

HOUSE BILL NO. 294

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/22/91

Referred: Labor & Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to leases of personal property under the Uniform Commercial Code."

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

3 \* Section 1. AS 45.01.101 is amended to read:

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

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

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

10           Rights of creditors against sold goods (AS 45.02.402)

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

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

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

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

1           Perfection provisions of the chapter [ARTICLE] on secured transactions (AS 45.09.103).

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

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

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

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

19                   (ii) the lessee is bound to renew the lease for the  
20                   remaining economic life of the goods or is bound to become the owner of the  
21                   goods,

22                   (iii) the lessee has an option to renew the lease for the  
23                   remaining economic life of the goods for no additional consideration or  
24                   nominal additional consideration upon compliance with the lease agreement,  
25                   or

26                   (iv) the lessee has an option to become the owner of the  
27                   goods for no additional consideration or nominal additional consideration  
28                   upon compliance with the lease agreement;

29           (B) a transaction does not create a security interest merely because it  
30           provides that

31                   (i) the present value of the consideration the lessee is

1 obligated to pay the lessor for the right to possession and use of the goods is  
2 substantially equal to or is greater than the fair market value of the goods at  
3 the time the lease is entered into,

4 (ii) the lessee assumes risk of loss of the goods, or agrees  
5 to pay taxes, insurance, filing, recording, or registration fees, or service or  
6 maintenance costs with respect to the goods,

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

9 (iv) the lessee has an option to renew the lease for a  
10 fixed rent that is equal to or greater than the reasonably predictable fair  
11 market rent for the use of the goods for the term of the renewal at the time  
12 the option is to be performed, or

13 (v) the lessee has an option to become the owner of the  
14 goods for a fixed price that is equal to or greater than the reasonably predict-  
15 able fair market value of the goods at the time the option is to be performed;

16 (C) for purposes of this paragraph (37), additional consideration is not  
17 nominal if (i) when the option to renew the lease is granted to the lessee the rent is  
18 stated to be the fair market rent for the use of the goods for the term of the renewal  
19 determined at the time the option is to be performed, or (ii) when the option to  
20 become the owner of the goods is granted to the lessee the price is stated to be the  
21 fair market value of the goods determined at the time the option is to be performed;  
22 additional consideration is nominal if it is less than the lessee's reasonably  
23 predictable cost of performing under the lease agreement if the option is not  
24 exercised;

25 (D) in this paragraph (37)

26 (i) "present value" means the amount as of a date  
27 certain of one or more sums payable in the future, discounted to the date  
28 certain; the discount is determined by the interest rate specified by the  
29 parties if the rate is not manifestly unreasonable at the time the transaction  
30 is entered into; otherwise, the discount is determined by a commercially  
31 reasonable rate that takes into account the facts and circumstances of each



1 case at the time the transaction was entered into; and  
 2 (ii) "reasonably predictable" and "remaining economic  
 3 life of the goods" are to be determined with reference to the facts and  
 4 circumstances at the time the transaction is entered into [(A) THE  
 5 INCLUSION OF AN OPTION TO PURCHASE DOES NOT OF ITSELF MAKE

6 THE LEASE ONE INTENDED FOR SECURITY, AND (B) AN AGREEMENT

7 THAT UPON COMPLIANCE WITH THE TERMS OF THE LEASE THE

8 LESSEE SHALL BECOME OR HAS THE OPTION TO BECOME THE

9 OWNER OF THE PROPERTY FOR NO ADDITIONAL CONSIDERATION OR

10 FOR A NOMINAL CONSIDERATION DOES MAKE THE LEASE ONE

11 INTENDED FOR SECURITY];

12 \* Sec. 4. AS 45.09.113 is amended to read:

13 Sec. 45.09.113. SECURITY INTERESTS ARISING UNDER AS 45.02 (SALES) OR  
 14 AS 45.12 (LEASES). A security interest arising solely under AS 45.02 or AS 45.12 is subject  
 15 to the provisions of this chapter except that, to the extent that and so long as the debtor does not  
 16 have or does not lawfully obtain possession of the goods,

- 17 (1) no security agreement is necessary to make the security interest enforceable;
- 18 (2) no filing is required to perfect the security interest; and
- 19 (3) the rights of the secured party on default by the debtor are governed (A) by  
 20 the chapter on sales (AS 45.02) in the case of a security interest arising solely under this  
 21 chapter, or (B) by the chapter on leases (AS 45.12) in the case of a security interest arising  
 22 solely under that chapter [BY THIS CHAPTER].

