

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 67

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to leases of personal property under
7 the Uniform Commercial Code."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 45.01.101 is amended to read:

10 Sec. 45.01.101. SHORT TITLE. AS 45.01.101 -- AS 45.09.507 and
11 AS 45.12 shall be known and may be cited as the Uniform Commercial
12 Code.

13 * Sec. 2. AS 45.01.105(b) is amended to read:

14 (b) Where one of the following provisions of AS 45.01 -- AS 45.09
15 and AS 45.12 specifies the applicable law, that provision governs and
16 a contrary agreement is effective only to the extent permitted by the
17 law, including the conflict of laws rules, so specified:

18 Rights of creditors against sold goods (AS 45.02.402)

19 Applicability of the chapter on leases (AS 45.12.105 and
20 45.12.106)

21 Applicability of the chapter [ARTICLE] on bank deposits and
22 collections (AS 45.04.102)

23 Bulk transfers subject to the chapter [ARTICLE] on bulk transfers
24 (AS 45.06.102)

25 Applicability of the chapter [ARTICLE] on investment securities
26 (AS 45.08.106)

27 Perfection provisions of the chapter [ARTICLE] on secured trans-
28 actions (AS 45.09.103).

29 * Sec. 3. AS 45.01.201(37) is amended to read:

1 (37) "security interest" means an interest in personal
2 property or fixtures which secures payment or performance of an
3 obligation; the retention or reservation of title by a seller of goods
4 notwithstanding shipment or delivery to the buyer (AS 45.02.401) is
5 limited in effect to a reservation of a "security interest"; the term
6 also includes an interest of a buyer of accounts or chattel paper
7 which is subject to AS 45.09; the special property interest of a buyer
8 of goods on identification of the goods to a contract for sale under
9 AS 45.02.401 is not a "security interest," but a buyer may also ac-
10 quire a "security interest" by complying with AS 45.09; unless a
11 [LEASE OR] consignment is intended as security, reservation of title
12 under the [LEASE OR] consignment is not a "security interest," but a
13 consignment is in any event subject to the provisions on consignment
14 sales (AS 45.02.326); whether a transaction creates a lease or [IS
15 INTENDED AS] security interest is [TO BE] determined by the facts of
16 each case; however,

17 (A) a transaction creates a security interest if the
18 consideration the lessee is to pay the lessor for the right to
19 possession and use of the goods is an obligation for the term of
20 the lease not subject to termination by the lessee, and

21 (i) the original term of the lease is equal to or
22 greater than the remaining economic life of the goods,

23 (ii) the lessee is bound to renew the lease for
24 the remaining economic life of the goods or is bound to
25 become the owner of the goods,

26 (iii) the lessee has an option to renew the lease
27 for the remaining economic life of the goods for no addi-
28 tional consideration or nominal additional consideration
29 upon compliance with the lease agreement, or

1 (iv) the lessee has an option to become the owner
2 of the goods for no additional consideration or nominal
3 additional consideration upon compliance with the lease
4 agreement;

5 (B) a transaction does not create a security interest
6 merely because it provides that

7 (i) the present value of the consideration the
8 lessee is obligated to pay the lessor for the right to
9 possession and use of the goods is substantially equal to or
10 is greater than the fair market value of the goods at the
11 time the lease is entered into,

12 (ii) the lessee assumes risk of loss of the goods,
13 or agrees to pay taxes, insurance, filing, recording, or
14 registration fees, or service or maintenance costs with re-
15 spect to the goods,

16 (iii) the lessee has an option to renew the lease
17 or to become the owner of the goods,

18 (iv) the lessee has an option to renew the lease
19 for a fixed rent that is equal to or greater than the rea-
20 sonably predictable fair market rent for the use of the
21 goods for the term of the renewal at the time the option is
22 to be performed, or

23 (v) the lessee has an option to become the owner
24 of the goods for a fixed price that is equal to or greater
25 than the reasonably predictable fair market value of the
26 goods at the time the option is to be performed;

27 (C) for purposes of this paragraph (37), additional
28 consideration is not nominal if (i) when the option to renew the
29 lease is granted to the lessee the rent is stated to be the fair

1 market rent for the use of the goods for the term of the renewal
2 determined at the time the option is to be performed, or (ii)
3 when the option to become the owner of the goods is granted to
4 the lessee the price is stated to be the fair market value of the
5 goods determined at the time the option is to be performed;
6 additional consideration is nominal if it is less than the les-
7 see's reasonably predictable cost of performing under the lease
8 agreement if the option is not exercised;

9 (D) in this paragraph (37)

10 (i) "present value" means the amount as of a date
11 certain of one or more sums payable in the future, discount-
12 ed to the date certain; the discount is determined by the
13 interest rate specified by the parties if the rate is not
14 manifestly unreasonable at the time the transaction is
15 entered into; otherwise, the discount is determined by a
16 commercially reasonable rate that takes into account the
17 facts and circumstances of each case at the time the trans-
18 action was entered into; and

19 (ii) "reasonably predictable" and "remaining
20 economic life of the goods" are to be determined with refer-
21 ence to the facts and circumstances at the time the trans-
22 action is entered into [(A) THE INCLUSION OF AN OPTION TO
23 PURCHASE DOES NOT OF ITSELF MAKE THE LEASE ONE INTENDED FOR
24 SECURITY, AND (B) AN AGREEMENT THAT UPON COMPLIANCE WITH THE
25 TERMS OF THE LEASE THE LESSEE SHALL BECOME OR HAS THE OPTION
26 TO BECOME THE OWNER OF THE PROPERTY FOR NO ADDITIONAL CON-
27 SIDERATION OR FOR A NOMINAL CONSIDERATION DOES MAKE THE
28 LEASE ONE INTENDED FOR SECURITY];

29 * Sec. 4. AS 45.09.113 is amended to read:

1 Sec. 45.09.113. SECURITY INTERESTS ARISING UNDER AS 45.02
2 (SALES) OR AS 45.12 (LEASES). A security interest arising solely
3 under AS 45.02 or AS 45.12 is subject to the provisions of this chap-
4 ter except that, to the extent that and so long as the debtor does not
5 have or does not lawfully obtain possession of the goods,

6 (1) no security agreement is necessary to make the security
7 interest enforceable;

8 (2) no filing is required to perfect the security interest;
9 and

10 (3) the rights of the secured party on default by the debtor
11 are governed (A) by the chapter on sales (AS 45.02) in the case of a
12 security interest arising solely under this chapter, or (B) by the
13 chapter on leases (AS 45.12) in the case of a security interest aris-
14 ing solely under that chapter [BY THIS CHAPTER].

15 * Sec. 5. AS 45 is amended by adding a new chapter to read:

16 CHAPTER 12. LEASES.

17 ARTICLE 1. GENERAL PROVISIONS.

18 Sec. 45.12.101. SHORT TITLE. This chapter shall be known and
19 may be cited as the Uniform Commercial Code -- leases.

20 Sec. 45.12.102. SCOPE. This chapter applies to any trans-
21 action, regardless of form, that creates a lease.

22 Sec. 45.12.103. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In
23 this chapter, unless the context otherwise requires:

24 (1) "buyer in ordinary course of business" means a person
25 who in good faith and without knowledge that the sale to him or her is
26 in violation of the ownership rights or security interest or leasehold
27 interest of a third party in the goods buys in ordinary course from a
28 person in the business of selling goods of that kind but does not
29 include a pawnbroker; "buying" may be for cash or by exchange of other

1 property or on secured or unsecured credit and includes receiving
2 goods or documents of title under a pre-existing contract for sale but
3 does not include a transfer in bulk or as security for or in total or
4 partial satisfaction of a money debt;

5 (2) "cancellation" occurs when either party puts an end to
6 the lease contract for default by the other party;

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

14 (4) "conforming" goods or performance under a lease con-
15 tract means goods or performance that are in accordance with the
16 obligations under the lease contract;

17 (5) "consumer lease" means a lease that a lessor regularly
18 engaged in the business of leasing or selling makes to a lessee,
19 except an organization, who takes under the lease primarily for a
20 personal, family, or household purpose, if the total payments to be
21 made under the lease contract, excluding payments for options to renew
22 or buy, do not exceed \$25,000;

23 (6) "fault" means wrongful act, omission, breach, or de-
24 fault;

25 (7) "finance lease" means a lease in which (A) the lessor
26 does not select, manufacture or supply the goods, (B) the lessor
27 acquires the goods or the right to possession and use of the goods in
28 connection with the lease, and (C) either the lessee receives a copy
29 of the contract evidencing the lessor's purchase of the goods on or

1 before signing the lease contract, or the lessee's approval of the
2 contract evidencing the lessor's purchase of the goods is a condition
3 to effectiveness of the lease contract;

4 (8) "goods" means all things that are movable at the time
5 of identification to the lease contract, or are fixtures (AS 45.12.-
6 309), but the term does not include money, documents, instruments,
7 accounts, chattel paper, general intangibles, or minerals or the like,
8 including oil and gas, before extraction; the term also includes the
9 unborn young of animals;

10 (9) "installment lease contract" means a lease contract
11 that authorizes or requires the delivery of goods in separate lots to
12 be separately accepted, even though the lease contract contains a
13 clause "each delivery is a separate lease" or its equivalent;

14 (10) "lease" means a transfer of the right to possession
15 and use of goods for a term in return for consideration, but a sale,
16 including a sale on approval or a sale or return, or retention or
17 creation of a security interest is not a lease; unless the context
18 clearly indicates otherwise, the term includes a sublease;

19 (11) "lease agreement" means the bargain, with respect to
20 the lease, of the lessor and the lessee in fact as found in their
21 language or by implication from other circumstances including course
22 of dealing or usage of trade or course of performance as provided in
23 this chapter; unless the context clearly indicates otherwise, the term
24 includes a sublease agreement;

25 (12) "lease contract" means the total legal obligation that
26 results from the lease agreement as affected by this chapter and any
27 other applicable rules of law; unless the context clearly indicates
28 otherwise, the term includes a sublease contract;

29 (13) "leasehold interest" means the interest of the lessor

1 or the lessee under a lease contract;

2 (14) "lessee" means a person who acquires the right to
3 possession and use of goods under a lease; unless the context clearly
4 indicates otherwise, the term includes a sublessee;

