

#### 22                                   "PERFORMANCE OF LEASE CONTRACT:

#### 23   REPUDIATED, SUBSTITUTED,

#### 24   AND EXCUSED.

#### 25 "§ 25-2A-401. Insecurity: Adequate assurance of performance.

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

28       (2)   If reasonable grounds for insecurity arise with respect to the performance of  
29 either party, the insecure party may demand in writing adequate assurance of due  
30 performance. Until the insecure party receives that assurance, if commercially  
31 reasonable the insecure party may suspend any performance for which he [or she] has  
32 not already received the agreed return.

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

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

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

#### 42 "§ 25-2A-402. Anticipatory repudiation.

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

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

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

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

16 **"§ 25-2A-403. Retraction of anticipatory repudiation.**

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

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

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

27 **"§ 25-2A-404. Substituted performance.**

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

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

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

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

41 **"§ 25-2A-405. Excused performance.**

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

43 (a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier  
44 who complies with paragraphs (b) and (c) is not a default under the lease contract if

1 performance as agreed has been made impracticable by the occurrence of a contingency  
2 the nonoccurrence of which was a basic assumption on which the lease contract was  
3 made or by compliance in good faith with any applicable foreign or domestic  
4 governmental regulation or order, whether or not the regulation or order later proves to  
5 be invalid.

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

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

16 **"§ 25-2A-406. Procedure on excused performance.**

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

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

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

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

30 **"§ 25-2A-407. Irrevocable promises: finance leases.**

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

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

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

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

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

43 **"PART 5.**  
44 **"DEFAULT**

"A. IN GENERAL.

"§ 25-2A-501. Default: procedure.

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

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

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

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

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

"§ 25-2A-502. Notice after default.

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

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

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

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

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

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

"§ 25-2A-504. Liquidation of damages.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an

1 amount or by a formula that is reasonable in light of the then anticipated harm caused by  
2 the default or other act or omission.

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

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

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

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

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

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

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

21 **"§ 25-2A-505. Cancellation and termination and effect of cancellation,**  
22 **termination, rescission, or fraud on rights and remedies.**

23 (1) On cancellation 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 and the cancelling party also retains any remedy for default of the whole lease contract  
26 or any unperformed balance.

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

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

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

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

37 **"§ 25-2A-506. Statute of limitations.**

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

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

1 indemnity accrues when the act or omission on which the claim for indemnity is based  
2 is or should have been discovered by the indemnified party, whichever is later.

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

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

11 **"§ 25-2A-507. Proof of market rent: time and place.**

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

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

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

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

33 **"B. DEFAULT BY LESSOR.**

34 **"§ 25-2A-508. Lessee's remedies.**

35 (1) If a lessor fails to deliver the goods in conformity to the lease contract (G.S.  
36 25-2A-509) or repudiates the lease contract (G.S. 25-2A-402), or a lessee rightfully  
37 rejects the goods (G.S. 25-2A-509) or justifiably revokes acceptance of the goods (G.S.  
38 25-2A-517), then with respect to any goods involved, and with respect to all of the  
39 goods if under an installment lease contract the value of the whole lease contract is  
40 substantially impaired (G.S. 25-2A-510), the lessor is in default under the lease contract  
41 and the lessee may:

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

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



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

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

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

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

9 (b) in a proper case, obtain specific performance or replevy the goods (G.S. 25-  
10 2A-521).

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

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

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

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

28 **"§ 25-2A-509. Lessee's rights on improper delivery; rightful rejection.**

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

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

35 **"§ 25-2A-510. Installment lease contracts; rejection and default.**

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

41 (2) Whenever nonconformity or default with respect to one or more deliveries  
42 substantially impairs the value of the installment lease contract as a whole there is a  
43 default with respect to the whole. But, the aggrieved party reinstates the installment  
44 lease contract as a whole if the aggrieved party accepts a nonconforming delivery

1 without seasonably notifying of cancellation or brings an action with respect only to  
2 past deliveries or demands performance as to future deliveries.

3 **"§ 25-2A-511. Merchant lessee's duties as to rightfully rejected goods.**

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

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

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

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

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

26 (1) Except as otherwise provided with respect to goods that threaten to decline in  
27 value speedily (G.S. 25-2A-511) and subject to any security interest of a lessee (G.S.  
28 25-2A-508(5)):

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

32 (b) if the lessor or the supplier gives no instructions within a reasonable time  
33 after notification of rejection, the lessee may store the rejected goods for the lessor's or  
34 the supplier's account or ship them to the lessor or the supplier or dispose of them for  
35 the lessor's or the supplier's account with reimbursement in the manner provided in G.S.  
36 25-2A-511; but

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

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

40 **"§ 25-2A-513. Cure by lessor of improper tender or delivery; replacement.**

41 (1) If any tender or delivery by the lessor or the supplier is rejected because  
42 nonconforming and the time for performance has not yet expired, the lessor or the  
43 supplier may seasonably notify the lessee of the lessor's or the supplier's intention to

1 cure and may then make a conforming delivery within the time provided in the lease  
2 contract.