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

24 CHAPTER 12. LEASES.

25 ARTICLE 1. GENERAL PROVISIONS.

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

28 Sec. 45.12.102. SCOPE. This chapter applies to any transaction, regardless of form, that  
 29 creates a lease.

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

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

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

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

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

17 (5) "consumer lease" means a lease that a lessor regularly engaged in the business  
18 of leasing or selling makes to a lessee who is an individual and who takes under the lease  
19 primarily for personal, family, or household purposes;

20 (6) "fault" means wrongful act, omission, breach, or default;

21 (7) "finance lease" means a lease with respect to which

22 (A) the lessor does not select, manufacture, or supply the goods;

23 (B) the lessor acquires the goods or the right to possession and use of the  
24 goods in connection with the lease; and

25 (C) one of the following occurs:

26 (i) the lessee receives a copy of the contract by which the lessor  
27 acquired the goods or the right to possession and use of the goods before signing  
28 the lease contract;

29 (ii) the lessee's approval of the contract by which the lessor  
30 acquired the goods or the right to possession and use of the goods is a condition  
31 to effectiveness of the lease contract;

1 (iii) the lessee, before signing the lease contract, receives an  
2 accurate and complete statement designating the promises and warranties, and any  
3 disclaimers of warranties, limitations or modifications of remedies, or liquidated  
4 damages, including those of a third party, such as the manufacturer of the goods,  
5 provided to the lessor by the person supplying the goods in connection with or as  
6 part of the contract by which the lessor acquired the goods or the right to  
7 possession and use of the goods; or

8 (iv) if the lease is not a consumer lease, the lessor, before the lessee signs  
9 the lease contract, informs the lessee in writing of the identity of the person  
10 supplying the goods to the lessor, unless the lessee has selected that person and  
11 directed the lessor to acquire the goods or the right to possession and use of the  
12 goods from that person; that the lessee is entitled under this chapter to the  
13 promises and warranties, including those of any third party, provided to the lessor  
14 by the person supplying the goods in connection with or as part of the contract by  
15 which the lessor acquired the goods or the right to possession and use of the  
16 goods; and that the lessee may communicate with the person supplying the goods  
17 to the lessor and receive an accurate and complete statement of those promises  
18 and warranties, including any disclaimers and limitations of them or of remedies;

19 (8) "goods" means all things that are movable at the time of identification to the  
20 lease contract, or are fixtures (AS 45.12.309), but the term does not include money, documents,  
21 instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and  
22 gas, before extraction; the term also includes the unborn young of animals;

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

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

30 (11) "lease agreement" means the bargain, with respect to the lease, of the lessor  
31 and the lessee in fact as found in their language or by implication from other circumstances

1 including course of dealing or usage of trade or course of performance as provided in this  
2 chapter; unless the context clearly indicates otherwise, the term includes a sublease agreement;

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

6 (13) "leasehold interest" means the interest of the lessor or the lessee under a  
7 lease contract;

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

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

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

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

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

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

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

27 (21) "present value" means the amount as of a date certain of one or more sums  
28 payable in the future, discounted to the date certain; the discount is determined by the interest  
29 rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction  
30 was entered into; otherwise, the discount is determined by a commercially reasonable rate that  
31 takes into account the facts and circumstances of each case at the time the transaction was



1 entered into;

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

4 (23) "sublease" means a lease of goods the right to possession and use of which  
5 was acquired by the lessor as a lessee under an existing lease;

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

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

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

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

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

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

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

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

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

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

19 (c) The following definitions in AS 45.01 - AS 45.09 apply to this chapter:

20 (1) "account" (AS 45.09.106)

21 (2) "between merchants" (AS 45.02.104(c))

22 (3) "buyer" (AS 45.02.103(a)(1))

23 (4) "chattel paper" (AS 45.09.105(a)(2))

24 (5) "consumer goods" (AS 45.09.109(1))

25 (6) "document" (AS 45.09.105(a)(6))

26 (7) "entrusting" (AS 45.02.403(c))

27 (8) "general intangibles" (AS 45.09.106)

28 (9) "good faith" (AS 45.02.103(a)(2))

29 (10) "instrument" (AS 45.09.105(a)(9))

30 (11) "merchant" (AS 45.02.104(a))

31 (12) "mortgage" (AS 45.09.105(a)(10))

- 1 (13) "pursuant to commitment" (AS 45.09.105(a)(11))  
2 (14) "receipt" (AS 45.02.103(a)(3))  
3 (15) "sale" (AS 45.02.106(a))  
4 (16) "sale on approval" (AS 45.02.326)  
5 (17) "sale or return" (AS 45.02.326)  
6 (18) "seller" (AS 45.02.103(a)(4)).