5 (15) "lessee in ordinary course of business" means a person
6 who in good faith and without knowledge that the lease to him or her
7 is in violation of the ownership rights or security interest or lease-
8 hold interest of a third party in the goods leases in ordinary course
9 from a person in the business of selling or leasing goods of that kind
10 but does not include a pawnbroker; "leasing" may be for cash or by
11 exchange of other property or on secured or unsecured credit and
12 includes receiving goods or documents of title under a pre-existing
13 lease contract but does not include a transfer in bulk or as security
14 for or in total or partial satisfaction of a money debt;

15 (16) "lessor" means a person who transfers the right to
16 possession and use of goods under a lease; unless the context clearly
17 indicates otherwise, the term includes a sublessor;

18 (17) "lessor's residual interest" means the lessor's inter-
19 est in the goods after expiration, termination, or cancellation of the
20 lease contract;

21 (18) "lien" means a charge against or interest in goods to
22 secure payment of a debt or performance of an obligation, but the term
23 does not include a security interest;

24 (19) "lot" means a parcel or a single article that is the
25 subject matter of a separate lease or delivery, whether or not it is
26 sufficient to perform the lease contract;

27 (20) "merchant lessee" means a lessee that is a merchant
28 with respect to goods of the kind subject to the lease;

29 (21) "present value" means the amount as of a date certain

1 of one or more sums payable in the future, discounted to the date
2 certain; the discount is determined by the interest rate specified by
3 the parties if the rate was not manifestly unreasonable at the time
4 the transaction was entered into; otherwise, the discount is de-
5 termined by a commercially reasonable rate that takes into account the
6 facts and circumstances of each case at the time the transaction was
7 entered into;

8 (22) "purchase" includes taking by sale, lease, mortgage,
9 security interest, pledge, gift, or any other voluntary transaction
10 creating an interest in goods;

11 (23) "sublease" means a lease of goods the right to pos-
12 session and use of which was acquired by the lessor as a lessee under
13 an existing lease;

14 (24) "supplier" means a person from whom a lessor buys or
15 leases goods to be leased under a finance lease;

16 (25) "supply contract" means a contract under which a
17 lessor buys or leases goods to be leased;

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

21 (b) Other definitions applying to this chapter and the sections
22 in which they appear are:

23 (1) "accessions" (AS 45.12.310(a))

24 (2) "construction mortgage" (AS 45.12.309(a)(4))

25 (3) "encumbrance" (AS 45.12.309(a)(5))

26 (4) "fixtures" (AS 45.12.309(a)(1))

27 (5) "fixture filing" (AS 45.12.309(a)(2))

28 (6) "purchase money lease" (AS 45.12.309(a)(3)).

29 (c) The following definitions in AS 45.01 -- AS 45.09 apply to

1 **this chapter:**

- 2 (1) "accounts" (AS 45.09.106)
- 3 (2) "between merchants" (AS 45.02.104(c))
- 4 (3) "buyer" (AS 45.02.103(a)(1))
- 5 (4) "chattel paper" (AS 45.09.105(a)(2))
- 6 (5) "consumer goods" (AS 45.09.109(1))
- 7 (6) "documents" (AS 45.09.105(a)(6))
- 8 (7) "entrusting" (AS 45.02.403(c))
- 9 (8) "general intangibles" (AS 45.09.106)
- 10 (9) "good faith" (AS 45.02.103(a)(2))
- 11 (10) "instruments" (AS 45.09.105(a)(9))
- 12 (11) "merchant" (AS 45.02.104(a))
- 13 (12) "mortgage" (AS 45.09.105(a)(10))
- 14 (13) "pursuant to commitment" (AS 45.09.105(a)(11))
- 15 (14) "receipt" (AS 45.02.103(a)(3))
- 16 (15) "sale" (AS 45.02.106(a))
- 17 (16) "sale on approval" (AS 45.02.326)
- 18 (17) "sale or return" (AS 45.02.326)
- 19 (18) "seller" (AS 45.02.103(a)(4)).

20 (d) In addition, AS 45.01 contains general definitions and
21 principles of construction and interpretation applicable throughout
22 this chapter.

23 Sec. 45.12.104. LEASES SUBJECT TO OTHER STATUTES. (a) A lease,
24 although subject to this chapter, is also subject to any applicable

- 25 (1) statute of the United States;
- 26 (2) certificate of title statute of this state, such as
27 AS 28.10.201;
- 28 (3) certificate of title statute of another jurisdiction
29 (AS 45.12.105); or

1 (4) consumer protection statute of this state.

2 (b) In case of conflict between the provisions of this chapter,
3 other than AS 45.12.105, 45.12.304(c), and 45.12.305(c), and any
4 statute referred to in (a) of this section, the provisions of that
5 statute control.

6 (c) Failure to comply with any applicable statute has only the
7 effect specified in it.

8 Sec. 45.12.105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS
9 COVERED BY CERTIFICATE OF TITLE. Subject to the provisions of
10 AS 45.12.304(c) and 45.12.305(c), with respect to goods covered by a
11 certificate of title issued under a statute of this state or of another
12 jurisdiction, compliance and the effect of compliance or noncompliance
13 with a certificate of title statute are governed by the law
14 (including the conflict of laws rules) of the jurisdiction issuing the
15 certificate until the earlier of (1) surrender of the certificate, or
16 (2) four months after the goods are removed from that jurisdiction and
17 after that date until a new certificate of title is issued by another
18 jurisdiction.

19 Sec. 45.12.106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE
20 TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (a) If the law chosen
21 by the parties to a consumer lease is that of a jurisdiction other
22 than a jurisdiction in which the lessee resides at the time the lease
23 agreement becomes enforceable or within 30 days after that date or in
24 which the goods are to be used, the choice is not enforceable.

25 (b) If the judicial forum chosen by the parties to a consumer
26 lease is a forum that would not otherwise have jurisdiction over the
27 lessee, the choice is not enforceable.

28 Sec. 45.12.107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER
29 DEFAULT. Any claim or right arising out of an alleged default or

1 breach of warranty may be discharged in whole or in part without
2 consideration by a written waiver or renunciation signed and delivered
3 by the aggrieved party.

4 Sec. 45.12.108. UNCONSCIONABILITY. (a) If the court as a
5 matter of law finds a lease contract or any clause of a lease contract
6 to have been unconscionable at the time it was made, the court may
7 refuse to enforce the lease contract, or it may enforce the remainder
8 of the lease contract without the unconscionable clause, or it may so
9 limit the application of any unconscionable clause as to avoid any
10 unconscionable result.

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

16 (c) Before making a finding of unconscionability under (a) or
17 (b) of this section, the court, on its own motion or that of a party,
18 shall afford the parties a reasonable opportunity to present evidence
19 as to the setting, purpose, and effect of the lease contract or clause
20 of the contract, or of the conduct.

21 (d) In an action in which the lessee claims unconscionability
22 with respect to a consumer lease

23 (1) if the court finds unconscionability under (a) or (b)
24 of this section, the court shall award reasonable attorney fees to the
25 lessee;

26 (2) if the court does not find unconscionability and the
27 lessee claiming unconscionability has brought or maintained an action
28 he or she knew to be groundless, the court shall award reasonable
29 attorney fees to the party against whom the claim is made;

1 (3) in determining attorney fees, the amount of the recovery
2 on behalf of the claimant under (a) and (b) of this section is not
3 controlling.

4 Sec. 45.12.109. OPTION TO ACCELERATE AT WILL. (a) A term
5 providing that one party or his or her successor in interest may
6 accelerate payment or performance or require collateral or additional
7 collateral "at will" or "when he or she considers himself or herself
8 insecure," or in words of similar import, must be construed to mean
9 that the party has power to do so only if he or she in good faith
10 believes that the prospect of payment or performance is impaired.

11 (b) With respect to a consumer lease, the burden of establishing
12 good faith under (a) of this section is on the party who exercised the
13 power; otherwise the burden of establishing lack of good faith is on
14 the party against whom the power has been exercised.

15 ARTICLE 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT.

16 Sec. 45.12.201. STATUTE OF FRAUDS. (a) A lease contract is not
17 enforceable by way of action or defense unless

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

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

25 (b) Any description of leased goods or of the lease term is
26 sufficient and satisfies (a)(2) of this section, whether or not it is
27 specific, if it reasonably identifies what is described.

28 (c) A writing is not insufficient because it omits or incorrect-
29 ly states a term agreed upon, but the lease contract is not

1 enforceable under (a)(2) of this section beyond the lease term and the
2 quantity of goods shown in the writing.

3 (d) A lease contract that does not satisfy the requirements of
4 (a) of this section, but which is valid in other respects, is enforce-
5 able:

6 (1) if the goods are to be specially manufactured or ob-
7 tained for the lessee and are not suitable for lease or sale to others
8 in the ordinary course of the lessor's business, and the lessor,
9 before notice of repudiation is received and under circumstances that
10 reasonably indicate that the goods are for the lessee, has made either
11 a substantial beginning of their manufacture or commitments for their
12 procurement;

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

17 (3) with respect to goods that have been received and
18 accepted by the lessee.

19 (e) The lease term under a lease contract referred to in (d) of
20 this section is:

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

24 (2) if the party against whom enforcement is sought admits
25 in that party's pleading, testimony, or otherwise in court a lease
26 term, the term so admitted; or

27 (3) a reasonable lease term.

28 Sec. 45.12.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC
29 EVIDENCE. Terms with respect to which the confirmatory memoranda of

1 the parties agree or which are otherwise set out in a writing intended
2 by the parties as a final expression of their agreement with respect
3 to such terms as are included in those memoranda or other writing may
4 not be contradicted by evidence of any prior agreement or of a
5 contemporaneous oral agreement but may be explained or supplemented

6 (1) by course of dealing or usage of trade or by course of
7 performance; and

8 (2) by evidence of consistent additional terms unless the
9 court finds the writing to have been intended also as a complete and
10 exclusive statement of the terms of the agreement.

11 Sec. 45.12.203. SEALS INOPERATIVE. The affixing of a seal to a
12 writing evidencing a lease contract or an offer to enter into a lease
13 contract does not render the writing a sealed instrument, and the law
14 with respect to sealed instruments does not apply to the lease con-
15 tract or offer.