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

7 **"§ 25-2A-514. Waiver of lessee's objections.**

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

11 (a) if, stated seasonably, the lessor or the supplier could have cured it (G.S. 25-  
12 2A-513); or

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

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

19 **"§ 25-2A-515. Acceptance of goods.**

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

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

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

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

27 **"§ 25-2A-516. Effect of acceptance of goods; notice of default; burden of**  
28 **establishing default after acceptance; notice of claim or litigation to**  
29 **person answerable over.**

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

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

39 (3) If a tender has been accepted:

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

43 (b) except in the case of a consumer lease, within a reasonable time after the  
44 lessee receives notice of litigation for infringement or the like (G.S. 25-2A-211) the

1 lessee shall notify the lessor or be barred from any remedy over for liability established  
2 by the litigation; and

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

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

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

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

18 (5) Subsections (3) and (4) of this section apply to any obligation of a lessee to  
19 hold the lessor or the supplier harmless against infringement or the like (G.S. 25-2A-  
20 211).

21 **"§ 25-2A-517. Revocation of acceptance of goods.**

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

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

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

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

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

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

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

41 **"§ 25-2A-518. Cover; substitute goods.**

42 (1) After a default by a lessor under the lease contract of the type described in  
43 G.S. 25-2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover

1 by making any purchase or lease of or contract to purchase or lease goods in  
2 substitution for those due from the lessor.

3 (2) Except as otherwise provided with respect to damages liquidated in the lease  
4 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the  
5 parties (G.S. 25-1-102(3) and G.S. 25-2A-503), if a lessee's cover is by a lease  
6 agreement substantially similar to the original lease agreement and the new lease  
7 agreement is made in good faith and in a commercially reasonable manner, the lessee  
8 may recover from the lessor as damages (i) the present value, as of the date of the  
9 commencement of the term of the new lease agreement, of the rent under the new lease  
10 agreement applicable to that period of the new lease term which is comparable to the  
11 then remaining term of the original lease agreement minus the present value as of the  
12 same date of the total rent for the then remaining lease term of the original lease  
13 agreement, and (ii) any incidental or consequential damages, less expenses saved in  
14 consequence of the lessor's default.

15 (3) If a lessee's cover is by lease agreement that for any reason does not qualify  
16 for treatment under subsection (2) of this section, or is by purchase or otherwise, the  
17 lessee may recover from the lessor as if the lessee had elected not to cover and G.S. 25-  
18 2A-519 governs.

19 **§ 25-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach**  
20 **of warranty in regard to accepted goods.**

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

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

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

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

1 **"§ 25-2A-520. Lessee's incidental and consequential damages.**

2 (1) Incidental damages resulting from a lessor's default include expenses  
3 reasonably incurred in inspection, receipt, transportation, and care and custody of goods  
4 rightfully rejected or goods the acceptance of which is justifiably revoked, any  
5 commercially reasonable charges, expenses or commissions in connection with  
6 effecting cover, and any other reasonable expense incident to the default.

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

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

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

13 **"§ 25-2A-521. Lessee's right to specific performance or replevin.**

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

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

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

22 **"§ 25-2A-522. Lessee's right to goods on lessor's insolvency.**

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

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

31 **"C. DEFAULT BY LESSEE.**

32 **"§ 25-2A-523. Lessor's remedies.**

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

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

39 (b) proceed respecting goods not identified to the lease contract (G.S. 25-2A-  
40 524);

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

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

1       (e) dispose of the goods and recover damages (G.S. 25-2A-527), or retain the  
2 goods and recover damages (G.S. 25-2A-528), or in a proper case recover rent (G.S. 25-  
3 2A-529);

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

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

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

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

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

20 **"§ 25-2A-524. Lessor's right to identify goods to lease contract.**

21       (1) After 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, the lessor may:

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

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

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

34 **"§ 25-2A-525. Lessor's right to possession of goods.**

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

37       (2) After a default by the lessee under the lease contract of the type described in  
38 G.S. 25-2A-523(1) or G.S. 25-2A-523(3) (a) or, if agreed, after other default by the  
39 lessee, the lessor has the right to take possession of the goods. If the lease contract so  
40 provides, the lessor may require the lessee to assemble the goods and make them  
41 available to the lessor at a place to be designated by the lessor which is reasonably  
42 convenient to both parties. Without removal, the lessor may render unusable any goods  
43 employed in trade or business, and may dispose of goods on the lessee's premises (G.S.  
44 25-2A-527).