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

9 Sec. 45.12.104. LEASES SUBJECT TO OTHER LAW. (a) A lease, although subject  
10 to this chapter, is also subject to any applicable

- 11 (1) certificate of title statute of this state, such as AS 28.10.201;  
12 (2) certificate of title statute of another jurisdiction (AS 45.12.105);  
13 (3) consumer protection statute of this state, or final consumer protection decision  
14 of a court of this state existing on the effective date of this chapter; or  
15 (4) provision of the State Procurement Code (AS 36.30).

16 (b) In case of conflict between this chapter, other than AS 45.12.105, 45.12.304(c), and  
17 45.12.305(c), and a statute or decision referred to in (a) of this section, the statute or decision  
18 controls.

19 (c) Failure to comply with an applicable law has only the effect specified in it.

20 Sec. 45.12.105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED  
21 BY CERTIFICATE OF TITLE. Subject to the provisions of AS 45.12.304(c) and 45.12.305(c),  
22 with respect to goods covered by a certificate of title issued under a statute of this state or of  
23 another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate  
24 of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction  
25 issuing the certificate until the earlier of (1) surrender of the certificate, or (2) four months after  
26 the goods are removed from that jurisdiction and after that date until a new certificate of title is  
27 issued by another jurisdiction.

28 Sec. 45.12.106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO  
29 CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (a) If the law chosen by the parties  
30 to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides  
31 at the time the lease agreement becomes enforceable or within 30 days after that date or in which

1 the goods are to be used, the choice is not enforceable.

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

4 Sec. 45.12.107. **WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER**  
5 **DEFAULT.** Any claim or right arising out of an alleged default or breach of warranty may be  
6 discharged in whole or in part without consideration by a written waiver or renunciation signed  
7 and delivered by the aggrieved party.

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

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

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

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

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

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

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

30 Sec. 45.12.109. **OPTION TO ACCELERATE AT WILL.** (a) A term providing that one  
31 party or his or her successor in interest may accelerate payment or performance or require

1 collateral or additional collateral "at will" or "when he or she considers himself or herself  
2 insecure," or in words of similar import, must be construed to mean that the party has power to  
3 do so only if he or she in good faith believes that the prospect of payment or performance is  
4 impaired.

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

8 ARTICLE 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT.

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

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

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

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

18 (c) A writing is not insufficient because it omits or incorrectly states a term agreed upon,  
19 but the lease contract is not enforceable under (a)(2) of this section beyond the lease term and  
20 the quantity of goods shown in the writing.

21 (d) A lease contract that does not satisfy the requirements of (a) of this section, but  
22 which is valid in other respects, is enforceable:

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

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

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

- 1           (e) The lease term under a lease contract referred to in (d) of this section is:
- 2                   (1) if there is a writing signed by the party against whom enforcement is sought
- 3 or by that party's authorized agent specifying the lease term, the term so specified;
- 4                   (2) if the party against whom enforcement is sought admits in that party's
- 5 pleading, testimony, or otherwise in court a lease term, the term so admitted; or
- 6                   (3) a reasonable lease term.

7           Sec. 45.12.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC

8 EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or

9 which are otherwise set out in a writing intended by the parties as a final expression of their

10 agreement with respect to such terms as are included in those memoranda or other writing may

11 not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement

12 but may be explained or supplemented

- 13                   (1) by course of dealing or usage of trade or by course of performance; and
- 14                   (2) by evidence of consistent additional terms unless the court finds the writing
- 15 to have been intended also as a complete and exclusive statement of the terms of the agreement.

16           Sec. 45.12.203. SEALS INOPERATIVE. The affixing of a seal to a writing evidencing

17 a lease contract or an offer to enter into a lease contract does not render the writing a sealed

18 instrument, and the law with respect to sealed instruments does not apply to the lease contract

19 or offer.