16 Sec. 45.12.204. FORMATION IN GENERAL. (a) A lease contract may
17 be made in any manner sufficient to show agreement, including conduct
18 by both parties which recognizes the existence of a lease contract.

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

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

25 Sec. 45.12.205. FIRM OFFERS. An offer by a merchant to lease
26 goods to or from another person in a signed writing that by its terms
27 gives assurance that it will be held open is not revocable, for lack
28 of consideration, during the time stated or, if no time is stated, for
29 a reasonable time; however, in no event may the period of

1 irrevocability exceed three months. Any such term of assurance on a
2 form supplied by the offeree must be separately signed by the offeror.

3 Sec. 45.12.206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE
4 CONTRACT. (a) Unless otherwise unambiguously indicated by the lan-
5 guage or circumstances, an offer to make a lease contract must be
6 construed as inviting acceptance in any manner and by any medium
7 reasonable under the circumstances.

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

12 Sec. 45.12.207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

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

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

24 (c) Subject to the provisions of AS 45.12.208 on modification
25 and waiver, course of performance is relevant to show a waiver or
26 modification of any term inconsistent with the course of performance.

27 Sec. 45.12.208. MODIFICATION, RESCISSION, AND WAIVER. (a) An
28 agreement modifying a lease contract needs no consideration to be
29 binding.

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

6 (c) Although an attempt at modification or rescission does not
7 satisfy the requirements of (b) of this section, it may operate as a
8 waiver.

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

14 Sec. 45.12.209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF
15 SUPPLY CONTRACT. (a) The benefit of the supplier's promises to the
16 lessor under the supply contract and of all warranties, whether ex-
17 press or implied, under the supply contract, extends to the lessee to
18 the extent of the lessee's leasehold interest under a finance lease
19 related to the supply contract, but subject to the terms of the supply
20 contract and all of the supplier's defenses or claims arising from it.

21 (b) The extension of the benefit of the supplier's promises and
22 warranties to the lessee ((a) of this section) does not (1) modify the
23 rights and obligations of the parties to the supply contract, whether
24 arising from it or otherwise, or (2) impose any duty or liability
25 under the supply contract on the lessee.

26 (c) Any modification or rescission of the supply contract by the
27 supplier and the lessor is effective against the lessee unless, before
28 the modification or rescission, the supplier has received notice that
29 the lessee has entered into a finance lease related to the supply

1 contract. If the supply contract is modified or rescinded after the
2 lessee enters the finance lease, the lessee has a cause of action
3 against the lessor, and against the supplier if the supplier has
4 notice of the lessee's entering the finance lease when the supply
5 contract is modified or rescinded. The lessee's recovery from that
6 action puts the lessee in as good a position as if the modification or
7 rescission had not occurred.

8 Sec. 45.12.210. EXPRESS WARRANTIES. (a) Express warranties by
9 the lessor are created as follows:

10 (1) Any affirmation of fact or promise made by the lessor
11 to the lessee which relates to the goods and becomes part of the basis
12 of the bargain creates an express warranty that the goods will conform
13 to the affirmation or promise.

14 (2) Any description of the goods which is made part of the
15 basis of the bargain creates an express warranty that the goods will
16 conform to the description.

17 (3) Any sample or model that is made part of the basis of
18 the bargain creates an express warranty that the whole of the goods
19 will conform to the sample or model.

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

26 Sec. 45.12.211. WARRANTIES AGAINST INTERFERENCE AND AGAINST
27 INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT. (a) There is
28 in a lease contract a warranty that for the lease term no person holds
29 a claim to or interest in the goods that arose from an act or omission

1 of the lessor, other than a claim by way of infringement or the like,
2 which will interfere with the lessee's enjoyment of its leasehold
3 interest.

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

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

12 Sec. 45.12.212. IMPLIED WARRANTY OF MERCHANTABILITY. (a)
13 Except in a finance lease, a warranty that the goods will be
14 merchantable is implied in a lease contract if the lessor is a mer-
15 chant with respect to goods of that kind.

16 (b) Goods to be merchantable must be at least such as

17 (1) pass without objection in the trade under the descrip-
18 tion in the lease agreement;

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

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

23 (4) run, within the variation permitted by the lease agree-
24 ment, of even kind, quality, and quantity within each unit and among
25 all units involved;

26 (5) are adequately contained, packaged, and labeled as the
27 lease agreement may require; and

28 (6) conform to any promises or affirmations of fact made on
29 the container or label.

1 (c) Other implied warranties may arise from course of dealing or
2 usage of trade.

3 Sec. 45.12.213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR
4 PURPOSE. Except in a finance lease, if the lessor at the time the
5 lease contract is made has reason to know of any particular purpose
6 for which the goods are required and that the lessee is relying on the
7 lessor's skill or judgment to select or furnish suitable goods, there
8 is in the lease contract an implied warranty that the goods will be
9 fit for that purpose.

10 Sec. 45.12.214. EXCLUSION OR MODIFICATION OF WARRANTIES. (a)
11 Words or conduct relevant to the creation of an express warranty and
12 words or conduct tending to negate or limit a warranty must be con-
13 strued wherever reasonable as consistent with each other; but, subject
14 to the provisions of AS 45.12.202 on parol or extrinsic evidence,
15 negation or limitation is inoperative to the extent that the con-
16 struction is unreasonable.

17 (b) Subject to (c) of this section, to exclude or modify the
18 implied warranty of merchantability or any part of it the language
19 must mention "merchantability," be by a writing, and be conspicuous.
20 Subject to (c) of this section, to exclude or modify any implied
21 warranty of fitness the exclusion must be by a writing and be conspic-
22 uous. Language to exclude all implied warranties of fitness is suffi-
23 cient if it is in writing, is conspicuous, and states, for example,
24 "There is no warranty that the goods will be fit for a particular
25 purpose."

26 (c) Notwithstanding (b) of this section, but subject to (d),

27 (1) unless the circumstances indicate otherwise, all im-
28 plied warranties are excluded by expressions like "as is," or "with
29 all fault," or by other language that in common understanding calls

1 the lessee's attention to the exclusion of warranties and makes plain
2 that there is no implied warranty, if in writing and conspicuous;

3 (2) if the lessee before entering into the lease contract
4 has examined the goods or the sample or model as fully as desired or
5 has refused to examine the goods, there is no implied warranty with
6 regard to defects that an examination ought in the circumstances to
7 have revealed; and

8 (3) an implied warranty may also be excluded or modified by
9 course of dealing, course of performance, or usage of trade.

10 (d) To exclude or modify a warranty against interference or
11 against infringement (AS 45.12.211) or any part of it, the language
12 must be specific, be by a writing, and be conspicuous, unless the
13 circumstances, including course of performance, course of dealing, or
14 usage of trade, give the lessee reason to know that the goods are
15 being leased subject to a claim or interest of any person.

16 Sec. 45.12.215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR
17 IMPLIED. Warranties, whether express or implied, must be construed as
18 consistent with each other and as cumulative, but if that construction
19 is unreasonable, the intention of the parties determines which warran-
20 ty is dominant. In ascertaining that intention the following rules
21 apply:

22 (1) exact or technical specifications displace an inconsis-
23 tent sample or model or general language of description;

24 (2) a sample from an existing bulk displaces inconsistent
25 general language of description;

26 (3) express warranties displace inconsistent implied war-
27 ranties other than an implied warranty of fitness for a particular
28 purpose.

29 Sec. 45.12.216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED

1 WARRANTIES. A warranty to or for the benefit of a lessee under this
2 Article, whether express or implied, extends to any natural person who
3 may reasonably be expected to use, consume, or be affected by the
4 goods and who is injured in person by breach of the warranty. This
5 section does not displace principles of law and equity that extend a
6 warranty to or for the benefit of a lessee to other persons. The
7 operation of this section may not be excluded, modified, or limited,
8 but an exclusion, modification, or limitation of the warranty, includ-
9 ing any with respect to rights and remedies, effective against the
10 lessee is also effective against the beneficiary designated under this
11 section.

12 Sec. 45.12.217. IDENTIFICATION. Identification of goods as
13 goods to which a lease contract refers may be made at any time and in
14 any manner explicitly agreed to by the parties. In the absence of
15 explicit agreement, identification occurs

16 (1) when the lease contract is made, if the lease contract
17 is for a lease of goods that are existing and identified;

18 (2) when the goods are shipped, marked, or otherwise des-
19 ignated by the lessor as goods to which the lease contract refers, if
20 the lease contract is for a lease of goods that are not existing and
21 identified; or

22 (3) when the young are conceived, if the lease contract is
23 for a lease of unborn young of animals.

24 Sec. 45.12.218. INSURANCE AND PROCEEDS. (a) A lessee obtains
25 an insurable interest when existing goods are identified to the lease
26 contract even though the goods identified are nonconforming and the
27 lessee has an option to reject them.

28 (b) If a lessee has an insurable interest only by reason of the
29 lessor's identification of the goods, the lessor, until default or

1 insolvency or notification to the lessee that identification is final,
2 may substitute other goods for those identified.

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

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

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

13 Sec. 45.12.219. RISK OF LOSS. (a) Except in the case of a
14 finance lease, risk of loss is retained by the lessor and does not
15 pass to the lessee. In the case of a finance lease, risk of loss
16 passes to the lessee.

17 (b) Subject to the provisions of this chapter on the effect of
18 default on risk of loss (AS 45.12.220), if risk of loss is to pass to
19 the lessee and the time of passage is not stated, the following rules
20 apply:

21 (1) If the lease contract requires or authorizes the goods
22 to be shipped by carrier

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

26 (B) if it does require delivery at a particular desti-
27 nation and the goods are there duly tendered while in the pos-
28 session of the carrier, the risk of loss passes to the lessee
29 when the goods are there duly so tendered as to enable the lessee

1 to take delivery.

2 (2) If the goods are held by a bailee to be delivered
3 without being moved, the risk of loss passes to the lessee on acknowl-
4 edgment by the bailee of the lessee's right to possession of the
5 goods.

6 (3) In any case not within (1) or (2) of this subsection,
7 the risk of loss passes to the lessee on the lessee's receipt of the
8 goods if the lessor, or, in the case of a finance lease, the supplier,
9 is a merchant; otherwise the risk passes to the lessee on tender of
10 delivery.