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

4 **"§ 25-2A-526. Lessor's stoppage of delivery in transit or otherwise.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

13 **"§ 25-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or**  
14 **other default.**

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

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

37 **"§ 25-2A-529. Lessor's action for the rent.**

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

42       (a) for goods accepted by the lessee and not repossessed by or tendered to the  
43 lessor, and for conforming goods lost or damaged within a commercially reasonable  
44 time after risk of loss passes to the lessee (G.S. 25-2A-219), (i) accrued and unpaid rent

1 as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the  
2 same date of the rent for the then remaining lease term of the lease agreement, and (iii)  
3 any incidental damages allowed under G.S. 25-2A-530, less expenses saved in  
4 consequence of the lessee's default; and

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

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

15 (3) The lessor may dispose of the goods at any time before collection of the  
16 judgment for damages obtained pursuant to subsection (1) of this section. If the  
17 disposition is before the end of the remaining lease term of the lease agreement, the  
18 lessor's recovery against the lessee for damages is governed by G.S. 25-2A-527 or G.S.  
19 25-2A-528, and the lessor will cause an appropriate credit to be provided against a  
20 judgment for damages to the extent that the amount of the judgment exceeds the  
21 recovery available pursuant to G.S. 25-2A-527 or G.S. 25-2A-528.

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

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

29 **"§ 25-2A-530. Lessor's incidental damages.**

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

34 **"§ 25-2A-531. Standing to sue third parties for injury to goods.**

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

39 (i) has a security interest in the goods;

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

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

43 (2) If at the time of the injury the party plaintiff did not bear the risk of loss as  
44 against the other party to the lease contract and there is no arrangement between them

1 for disposition of the recovery, his [or her] suit or settlement, subject to his [or her] own  
2 interest, is as a fiduciary for the other party to the lease contract.

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

5 **"§ 25-2A-532. Lessor's rights to residual interest.**

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

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

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

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

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

39 (ii) The lessee is bound to renew the lease for the  
40 remaining economic life of the goods or is bound to  
41 become the owner of the goods,

42 (iii) The lessee has an option to renew the lease for the  
43 remaining economic life of the goods for no  
44 additional consideration or nominal additional

- 1 consideration upon compliance with the lease  
2 agreement, or
- 3 (iv) The lessee has an option to become the owner of the  
4 goods for no additional consideration or nominal  
5 additional consideration upon compliance with the  
6 lease agreement.
- 7 (b) A transaction does not create a security interest merely because  
8 it provides that
- 9 (i) The present value of the consideration the lessee is  
10 obligated to pay the lessor for the right to  
11 possession and use of the goods is substantially  
12 equal to or is greater than the fair market value of  
13 the goods at the time the lease is entered into,
- 14 (ii) The lessee assumes risk of loss of the goods, or  
15 agrees to pay taxes, insurance, filing, recording, or  
16 registration fees, or service or maintenance costs  
17 with respect to the goods,
- 18 (iii) The lessee has an option to renew the lease or to  
19 become the owner of the goods,
- 20 (iv) The lessee has an option to renew the lease for a  
21 fixed rent that is equal to or greater than the  
22 reasonably predictable fair market rent for the use of  
23 the goods for the term of the renewal at the time the  
24 option is to be performed, or
- 25 (v) The lessee has an option to become the owner of the  
26 goods for a fixed price that is equal to or greater  
27 than the reasonably predictable fair market value of  
28 the goods at the time the option is to be performed.
- 29 (c) For purposes of this subsection (37):
- 30 (i) Additional consideration is not nominal if (i) when  
31 the option to renew the lease is granted to the lessee  
32 the rent is stated to be the fair market rent for the  
33 use of the goods for the term of the renewal  
34 determined at the time the option is to be  
35 performed, or (ii) when the option to become the  
36 owner of the goods is granted to the lessee the price  
37 is stated to be the fair market value of the goods  
38 determined at the time the option is to be  
39 performed. Additional consideration is nominal if it  
40 is less than the lessee's reasonably predictable cost  
41 of performing under the lease agreement if the  
42 option is not exercised.
- 43 (ii) 'Reasonably predictable' and 'remaining economic  
44 life of the goods' are to be determined with

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

13 Sec. 3. G.S. 25-9-113 reads as rewritten:

14 **"§ 25-9-113. Security interests arising under article on sales. sales or under article**  
15 **on leases.**

16 A security interest arising solely under the article on sales (~~article Article 2~~) or the  
17 article on leases (Article 2A) is subject to the provisions of this article except that to the  
18 extent that and so long as the debtor does not have or does not lawfully obtain  
19 possession of the goods

20 (a) no security agreement is necessary to make the security interest enforceable;  
21 and

22 (b) no filing is required to perfect the security interest; and

23 (c) the rights of the secured party on default by the debtor are governed (i) by the  
24 article on sales (~~article 2~~)-(Article 2) in the case of a security interest arising solely  
25 under that Article, or (ii) by the Article on leases (Article 2A) in the case of a security  
26 interest arising solely under that Article."

27 Sec. 4. This act is effective upon ratification.