20           Sec. 45.12.204. FORMATION IN GENERAL. (a) A lease contract may be made in any

21 manner sufficient to show agreement, including conduct by both parties which recognizes the

22 existence of a lease contract.

23                   (b) An agreement sufficient to constitute a lease contract may be found although the

24 moment of its making is undetermined.

25                   (c) Although one or more terms are left open, a lease contract does not fail for

26 indefiniteness if the parties have intended to make a lease contract and there is a reasonably

27 certain basis for giving an appropriate remedy.

28           Sec. 45.12.205. FIRM OFFERS. An offer by a merchant to lease goods to or from

29 another person in a signed writing that by its terms gives assurance that it will be held open is

30 not revocable, for lack of consideration, during the time stated or, if no time is stated, for a

31 reasonable time; however, in no event may the period of irrevocability exceed three months. Any

1 such term of assurance on a form supplied by the offeree must be separately signed by the  
2 offeror.

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

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

10 Sec. 45.12.207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.  
11 (a) If a lease contract involves repeated occasions for performance by either party with  
12 knowledge of the nature of the performance and opportunity for objection to it by the other, any  
13 course of performance accepted or acquiesced in without objection is relevant to determine the  
14 meaning of the lease agreement.

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

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

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

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

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

30 (d) A party who has made a waiver affecting an executory portion of a lease contract  
31 may retract the waiver by reasonable notification received by the other party that strict

1 performance will be required of any term waived, unless the retraction would be unjust in view  
2 of a material change of position in reliance on the waiver.

3 **Sec. 45.12.209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY**  
4 **CONTRACT.** (a) The benefit of the supplier's promises to the lessor under the supply contract  
5 and of all warranties, whether express or implied, including those of any third party provided in  
6 connection with or as part of the supply contract, extends to the lessee to the extent of the  
7 lessee's leasehold interest under a finance lease related to the supply contract, but is subject to  
8 the terms of the warranty and of the supply contract and all defenses or claims arising from it.

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

13 (c) Any modification or rescission of the supply contract by the supplier and the lessor  
14 is effective between the supplier and the lessee unless, before the modification or rescission, the  
15 supplier has received notice that the lessee has entered into a finance lease related to the supply  
16 contract. If the modification or rescission is effective between the supplier and the lessee, the  
17 lessor is considered to have assumed, in addition to the obligations of the lessor under the lease  
18 contract, promises of the supplier to the lessor and warranties that were so modified or rescinded  
19 as they existed and were available to the lessee before modification or rescission.

20 (d) In addition to the extension of the benefit of the supplier's promises and of warranties  
21 to the lessee under (a) of this section, the lessee retains all rights that the lessee may have against  
22 the supplier which arise from an agreement between the lessee and the supplier or under other  
23 law.

24 **Sec. 45.12.210. EXPRESS WARRANTIES.** (a) Express warranties by the lessor are  
25 created as follows:

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

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

31 (3) Any sample or model that is made part of the basis of the bargain creates an

1 express warranty that the whole of the goods will conform to the sample or model.

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

6 Sec. 45.12.211. WARRANTIES AGAINST INTERFERENCE AND AGAINST  
7 INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT. (a) There is in  
8 a lease contract a warranty that for the lease term no person holds a claim to or interest in the  
9 goods that arose from an act or omission of the lessor, other than a claim by way of infringement  
10 or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

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

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

17 Sec. 45.12.212. IMPLIED WARRANTY OF MERCHANTABILITY. (a) Except in a  
18 finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the  
19 lessor is a merchant with respect to goods of that kind.

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

21 (1) pass without objection in the trade under the description in the lease  
22 agreement;

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

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

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

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

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

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



1           **Sec. 45.12.213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.**

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

6           **Sec. 45.12.214. EXCLUSION OR MODIFICATION OF WARRANTIES. (a) Words**  
7       **or conduct relevant to the creation of an express warranty and words or conduct tending to negate**  
8       **or limit a warranty must be construed wherever reasonable as consistent with each other; but,**  
9       **subject to the provisions of AS 45.12.202 on parol or extrinsic evidence, negation or limitation**  
10      **is inoperative to the extent that the construction is unreasonable.**