11 Sec. 45.12.220. EFFECT OF DEFAULT ON RISK OF LOSS. (a) Where
12 risk of loss is to pass to the lessee and the time of passage is not
13 stated

14 (1) if a tender or delivery of goods so fails to conform to
15 the lease contract as to give a right of rejection, the risk of their
16 loss remains with the lessor, or, in the case of a finance lease, the
17 supplier, until cure or acceptance;

18 (2) if the lessee rightfully revokes acceptance, he or she,
19 to the extent of any deficiency in his or her effective insurance
20 coverage, may treat the risk of loss as having remained with the
21 lessor from the beginning.

22 (b) Whether or not risk of loss is to pass to the lessee, if the
23 lessee as to conforming goods already identified to a lease contract
24 repudiates or is otherwise in default under the lease contract, the
25 lessor, or, in the case of a finance lease, the supplier, to the
26 extent of any deficiency in his or her effective insurance coverage
27 may treat the risk of loss as resting on the lessee for a commercially
28 reasonable time.

29 Sec. 45.12.221. CASUALTY TO IDENTIFIED GOODS. If a lease

1 contract requires goods identified when the lease contract is made,
2 and the goods suffer casualty without fault of the lessee, the lessor,
3 or the supplier before delivery, or the goods suffer casualty before
4 risk of loss passes to the lessee under the lease agreement or
5 AS 45.12.219, then

6 (1) if the loss is total, the lease contract is avoided;
7 and

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

16 ARTICLE 3. EFFECT OF LEASE CONTRACT.

17 Sec. 45.12.301. ENFORCEABILITY OF LEASE CONTRACT. Except as
18 otherwise provided in this chapter, a lease contract is effective and
19 enforceable according to its terms between the parties, against pur-
20 chasers of the goods, and against creditors of the parties.

21 Sec. 45.12.302. TITLE TO AND POSSESSION OF GOODS. Except as
22 otherwise provided in this chapter, each provision of this chapter
23 applies whether the lessor or a third party has title to the goods,
24 and whether the lessor, the lessee, or a third party has possession of
25 the goods, notwithstanding any statute or rule of law that possession
26 or the absence of possession is fraudulent.

27 Sec. 45.12.303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE
28 CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF
29 PERFORMANCE; ASSIGNMENT OF RIGHTS. (a) Any interest of a party under

1 a lease contract and the lessor's residual interest in the goods may
2 be transferred unless

3 (1) the transfer is voluntary and the lease contract prohib-
4 its the transfer; or

5 (2) the transfer materially changes the duty of or mate-
6 rially increases the burden or risk imposed on the other party to the
7 lease contract, and within a reasonable time after notice of the
8 transfer the other party demands that the transferee comply with (b)
9 of this section and the transferee fails to comply.

10 (b) Within a reasonable time after demand under (a)(2) of this
11 section, the transferee shall

12 (1) cure or provide adequate assurance that he or she will
13 promptly cure any default other than one arising from the transfer;

14 (2) compensate or provide adequate assurance that he or she
15 will promptly compensate the other party to the lease contract and any
16 other person holding an interest in the lease contract, except the
17 party whose interest is being transferred, for any loss to that party
18 resulting from the transfer;

19 (3) provide adequate assurance of future due performance
20 under the lease contract; and

21 (4) assume the lease contract.

22 (c) Demand made under (a)(2) of this section is without
23 prejudice to the other party's rights against the transferee and the
24 party whose interest is transferred.

25 (d) An assignment of "the lease" or of "all my rights under the
26 lease" or an assignment in similar general terms is a transfer of
27 rights, and unless the language or the circumstances, as in an assign-
28 ment for security, indicate the contrary, the assignment is a delega-
29 tion of duties by the assignor to the assignee and acceptance by the

1 assignee constitutes a promise by him or her to perform those duties.
2 This promise is enforceable by either the assignor or the other party
3 to the lease contract.

4 (e) Unless otherwise agreed by the lessor and the lessee, no
5 delegation of performance relieves the assignor as against the other
6 party of any duty to perform or any liability for default.

7 (f) A right to damages for default with respect to the whole
8 lease contract or a right arising out of the assignor's due perfor-
9 mance of his or her entire obligation can be assigned despite agree-
10 ment otherwise.

11 (g) To prohibit the transfer of an interest of a party under a
12 lease contract, the language of prohibition must be specific, by a
13 writing, and conspicuous.

14 Sec. 45.12.304. SUBSEQUENT LEASE OF GOODS BY LESSOR. (a)
15 Subject to the provisions of AS 45.12.303, a subsequent lessee from a
16 lessor of goods under an existing lease contract obtains, to the
17 extent of the leasehold interest transferred, the leasehold interest
18 in the goods that the lessor had or had power to transfer, and except
19 as provided in (b) of this section and AS 45.12.527(d), takes subject
20 to the existing lease contract. A lessor with voidable title has
21 power to transfer a good leasehold interest to a good faith subsequent
22 lessee for value, but only to the extent set out in the preceding
23 sentence. When goods have been delivered under a transaction of
24 purchase the lessor has that power even though

25 (1) the lessor's transferor was deceived as to the identity
26 of the lessor;

27 (2) the delivery was in exchange for a check which is later
28 dishonored;

29 (3) it was agreed that the transaction was to be a "cash

1 sale"; or

2 (4) the delivery was procured through fraud punishable as
3 larcenous under the criminal law.

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

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

16 Sec. 45.12.305. SALE OR SUBLEASE OF GOODS BY LESSEE. (a)
17 Subject to the provisions of AS 45.12.303, a buyer or sublessee from
18 the lessee of goods under an existing lease contract obtains, to the
19 extent of the interest transferred, the leasehold interest in the
20 goods that the lessee had or had power to transfer, and except as
21 provided in (b) of this section and AS 45.12.511(d), takes subject to
22 the existing lease contract. A lessee with a voidable leasehold
23 interest has power to transfer a good leasehold interest to a good
24 faith buyer for value or a good faith sublessee for value, but only to
25 the extent set out in the preceding sentence. If goods have been de-
26 livered under a transaction of lease the lessee has that power even
27 though

28 (1) the lessor was deceived as to the identity of the
29 lessee;

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

3 (3) the delivery was procured through fraud punishable as
4 larcenous under the criminal law.

5 (b) A buyer in the ordinary course of business or a sublessee in
6 the ordinary course of business from a lessee who is a merchant deal-
7 ing in goods of that kind to whom the goods were entrusted by the
8 lessor obtains, to the extent of the interest transferred, all of the
9 lessor's and lessee's rights to the goods, and takes free of the
10 existing lease contract.

11 (c) A buyer or sublessee from the lessee of goods that are
12 subject to an existing lease contract and are covered by a certificate
13 of title issued under a statute of this state or of another jurisdic-
14 tion takes no greater rights than those provided both by this section
15 and by the certificate of title statute.

16 Sec. 45.12.306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION
17 OF LAW. If a person in the ordinary course of his or her business
18 furnishes services or materials with respect to goods subject to a
19 lease contract, a lien upon those goods in the possession of that
20 person given by statute or rule of law for those materials or services
21 takes priority over any interest of the lessor or lessee under the
22 lease contract or this chapter unless the lien is created by statute
23 and the statute provides otherwise or unless the lien is created by
24 rule of law and the rule of law provides otherwise.

25 Sec. 45.12.307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY
26 ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS. (a) Except as
27 otherwise provided in AS 45.12.306, a creditor of a lessee takes
28 subject to the lease contract.

29 (b) Except as otherwise provided in (c) and (d) of this section

1 and in AS 45.12.306 and 45.12.308, a creditor of a lessor takes sub-
2 ject to the lease contract

3 (1) unless the creditor holds a lien that attached to the
4 goods before the lease contract became enforceable, or

5 (2) unless the creditor holds a security interest in the
6 goods that under AS 45.09 on secured transactions would have priority
7 over any other security interest in the goods perfected by a filing
8 covering the goods and made at the time the lease contract became
9 enforceable, whether or not any other security interest existed.

10 (c) A lessee in the ordinary course of business takes the lease-
11 hold interest free of a security interest in the goods created by the
12 lessor even though the security interest is perfected and the lessee
13 knows of its existence.

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

21 Sec. 45.12.308. SPECIAL RIGHTS OF CREDITORS. (a) A creditor of
22 a lessor in possession of goods subject to a lease contract may treat
23 the lease contract as void if as against the creditor retention of
24 possession by the lessor is fraudulent under any statute or rule of
25 law, but retention of possession in good faith and current course of
26 trade by the lessor for a commercially reasonable time after the lease
27 contract becomes enforceable is not fraudulent.

28 (b) Nothing in this chapter impairs the rights of creditors of a
29 lessor if the lease contract (1) becomes enforceable, not in current

1 course of trade but in satisfaction of or as security for a
2 pre-existing claim for money, security, or the like, and (2) is made
3 under circumstances which under any statute or rule of law apart from
4 this chapter would constitute the transaction a fraudulent transfer or
5 voidable preference.

6 (c) A creditor of a seller may treat a sale or an identification
7 of goods to a contract for sale as void if as against the creditor
8 retention of possession by the seller is fraudulent under any statute
9 or rule of law, but retention of possession of the goods under a lease
10 contract entered into by the seller as lessee and the buyer as lessor
11 in connection with the sale or identification of the goods is not
12 fraudulent if the buyer bought for value and in good faith.

13 Sec. 45.12.309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME
14 FIXTURES. (a) In this section,

15 (1) goods are "fixtures" when they become so related to
16 particular real estate that an interest in them arises under real
17 estate law;

18 (2) a "fixture filing" is the filing, in the office where a
19 mortgage on the real estate would be recorded or registered, of a
20 financing statement concerning goods that are or are to become fix-
21 tures and conforming to the requirements of AS 45.09.402(e);

22 (3) a lease is a "purchase money lease" unless the lessee
23 has possession or use of the goods or the right to possession or use
24 of the goods before the lease agreement is enforceable;

25 (4) a mortgage is a "construction mortgage" to the extent
26 that it secures an obligation incurred for the construction of an
27 improvement on land including the acquisition cost of the land, if the
28 recorded writing so indicates; and

29 (5) "encumbrance" includes real estate mortgages and other

1 liens on real estate and all other rights in real estate that are not
2 ownership interests.

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

7 (c) This chapter does not prevent creation of a lease of fix-
8 tures under real estate law.

9 (d) The perfected interest of a lessor of fixtures has priority
10 over a conflicting interest of an encumbrancer or owner of the real
11 estate if

12 (1) the lease is a purchase money lease, the conflicting
13 interest of the encumbrancer or owner arises before the goods become
14 fixtures, the interest of the lessor is perfected by a fixture filing
15 before the goods become fixtures or within 10 days thereafter, and the
16 lessee has an interest of record in the real estate or is in pos-
17 session of the real estate; or

18 (2) the interest of the lessor is perfected by a fixture
19 filing before the interest of the encumbrancer or owner is of record,
20 the lessor's interest has priority over any conflicting interest of a
21 predecessor in title of the encumbrancer or owner, and the lessee has
22 an interest of record in the real estate or is in possession of the
23 real estate.

24 (e) The interest of a lessor of fixtures, whether or not per-
25 fected, has priority over the conflicting interest of an encumbrancer
26 or owner of the real estate if

27 (1) the fixtures are readily removable factory or office
28 machines, readily removable equipment that is not primarily used or
29 leased for use in the operation of the real estate, or readily

1 removable replacements of domestic appliances that are goods subject
2 to a consumer lease, and before the goods become fixtures the lease
3 contract is enforceable; or

4 (2) the conflicting interest is a lien on the real estate
5 obtained by legal or equitable proceedings after the lease contract is
6 enforceable; or

7 (3) the encumbrancer or owner has consented in writing to
8 the lease or has disclaimed an interest in the goods as fixtures; or

9 (4) the lessee has a right to remove the goods as against
10 the encumbrancer or owner; if the lessee's right to remove terminates,
11 the priority of the interest of the lessor continues for a reasonable
12 time.

13 (f) Notwithstanding (d)(1) of this section but otherwise subject
14 to (d) and (e) of this section, the interest of a lessor of fixtures
15 is subordinate to the conflicting interest of an encumbrancer of the
16 real estate under a construction mortgage recorded before the goods
17 become fixtures if the goods become fixtures before the completion of
18 the construction. To the extent given to refinance a construction
19 mortgage, the conflicting interest of an encumbrancer of the real
20 estate under a mortgage has this priority to the same extent as the
21 encumbrancer of the real estate under the construction mortgage.

22 (g) In cases not within the preceding subsections of this sec-
23 tion, priority between the interest of a lessor of fixtures and the
24 conflicting interest of an encumbrancer or owner of the real estate
25 who is not the lessee is determined by the priority rules governing
26 conflicting interests in real estate.

27 (h) If the interest of a lessor has priority over all conflict-
28 ing interests of all owners and encumbrancers of the real estate, the
29 lessor or the lessee may (1) on default, expiration, termination, or

1 cancellation of the lease agreement by the other party but subject to
2 the provisions of the lease agreement and this chapter, or (2) if
3 necessary to enforce his or her other rights and remedies under this
4 chapter, remove the goods from the real estate, free and clear of all
5 conflicting interests of all owners and encumbrancers of the real
6 estate, but he or she must reimburse any encumbrancer or owner of the
7 real estate who is not the lessee and who has not otherwise agreed for
8 the cost of repair of any physical injury, but not for any diminution
9 in value of the real estate caused by the absence of the goods removed
10 or by any necessity of replacing them. A person entitled to reim-
11 bursement may refuse permission to remove until the party seeking
12 removal gives adequate security for the performance of this
13 obligation.

14 (i) Even though the lease agreement does not create a security
15 interest, the interest of a lessor of fixtures is perfected by filing
16 a financing statement as a fixture filing for leased goods that are or
17 are to become fixtures in accordance with the relevant provisions of
18 AS 45.09 on secured transactions.

19 Sec. 45.12.310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME
20 ACCESSIONS. (a) Goods are "accessions" when they are installed in or
21 affixed to other goods.

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

25 (c) The interest of a lessor or a lessee under a lease contract
26 entered into at the time or after the goods became accessions is
27 superior to all subsequently acquired interests in the whole except as
28 stated in (d) of this section but is subordinate to interests in the
29 whole existing at the time the lease contract was made unless the

1 holders of those interests in the whole have in writing consented to
2 the lease or disclaimed an interest in the goods as part of the whole.

3 (d) The interest of a lessor or a lessee under a lease contract
4 described in (b) or (c) of this section is subordinate to the interest
5 of

6 (1) a buyer in the ordinary course of business or a lessee
7 in the ordinary course of business of any interest in the whole
8 acquired after the goods became accessions; or

9 (2) a creditor with a security interest in the whole per-
10 fected before the lease contract was made to the extent that the
11 creditor makes subsequent advances without knowledge of the lease
12 contract.

13 (e) If, under (b) or (c) and (d) of this section, a lessor or a
14 lessee of accessions holds an interest that is superior to all inter-
15 ests in the whole, the lessor or the lessee may (1) on default, ex-
16 piration, termination, or cancellation of the lease contract by the
17 other party but subject to the provisions of the lease contract and
18 this chapter, or (2) if necessary to enforce his or her other rights
19 and remedies under this chapter, remove the goods from the whole, free
20 and clear of all interests in the whole, but he or she must reimburse
21 any holder of an interest in the whole who is not the lessee and who
22 has not otherwise agreed for the cost of repair of any physical injury
23 but not for any diminution in value of the whole caused by the absence
24 of the goods removed or by any necessity for replacing them. A person
25 entitled to reimbursement may refuse permission to remove until the
26 party seeking removal gives adequate security for the performance of
27 this obligation.

28 ARTICLE 4. PERFORMANCE OF LEASE CONTRACT:

29 REPUDIATED, SUBSTITUTED, AND EXCUSED.

1 Sec. 45.12.401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.

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

4 (b) If reasonable grounds for insecurity arise with respect to
5 the performance of either party, the insecure party may demand in
6 writing adequate assurance of due performance. Until the insecure
7 party receives that assurance, if commercially reasonable the insecure
8 party may suspend any performance for which he or she has not already
9 received the agreed return.

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

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

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

20 Sec. 45.12.402. ANTICIPATORY REPUDIATION. If either party
21 repudiates a lease contract with respect to a performance not yet due
22 under the lease contract, the loss of which performance will substantially
23 impair the value of the lease contract to the other, the aggrieved
24 party may

25 (1) for a commercially reasonable time, await retraction of
26 repudiation and performance by the repudiating party;

27 (2) make demand pursuant to AS 45.12.401 and await assurance
28 of future performance adequate under the circumstances of the
29 particular case; or

1 (3) resort to any right or remedy upon default under the
2 lease contract or this chapter, even though the aggrieved party has
3 notified the repudiating party that the aggrieved party would await
4 the repudiating party's performance and assurance and has urged re-
5 traction. In addition, whether or not the aggrieved party is pursuing
6 one of the foregoing remedies, the aggrieved party may suspend perfor-
7 mance or, if the aggrieved party is the lessor, proceed in accordance
8 with the provisions of this chapter on the lessor's right to identify
9 goods to the lease contract notwithstanding default or to salvage
10 unfinished goods (AS 45.12.524).

11 Sec. 45.12.403. RETRACTION OF ANTICIPATORY REPUDIATION. (a)
12 Until the repudiating party's next performance is due, the repudiating
13 party can retract the repudiation unless, since the repudiation, the
14 aggrieved party has cancelled the lease contract or materially changed
15 the aggrieved party's position or otherwise indicated that the ag-
16 grieved party considers the repudiation final.

17 (b) Retraction may be by any method that clearly indicates to
18 the aggrieved party that the repudiating party intends to perform
19 under the lease contract and includes any assurance demanded under
20 AS 45.12.401.

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

24 Sec. 45.12.404. SUBSTITUTED PERFORMANCE. (a) If without fault
25 of the lessee, the lessor and the supplier, the agreed berthing,
26 loading, or unloading facilities fail or the agreed type of carrier
27 becomes unavailable or the agreed manner of delivery otherwise becomes
28 commercially impracticable, but a commercially reasonable substitute
29 is available, the substitute performance must be tendered and

1 accepted.

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

4 (1) the lessor may withhold or stop delivery or cause the
5 supplier to withhold or stop delivery unless the lessee provides a
6 means or manner of payment that is commercially a substantial equiva-
7 lent; and

8 (2) if delivery has already been taken, payment by the
9 means or in the manner provided by the regulation discharges the
10 lessee's obligation unless the regulation is discriminatory, oppres-
11 sive, or predatory.

12 Sec. 45.12.405. EXCUSED PERFORMANCE. Subject to AS 45.12.404 on
13 substituted performance, the following rules apply:

14 (1) Delay in delivery or nondelivery in whole or in part by
15 a lessor or a supplier who complies with (2) and (3) of this section
16 is not a default under the lease contract if performance as agreed has
17 been made impracticable by the occurrence of a contingency the nonoc-
18 currence of which was a basic assumption on which the lease contract
19 was made or by compliance in good faith with any applicable foreign or
20 domestic governmental regulation or order, whether or not the regu-
21 lation or order later proves to be invalid.

22 (2) If the causes mentioned in (1) of this section affect
23 only part of the lessor's or the supplier's capacity to perform, he or
24 she shall allocate production and deliveries among his or her custom-
25 ers but at his or her option may include regular customers not then
26 under contract for sale or lease as well as his or her own require-
27 ments for further manufacture. He or she may so allocate in any
28 manner that is fair and reasonable.

29 (3) The lessor seasonably shall notify the lessee and in

1 the case of a finance lease the supplier seasonably shall notify the
2 lessor and the lessee, if known, that there will be delay or
3 nondelivery and, if allocation is required under (2) of this section,
4 of the estimated quota thus made available for the lessee.

5 Sec. 45.12.406. PROCEDURE ON EXCUSED PERFORMANCE. (a) If the
6 lessee receives notification of a material or indefinite delay or an
7 allocation justified under AS 45.12.405, the lessee may by written
8 notification to the lessor as to any goods involved, and with respect
9 to all of the goods if under an installment lease contract the value
10 of the whole lease contract is substantially impaired (AS 45.12.510):

11 (1) terminate the lease contract (AS 45.12.505(b)); or

12 (2) except in a finance lease that is not a consumer lease,
13 modify the lease contract by accepting the available quota in substi-
14 tution, with due allowance from the rent payable for the balance of
15 the lease term for the deficiency but without further right against
16 the lessor.