11           **(b) Subject to (c) of this section, to exclude or modify the implied warranty of**  
12      **merchantability or any part of it the language must mention "merchantability," be by a writing,**  
13      **and be conspicuous. Subject to (c) of this section, to exclude or modify any implied warranty**  
14      **of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all**  
15      **implied warranties of fitness is sufficient if it is in writing, is conspicuous, and states, for**  
16      **example, "There is no warranty that the goods will be fit for a particular purpose."**

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

18                   **(1) unless the circumstances indicate otherwise, all implied warranties are**  
19      **excluded by expressions like "as is," or "with all fault," or by other language that in common**  
20      **understanding calls the lessee's attention to the exclusion of warranties and makes plain that there**  
21      **is no implied warranty, if in writing and conspicuous;**

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

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

28           **(d) To exclude or modify a warranty against interference or against infringement**  
29      **(AS 45.12.211) or any part of it, the language must be specific, be by a writing, and be**  
30      **conspicuous, unless the circumstances, including course of performance, course of dealing, or**  
31      **usage of trade, give the lessee reason to know that the goods are being leased subject to a claim**

1 or interest of any person.

2 Sec. 45.12.215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR  
3 IMPLIED. Warranties, whether express or implied, must be construed as consistent with each  
4 other and as cumulative, but if that construction is unreasonable, the intention of the parties  
5 determines which warranty is dominant. In ascertaining that intention the following rules apply:

6 (1) exact or technical specifications displace an inconsistent sample or model or  
7 general language of description;

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

10 (3) express warranties displace inconsistent implied warranties other than an  
11 implied warranty of fitness for a particular purpose.

12 Sec. 45.12.216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED  
13 WARRANTIES. A warranty to or for the benefit of a lessee under this chapter, whether express  
14 or implied, extends to any natural person who may reasonably be expected to use, consume, or  
15 be affected by the goods and who is injured in person by breach of the warranty. This section  
16 does not displace principles of law and equity that extend a warranty to or for the benefit of a  
17 lessee to other persons. The operation of this section may not be excluded, modified, or limited,  
18 but an exclusion, modification, or limitation of the warranty, including any with respect to rights  
19 and remedies, effective against the lessee is also effective against the beneficiary designated  
20 under this section.

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

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

26 (2) when the goods are shipped, marked, or otherwise designated by the lessor  
27 as goods to which the lease contract refers, if the lease contract is for a lease of goods that are  
28 not existing and identified; or

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

31 Sec. 45.12.218. INSURANCE AND PROCEEDS. (a) A lessee obtains an insurable

1 interest when existing goods are identified to the lease contract even though the goods identified  
2 are nonconforming and the lessee has an option to reject them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14           Sec. 45.12.221. CASUALTY TO IDENTIFIED GOODS. If a lease contract requires  
15 goods identified when the lease contract is made, and the goods suffer casualty without fault of  
16 the lessee, the lessor, or the supplier before delivery, or the goods suffer casualty before risk of  
17 loss passes to the lessee under the lease agreement or AS 45.12.219, then

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

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

#### 24                   ARTICLE 3. EFFECT OF LEASE CONTRACT.

25           Sec. 45.12.301. ENFORCEABILITY OF LEASE CONTRACT. Except as otherwise  
26 provided in this chapter, a lease contract is effective and enforceable according to its terms  
27 between the parties, against purchasers of the goods, and against creditors of the parties.

28           Sec. 45.12.302. TITLE TO AND POSSESSION OF GOODS. Except as otherwise  
29 provided in this chapter, each provision of this chapter applies whether the lessor or a third party  
30 has title to the goods, and whether the lessor, the lessee, or a third party has possession of the  
31 goods, notwithstanding any statute or rule of law that possession or the absence of possession is

1 fraudulent.

2 Sec. 45.12.303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE  
3 CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF  
4 PERFORMANCE; TRANSFER OF RIGHTS. (a) As used in this section, "creation of a security  
5 interest" includes the sale of a lease contract that is subject to AS 45.09, on secured transactions,  
6 by reason of AS 45.09.102(a)(2).

7 (b) Except as provided in (c) and (d) of this section, a provision in a lease agreement that  
8 (1) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation  
9 or enforcement of a security interest, or attachment, levy, or other judicial process, of (A) an  
10 interest of a party under the lease contract, or (B) the lessor's residual interest in the goods; or  
11 (2) makes such a transfer an event of default, gives rise to the rights and remedies provided in  
12 (e) of this section, but a transfer that is prohibited or is an event of default under the lease  
13 agreement is otherwise effective.