17 (b) If, after receipt of a notification from the lessor under
18 AS 45.12.405, the lessee fails so to modify the lease agreement within
19 a reasonable time not exceeding 30 days, the lease contract lapses
20 with respect to any deliveries affected.

21 Sec. 45.12.407. IRREVOCABLE PROMISES: FINANCE LEASES. (a) In
22 the case of a finance lease that is not a consumer lease the lessee's
23 promises under the lease contract become irrevocable and independent
24 upon the lessee's acceptance of the goods.

25 (b) A promise that has become irrevocable and independent under
26 (a) of this section:

27 (1) is effective and enforceable between the parties, and
28 by or against the third parties including assignees of the parties,
29 and

1 (2) is not subject to cancellation, termination, modifica-
2 tion, repudiation, excuse, or substitution without the consent of the
3 party to whom the promise runs.

4 ARTICLE 5. DEFAULT.

5 Sec. 45.12.501. DEFAULT: PROCEDURE. (a) Whether the lessor or
6 the lessee is in default under a lease contract is determined by the
7 lease agreement and this chapter.

8 (b) If the lessor or the lessee is in default under the lease
9 contract, the party seeking enforcement has rights and remedies as
10 provided in this chapter and, except as limited by this chapter, as
11 provided in the lease agreement.

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

18 (d) Except as otherwise provided in this chapter or the lease
19 agreement, the rights and remedies referred to in (b) and (c) of this
20 section are cumulative.

21 (e) If the lease agreement covers both real property and goods,
22 the party seeking enforcement may proceed under AS 45.12.501 --
23 45.12.531 as to the goods, or under other applicable law as to both
24 the real property and the goods in accordance with his or her rights
25 and remedies in respect of the real property, in which case
26 AS 45.12.501 -- 45.12.531 do not apply.

27 Sec. 45.12.502. NOTICE AFTER DEFAULT. Except as otherwise
28 provided in this chapter or the lease agreement, the lessor or lessee
29 in default under the lease contract is not entitled to notice of

1 default or notice of enforcement from the other party to the lease
2 agreement.

3 Sec. 45.12.503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REM-
4 EDIES. (a) Except as otherwise provided in this chapter, the lease
5 agreement may include rights and remedies for default in addition to
6 or in substitution for those provided in this chapter and may limit or
7 alter the measure of damages recoverable under this chapter.

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

13 (c) Consequential damages may be liquidated under AS 45.12.504,
14 or may otherwise be limited, altered, or excluded unless the limita-
15 tion, alteration, or exclusion is unconscionable. Limitation of
16 consequential damages for injury to the person in the case of consumer
17 goods is prima facie unconscionable but limitation of damages where
18 the loss is commercial is not.

19 (d) Rights and remedies on default by the lessor or the lessee
20 with respect to any obligation or promise collateral or ancillary to
21 the lease contract are not impaired by this chapter.

22 Sec. 45.12.504. LIQUIDATION OF DAMAGES. (a) Damages payable by
23 either party for default, or any other act or omission, including
24 indemnity for loss or diminution of anticipated tax benefits or loss
25 or damage to lessor's residual interest, may be liquidated in the
26 lease agreement but only at an amount or by a formula that is reason-
27 able in light of the then anticipated harm caused by the default or
28 other act or omission.

29 (b) If the lease agreement provides for liquidation of damages,

1 and the provision does not comply with (a) of this section, or the
2 provision is an exclusive or limited remedy that circumstances cause
3 to fail of its essential purpose, remedy may be had as provided in
4 this chapter.

5 (c) If the lessor justifiably withholds or stops delivery of
6 goods because the lessee's default or insolvency (AS 45.12.525 or
7 45.12.526), the lessee is entitled to restitution of any amount by
8 which the sum of his or her payments exceeds

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

12 (2) in the absence of those terms, 20 percent of the then
13 present value of the total rent the lessee was obligated to pay for
14 the balance of the lease term, or, in the case of a consumer lease,
15 the lesser of that amount or \$500.

16 (d) A lessee's right to restitution under (c) of this section is
17 subject to offset to the extent the lessor establishes

18 (1) a right to recover damages under the provisions of this
19 chapter other than (a) of this section; and

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

22 Sec. 45.12.505. CANCELLATION AND TERMINATION, AND EFFECT OF
23 CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REM-
24 EDIES. (a) On cancellation of the lease contract, all obligations
25 that are still executory on both sides are discharged, but any right
26 based on prior default or performance survives, and the cancelling
27 party also retains any remedy for default of the whole lease contract
28 or any unperformed balance.

29 (b) On termination of the lease contract, all obligations that

1 are still executory on both sides are discharged but any right based
2 on prior default or performance survives.

3 (c) Unless the contrary intention clearly appears, expressions
4 of "cancellation," "rescission," or the like of the lease contract may
5 not be construed as a renunciation or discharge of any claim in dam-
6 ages for an antecedent default.

7 (d) Rights and remedies for material misrepresentation or fraud
8 include all rights and remedies available under this chapter for
9 default.

10 (e) Neither rescission nor a claim for rescission of the lease
11 contract nor rejection or return of the goods bars or is inconsistent
12 with a claim for damages or other right or remedy.

13 Sec. 45.12.506. STATUTE OF LIMITATIONS. (a) An action for
14 default under a lease contract, including breach of warranty or indem-
15 nity, must be commenced within four years after the cause of action
16 accrued. By the original lease contract the parties may reduce the
17 period of limitation to not less than one year.

18 (b) A cause of action for default accrues when the act or omis-
19 sion on which the default or breach of warranty is based is or should
20 have been discovered by the aggrieved party, or when the default
21 occurs, whichever is later. A cause of action for indemnity accrues
22 when the act or omission on which the claim for indemnity is based is
23 or should have been discovered by the indemnified party, whichever is
24 later.

25 (c) If an action commenced within the time limited by (a) of
26 this section is so terminated as to leave available a remedy by anoth-
27 er action for the same default or breach of warranty or indemnity, the
28 other action may be commenced after the expiration of the time limited
29 and within six months after the termination of the first action unless

1 the termination resulted from voluntary discontinuance or from dis-
2 missal for failure or neglect to prosecute.

3 (d) This section does not alter the law on tolling of the stat-
4 ute of limitations nor does it apply to causes of action that have
5 accrued before this chapter takes effect.

6 Sec. 45.12.507. PROOF OF MARKET RENT: TIME AND PLACE. (a)
7 Damages based on market rent (AS 45.12.519 or 45.12.528) are de-
8 termined according to the rent for the use of the goods concerned for
9 a lease term identical to the remaining lease term of the original
10 lease agreement and prevailing at the time of the default.

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

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

25 (d) If the prevailing rent or value of any goods regularly
26 leased in any established market is in issue, reports in official
27 publications or trade journals or in newspapers or periodicals of
28 general circulation published as the reports of that market are admis-
29 sible in evidence. The circumstances of the preparation of the report

1 may be shown to affect its weight but not its admissibility.

2 Sec. 45.12.508. LESSEE'S REMEDIES. (a) If a lessor fails to
3 deliver the goods in conformity with the lease contract (AS 45.12.509)
4 or repudiates the lease contract (AS 45.12.402), or a lessee rightful-
5 ly rejects the goods (AS 45.12.509) or justifiably revokes acceptance
6 of the goods (AS 45.12.517), then with respect to any goods involved,
7 and with respect to all of the goods if under an installment lease
8 contract the value of the whole lease contract is substantially im-
9 paired (AS 45.12.510), the lessor is in default under the lease con-
10 tract and the lessee may

11 (1) cancel the lease contract (AS 45.12.505(a));

12 (2) recover so much of the rent and security as has been
13 paid, but in the case of an installment lease contract the recovery is
14 that which is just under the circumstances;

15 (3) cover and recover damages as to all goods affected
16 whether or not they have been identified to the lease contract
17 (AS 45.12.518 and 45.12.520), or recover damages for nondelivery
18 (AS 45.12.519 and 45.12.520).

19 (b) If a lessor fails to deliver the goods in conformity to the
20 lease contract or repudiates the lease contract, the lessee may also

21 (1) if the goods have been identified, recover them
22 (AS 45.12.522); or

23 (2) in a proper case, obtain specific performance or
24 replevy the goods (AS 45.12.521).

25 (c) If a lessor is otherwise in default under a lease contract,
26 the lessee may exercise the rights and remedies provided in the lease
27 contract and this chapter.

28 (d) If a lessor has breached a warranty, whether express or
29 implied, the lessee may recover damages (AS 45.12.519(d)).

1 (e) On rightful rejection or justifiable revocation of accep-
2 tance, a lessee has a security interest in goods in the lessee's
3 possession or control for any rent and security that has been paid and
4 any expenses reasonably incurred in their inspection, receipt, trans-
5 portation, and care and custody, and may hold those goods and dispose
6 of them in good faith and in a commercially reasonable manner, subject
7 to the provisions of AS 45.12.527(e).

8 (f) Subject to the provisions of AS 45.12.407, a lessee, on
9 notifying the lessor of the lessee's intention to do so, may deduct
10 all or any part of the damages resulting from any default under the
11 lease contract from any part of the rent still due under the same
12 lease contract.

13 Sec. 45.12.509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL
14 REJECTION. (a) Subject to the provisions of AS 45.12.510 on default
15 in installment lease contracts, if the goods or the tender or delivery
16 fail in any respect to conform to the lease contract, the lessee may
17 reject or accept the goods or accept any commercial unit or units and
18 reject the rest of the goods.

19 (b) Rejection of goods is ineffective unless it is within a
20 reasonable time after tender or delivery of the goods and the lessee
21 seasonably notifies the lessor.

22 Sec. 45.12.510. INSTALLMENT LEASE CONTRACTS: REJECTION AND
23 DEFAULT. (a) Under an installment lease contract a lessee may reject
24 any delivery that is nonconforming if the nonconformity substantially
25 impairs the value of that delivery and cannot be cured or the noncon-
26 formity is a defect in the required documents; but if the nonconformi-
27 ty does not fall within (b) of this section and the lessor or the
28 supplier gives adequate assurance of its cure, the lessee must accept
29 that delivery.

1 (b) If nonconformity or default with respect to one or more
2 deliveries substantially impairs the value of the installment lease
3 contract as a whole, there is a default with respect to the whole.
4 But the aggrieved party reinstates the installment lease contract as a
5 whole if the aggrieved party accepts a nonconforming delivery without
6 seasonably notifying of cancellation or brings an action with respect
7 only to past deliveries or demands performance as to future deliv-
8 eries.

9 Sec. 45.12.511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY RE-
10 JECTED GOODS. (a) Subject to any security interest of a lessee
11 (AS 45.12.508(e)), if a lessor or a supplier has no agent or place of
12 business at the market of rejection, a merchant lessee, after re-
13 jection of goods in his or her possession or control, shall follow any
14 reasonable instructions received from the lessor or the supplier with
15 respect to the goods. In the absence of those instructions, a mer-
16 chant lessee shall make reasonable efforts to sell, lease, or other-
17 wise dispose of the goods for the lessor's account if they threaten to
18 decline in value speedily. Instructions are not reasonable if on
19 demand indemnity for expenses is not forthcoming.

20 (b) If a merchant lessee ((a) of this section) or any other
21 lessee (AS 45.12.512) disposes of goods, he or she is entitled to
22 reimbursement either from the lessor or the supplier or out of the
23 proceeds for reasonable expenses of caring for and disposing of the
24 goods and, if the expenses include no disposition commission, to such
25 commission as is usual in the trade, or if there is none, to a reason-
26 able sum not exceeding 10 percent of the gross proceeds.

27 (c) In complying with this section or AS 45.12.512, the lessee
28 is held only to good faith. Good faith conduct under this provision
29 is neither acceptance or conversion nor the basis of an action for

1 damages.

2 (d) A purchaser who purchases in good faith from a lessee under
3 this section or AS 45.12.512 takes the goods free of any rights of the
4 lessor and the supplier even though the lessee fails to comply with
5 one or more of the requirements of this chapter.

6 Sec. 45.12.512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

7 (a) Except as otherwise provided with respect to goods that threaten
8 to decline in value speedily (AS 45.12.511) and subject to any securi-
9 ty interest of a lessee (AS 45.12.508(e)),

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

14 (2) if the lessor or the supplier gives no instructions
15 within a reasonable time after notification of rejection, the lessee
16 may store the rejected goods for the lessor's or the supplier's ac-
17 count or ship them to the lessor or the supplier or dispose of them
18 for the lessor's or the supplier's account with reimbursement in the
19 manner provided in AS 45.12.511; but

20 (3) the lessee has no further obligations with regard to
21 goods rightfully rejected.

22 (b) Action by the lessee under (a) of this section is not accep-
23 tance or conversion.

24 Sec. 45.12.513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY;
25 REPLACEMENT. (a) If any tender or delivery by the lessor or the
26 supplier is rejected because it is nonconforming and the time for
27 performance has not yet expired, the lessor or the supplier may
28 seasonably notify the lessee of the lessor's or the supplier's inten-
29 tion to cure and may then make a conforming delivery within the time

1 provided in the lease contract.

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

7 Sec. 45.12.514. WAIVER OF LESSEE'S OBJECTIONS. (a) In reject-
8 ing goods, a lessee's failure to state a particular defect that is
9 ascertainable by reasonable inspection precludes the lessee from
10 relying on the defect to justify rejection or to establish default

11 (1) if, stated seasonably, the lessor or the supplier could
12 have cured it (AS 45.12.513); or

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

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

19 Sec. 45.12.515. ACCEPTANCE OF GOODS. (a) Acceptance of goods
20 occurs after the lessee has had a reasonable opportunity to inspect
21 the goods and

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

26 (2) the lessee fails to make an effective rejection of the
27 goods (AS 45.12.509(b)).

28 (b) Acceptance of a part of any commercial unit is acceptance of
29 that entire unit.

1 Sec. 45.12.516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DE-
2 FAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF
3 CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (a) A lessee must pay
4 rent for any goods accepted in accordance with the lease contract,
5 with due allowance for goods rightfully rejected or not delivered.

6 (b) A lessee's acceptance of goods precludes rejection of the
7 goods accepted. In the case of a finance lease, if made with knowl-
8 edge of a nonconformity, acceptance cannot be revoked because of it.
9 In any other case, if made with knowledge of a nonconformity, accep-
10 tance cannot be revoked because of it unless the acceptance was on the
11 reasonable assumption that the nonconformity would be seasonably
12 cured. Acceptance does not of itself impair any other remedy provided
13 by this chapter or the lease agreement for nonconformity.

14 (c) If a tender has been accepted

15 (1) within a reasonable time after the lessee discovers or
16 should have discovered any default, the lessee shall notify the lessor
17 and the supplier, or be barred from any remedy;

18 (2) except in the case of a consumer lease, within a rea-
19 sonable time after the lessee receives notice of litigation for in-
20 fringement or the like (AS 45.12.211) the lessee shall notify the
21 lessor or be barred from any remedy over for liability established by
22 the litigation; and

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

24 (d) If a lessee is sued for breach of a warranty or other
25 obligation for which a lessor or a supplier is answerable over, the
26 following rules apply:

27 (1) The lessee may give the lessor or the supplier written
28 notice of the litigation. If the notice states that the lessor or the
29 supplier may come in and defend and that if the lessor or the supplier

1 does not do so he or she will be bound in any action against him or
2 her by the lessee by any determination of fact common to the two
3 litigations, then unless the lessor or the supplier after reasonable
4 receipt of the notice does come in and defend he or she is so bound.

5 (2) The lessor or the supplier may demand in writing that
6 the lessee turn over control of the litigation including settlement if
7 the claim is one for infringement or the like (AS 45.12.211) or else
8 be barred from any remedy over. If the demand states that the lessor
9 or the supplier agrees to bear all expense and to satisfy any adverse
10 judgment, then unless the lessee after reasonable receipt of the
11 demand does turn over control the lessee is so barred.

12 (e) The provisions of (c) and (d) of this section apply to any
13 obligation of a lessee to hold the lessor or the supplier harmless
14 against infringement or the like (AS 45.12.211).

15 Sec. 45.12.517. REVOCATION OF ACCEPTANCE OF GOODS. (a) A
16 lessee may revoke acceptance of a lot or commercial unit whose noncon-
17 formity substantially impairs its value to the lessee if he or she has
18 accepted it

19 (1) except in the case of a finance lease, on the reason-
20 able assumption that its nonconformity would be cured and it has not
21 been seasonably cured; or

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

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

1 the lessee notifies the lessor.

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

4 Sec. 45.12.518. COVER; SUBSTITUTE GOODS. (a) After default by a
5 lessor under the lease contract (AS 45.12.508(a)), the lessee may
6 cover by making any purchase or lease of or contract to purchase or
7 lease goods in substitution for those due from the lessor.

8 (b) Except as otherwise provided with respect to damages liq-
9 uidated in the lease agreement (AS 45.12.504) or determined by agree-
10 ment of the parties (AS 45.01.102(c)), if a lessee's cover is by lease
11 agreement substantially similar to the original lease agreement and
12 the lease agreement is made in good faith and in a commercially rea-
13 sonable manner, the lessee may recover from the lessor as damages (1)
14 the present value, as of the date of default, of the difference be-
15 tween the total rent for the lease term of the new lease agreement and
16 the total rent for the remaining lease term of the original lease
17 agreement and (2) any incidental or consequential damages less ex-
18 penses saved in consequence of the lessor's default.

19 (c) If a lessee's cover is by lease agreement that for any
20 reason does not qualify for treatment under (b) of this section, or is
21 by purchase or otherwise, the lessee may recover from the lessor as if
22 the lessee had elected not to cover and AS 45.12.519 governs.

23 Sec. 45.12.519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION,
24 DEFAULT AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (a)
25 Except as otherwise provided with respect to damages liquidated in the
26 lease agreement (AS 45.12.504) or determined by agreement of the
27 parties (AS 45.01.102(c)), if a lessee elects not to cover or a lessee
28 elects to cover and the cover is by lease agreement that for any
29 reason does not qualify for treatment under AS 45.12.518(b), or is by

1 purchase or otherwise, the measure of damages for non-delivery or
2 repudiation by the lessor or for rejection or revocation of acceptance
3 by the lessee is the present value as of the date of the default of
4 the difference between the then market rent and the original rent,
5 computed for the remaining lease term of the original lease agreement
6 together with incidental and consequential damages, less expenses
7 saved in consequence of the lessor's default.

8 (b) Market rent is to be determined as of the place for tender
9 or, in cases of rejection after arrival or revocation of acceptance,
10 as of the place of arrival.

11 (c) If the lessee has accepted goods and given notification
12 (AS 45.12.516(c)), the measure of damages for non-conforming tender or
13 delivery by a lessor is the loss resulting in the ordinary course of
14 events from the lessor's default as determined in any manner that is
15 reasonable together with incidental and consequential damages, less
16 expenses saved in consequence of the lessor's default.

17 (d) The measure of damages for breach of warranty is the present
18 value at the time and place of acceptance of the difference between
19 the value of the use of the goods accepted and the value if they had
20 been as warranted for the lease term, unless special circumstances
21 show proximate damages of a different amount, together with incidental
22 and consequential damages, less expenses saved in consequence of the
23 lessor's default or breach of warranty.

24 Sec. 45.12.520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

25 (a) Incidental damages resulting from a lessor's default include
26 expenses reasonably incurred in inspection, receipt, transportation,
27 and care and custody of goods rightfully rejected or goods the accep-
28 tance of which is justifiably revoked, any commercially reasonable
29 charges, expenses or commissions in connection with effecting cover,

1 and any other reasonable expense incident to the default.

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

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

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

10 Sec. 45.12.521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR
11 REPLEVIN. (a) Specific performance may be decreed if the goods are
12 unique or in other proper circumstances.

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

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

21 Sec. 45.12.522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.

22 (a) Subject to (b) of this section and even though the goods have not
23 been shipped, a lessee who has paid a part or all of the rent and
24 security for goods identified to a lease contract (AS 45.12.217) on
25 making and keeping good a tender of any unpaid portion of the rent and
26 security due under the lease contract may recover the goods identified
27 from the lessor if the lessor becomes insolvent within 10 days after
28 receipt of the first installment of rent and security.

29 (b) A lessee acquires the right to recover goods identified to a

1 lease contract only if they conform to the lease contract.

2 Sec. 45.12.523. LESSOR'S REMEDIES. (a) If a lessee wrongfully
3 rejects or revokes acceptance of goods or fails to make a payment when
4 due or repudiates with respect to a part or the whole, then, with
5 respect to any goods involved, and with respect to all of the goods if
6 under an installment lease contract the value of the whole lease
7 contract is substantially impaired (AS 45.12.510), the lessee is in
8 default under the lease contract and the lessor may

9 (1) cancel the lease contract (AS 45.12.505(a));

10 (2) proceed respecting goods not identified to the lease
11 contract (AS 45.12.524);

12 (3) withhold delivery of the goods and take possession of
13 goods previously delivered (AS 45.12.525);

14 (4) stop delivery of the goods by any bailee
15 (AS 45.12.526);

16 (5) dispose of the goods and recover damages
17 (AS 45.12.527), or retain the goods and recover damages
18 (AS 45.12.528), or in a proper case recover rent (AS 45.12.529).

19 (b) If a lessee is otherwise in default under a lease contract,
20 the lessor may exercise the rights and remedies provided in the lease
21 contract and this chapter.

22 Sec. 45.12.524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CON-
23 TRACT. (a) A lessor aggrieved under AS 45.12.523(a) may

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

27 (2) dispose of goods (AS 45.12.527(a)) that demonstrably
28 have been intended for the particular lease contract even though those
29 goods are unfinished.

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

7 Sec. 45.12.525. LESSOR'S RIGHT TO POSSESSION OF GOODS. (a) If
8 a lessor discovers the lessee to be insolvent, the lessor may refuse
9 to deliver the goods.

10 (b) The lessor has on default by the lessee under the lease
11 contract the right to take possession of the goods. If the lease
12 contract so provides, the lessor may require the lessee to assemble
13 the goods and make them available to the lessor at a place to be
14 designated by the lessor which is reasonably convenient to both
15 parties. Without removal, the lessor may render unusable any goods
16 employed in trade or business, and may dispose of goods on the les-
17 see's premises (AS 45.12.527).

18 (c) The lessor may proceed under (b) of this section without
19 judicial process if that can be done without breach of the peace, or
20 the lessor may proceed by action.

21 Sec. 45.12.526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR
22 OTHERWISE. (a) A lessor may stop delivery of goods in the possession
23 of a carrier or other bailee if the lessor discovers the lessee to be
24 insolvent and may stop delivery of carload, truckload, planeload, or
25 larger shipments of express or freight if the lessee repudiates or
26 fails to make a payment due before delivery, whether for rent, securi-
27 ty, or otherwise under the lease contract, or for any other reason the
28 lessor has a right to withhold or take possession of the goods.

29 (b) In pursuing its remedies under (a) of this section, the

1 lessor may stop delivery until

2 (1) receipt of the goods by the lessee;

3 (2) acknowledgment to the lessee by any bailee of the
4 goods, except a carrier, that the bailee holds the goods for the
5 lessee; or

6 (3) such an acknowledgment to the lessee by a carrier via
7 reshipment or as warehouseman.

8 (c) (1) To stop delivery, a lessor shall so notify as to enable
9 the bailee by reasonable diligence to prevent delivery of the goods.

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

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

16 Sec. 45.12.527. LESSOR'S RIGHTS TO DISPOSE OF GOODS. (a) After
17 a default by a lessee under the lease contract (AS 45.12.523(a)) or
18 after the lessor refuses to deliver or takes possession of goods
19 (AS 45.12.525 or 45.12.526), the lessor may dispose of the goods
20 concerned or the undelivered balance thereof by lease, sale, or other-
21 wise.

22 (b) Except as otherwise provided with respect to damages liq-
23 uidated in the lease agreement (AS 45.12.504) or determined by agree-
24 ment of the parties (AS 45.01.102(c)), if the disposition is by lease
25 agreement substantially similar to the original lease agreement and
26 the lease agreement is made in good faith and in a commercially rea-
27 sonable manner, the lessor may recover from the lessee as damages (1)
28 accrued and unpaid rent as of the date of default, (2) the present
29 value as of the date of default of the difference between the total

1 rent for the remaining lease term of the original lease agreement and
2 the total rent for the lease term of the new lease agreement, and (3)
3 any incidental damages allowed under AS 45.12.530, less expenses saved
4 in consequence of the lessee's default.

5 (c) If the lessor's disposition is by lease agreement that for
6 any reason does not qualify for treatment under (b) of this section,
7 or is by sale or otherwise, the lessor may recover from the lessee as
8 if the lessor had elected not to dispose of the goods and AS 45.12.528
9 governs.

10 (d) A subsequent buyer or lessee who buys or leases from the
11 lessor in good faith for value as a result of a disposition under this
12 section takes the goods free of the original lease contract and any
13 rights of the original lessee even though the lessor fails to comply
14 with one or more of the requirements of this chapter.

15 (e) The lessor is not accountable to the lessee for any profit
16 made on any disposition. A lessee who has rightfully rejected or
17 justifiably revoked acceptance shall account to the lessor for any
18 excess over the amount of the lessee's security interest
19 (AS 45.12.508(e)).

20 Sec. 45.12.528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE OR REPU-
21 DIATION. (a) Except as otherwise provided with respect to damages
22 liquidated in the lease agreement (AS 45.12.504) or determined by
23 agreement of the parties (AS 45.01.102(c)), if a lessor elects to
24 retain the goods or a lessor elects to dispose of the goods and dispo-
25 sition is by lease agreement that for any reason does not qualify for
26 treatment under AS 45.12.527(b), or is by sale or otherwise, the
27 lessor may recover from the lessee as damages for non-acceptance or
28 repudiation by the lessee (1) accrued and unpaid rent as of the date
29 of default, (2) the present value as of the date of default of the

1 difference between the total rent for the remaining lease term of the
2 original lease agreement and the market rent at the time and place for
3 tender computed for the same lease term, and (3) any incidental dam-
4 ages allowed under AS 45.12.530, less expenses saved in consequence of
5 the lessee's default.

6 (b) If the measure of damages provided in (a) of this section is
7 inadequate to put a lessor in as good a position as performance would
8 have, the measure of damages is the profit, including reasonable
9 overhead, the lessor would have made from full performance by the
10 lessee, together with any incidental damages allowed under
11 AS 45.12.530, due allowance for costs reasonably incurred and due
12 credit for payments or proceeds of disposition.

13 Sec. 45.12.529. LESSOR'S ACTION FOR THE RENT. (a) After de-
14 fault by the lessee under the lease contract (AS 45.12.523(a)), if the
15 lessor complies with (b) of this section, the lessor may recover from
16 the lessee as damages

17 (1) for goods accepted by the lessee and for conforming
18 goods lost or damaged within a commercially reasonable time after risk
19 of loss passes to the lessee (AS 45.12.219), (A) accrued and unpaid
20 rent as of the date of default, (B) the present value as of the date
21 of default of the rent for the remaining lease term of the lease
22 agreement, and (C) any incidental damages allowed under AS 45.12.530,
23 less expenses saved in consequence of the lessee's default; and

24 (2) for goods identified to the lease contract if the
25 lessor is unable after reasonable effort to dispose of them at a
26 reasonable price or the circumstances reasonably indicate that effort
27 will be unavailing, (A) accrued and unpaid rent as of the date of
28 default, (B) the present value as of the date of default of the rent
29 for the remaining lease term of the lease agreement, and (C) any

1 incidental damages allowed under AS 45.12.530, less expenses saved in
2 consequence of the lessee's default.

3 (b) Except as provided in (c) of this section, the lessor shall
4 hold for the lessee for the remaining lease term of the lease agree-
5 ment any goods that have been identified to the lease contract and are
6 in the lessor's control.

7 (c) The lessor may dispose of the goods at any time before
8 collection of the judgment for damages obtained under (a) of this
9 section. If the disposition is before the end of the remaining lease
10 term of the lease agreement, the lessor's recovery against the lessee
11 for damages will be governed by AS 45.12.527 or 45.12.528.

12 (d) Payment of the judgment for damages obtained under (a) of
13 this section entitles the lessee to use and possession of the goods
14 not then disposed of for the remaining lease term of the lease agree-
15 ment.

16 (e) After a lessee has wrongfully rejected or revoked acceptance
17 of goods, has failed to pay rent then due, or has repudiated
18 (AS 45.12.402), a lessor who is held not entitled to rent under this
19 section must nevertheless be awarded damages for non-acceptance under
20 AS 45.12.527 and 45.12.528.

21 Sec. 45.12.530. LESSOR'S INCIDENTAL DAMAGES. Incidental damages
22 to an aggrieved lessor include any commercially reasonable charges,
23 expenses, or commissions incurred in stopping delivery, in the trans-
24 portation, care, and custody of goods after the lessee's default, in
25 connection with return or disposition of the goods, or otherwise
26 resulting from the default.

27 Sec. 45.12.531. STANDING TO SUE THIRD PARTIES FOR INJURY TO
28 GOODS. (a) If a third party so deals with goods that have been
29 identified to a lease contract as to cause actionable injury to a

1 party to the lease contract (1) the lessor has a right of action
2 against the third party, and (2) the lessee also has a right of action
3 against the third party if the lessee

4 (A) has a security interest in the goods;

5 (B) has an insurable interest in the goods; or

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

9 (b) If at the time of the injury the party plaintiff did not
10 bear the risk of loss as against the other party to the lease contract
11 and there is no arrangement between them for disposition of the recov-
12 ery, his or her suit or settlement, subject to his or her own inter-
13 est, is as a fiduciary for the other party to the lease contract.

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

16 * Sec. 6. The revisor of statutes shall update citations to Alaska's
17 Uniform Commercial Code throughout the Alaska Statutes, especially in the
18 chapters of the code (AS 45.01 -- AS 45.09) in effect before the effective
19 date of this Act, to include the new chapter on leasing, AS 45.12.