14 (c) A provision in a lease agreement that (1) prohibits the creation or enforcement of a  
15 security interest in (A) an interest of a party under the lease contract or (B) the lessor's residual  
16 interest in the goods, or (2) makes such a transfer an event of default, is not enforceable unless,  
17 and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of  
18 possession or use of the goods in violation of the provision or there is an actual delegation of a  
19 material performance of either party to the lease contract in violation of the provision. Neither  
20 the granting nor the enforcement of a security interest in either the lessor's interest under the  
21 lease contract or the lessor's residual interest in the goods is a transfer that materially impairs  
22 the prospect of obtaining return performance by, materially changes the duty of, or materially  
23 increases the burden or risk imposed on, the lessee within the purview of (e) of this section  
24 unless, and then only to the extent that, there is an actual delegation of a material performance  
25 of the lessor.

26 (d) A provision in a lease agreement that (1) prohibits a transfer of a right to damages  
27 for default with respect to the whole lease contract or of a right to payment arising out of the  
28 transferor's due performance of the transferor's entire obligation, or (2) makes such a transfer  
29 an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs  
30 the prospect of obtaining return performance by, materially changes the duty of, or materially  
31 increases the burden or risk imposed on, the other party to the lease contract within the purview

1 of (e) of this section.

2 (e) Subject to (c) and (d) of this section,

3 (1) if a transfer is made which is made an event of default under a lease  
4 agreement, the party to the lease contract not making the transfer, unless that party waives the  
5 default or otherwise agrees, has the rights and remedies described in AS 45.12.501(b);

6 (2) if (1) of this subsection is not applicable and if a transfer is made that is  
7 prohibited under a lease agreement or that materially impairs the prospect of obtaining return  
8 performance by, materially changes the duty of, or materially increases the burden or risk  
9 imposed on, the other party to the lease contract, unless the party not making the transfer agrees  
10 at any time to the transfer, in the lease contract or otherwise, then, except as limited by contract,  
11 the transferor is liable to the party not making the transfer for damages caused by the transfer  
12 to the extent that the damages could not reasonably be prevented by the party not making the  
13 transfer, and a court having jurisdiction may grant other appropriate relief, including cancellation  
14 of the lease contract or an injunction against the transfer.

15 (f) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar  
16 general terms, is a transfer of rights, and, unless the language or the circumstances, as in a  
17 transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor  
18 to the transferee. Acceptance by the transferee constitutes a promise by the transferee to  
19 perform those duties. The promise is enforceable by either the transferor or the other party to  
20 the lease contract.

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

24 (h) In a consumer lease, to prohibit the transfer of an interest of a party under the lease  
25 contract or to make a transfer an event of default, the language must be specific, by a writing,  
26 and conspicuous.

27 Sec. 45.12.304. SUBSEQUENT LEASE OF GOODS BY LESSOR. (a) Subject to  
28 AS 45.12.303, a subsequent lessee from a lessor of goods under an existing lease contract  
29 obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that  
30 the lessor had or had power to transfer, and except as provided in (b) of this section and  
31 AS 45.12.527(d), takes subject to the existing lease contract. A lessor with voidable title has

1 power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only  
2 to the extent set out in the preceding sentence. If goods have been delivered under a transaction  
3 of purchase, the lessor has that power even though

4 (1) the lessor's transferor was deceived as to the identity of the lessor;  
5 (2) the delivery was in exchange for a check which is later dishonored;  
6 (3) it was agreed that the transaction was to be a "cash sale"; or  
7 (4) the delivery was procured through fraud punishable as larcenous under the  
8 criminal law.

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

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

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

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

30 (b) A buyer in the ordinary course of business or a sublessee in the ordinary course of  
31 business from a lessee who is a merchant dealing in goods of that kind to whom the goods were

1 entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and  
2 lessee's rights to the goods, and takes free of the existing lease contract.

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

7 Sec. 45.12.306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF  
8 LAW. If a person in the ordinary course of his or her business furnishes services or materials  
9 with respect to goods subject to a lease contract, a lien upon those goods in the possession of that  
10 person given by statute or rule of law for those materials or services takes priority over any  
11 interest of the lessor or lessee under the lease contract or this chapter unless the lien is created  
12 by statute and the statute provides otherwise or unless the lien is created by rule of law and the  
13 rule of law provides otherwise.

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

17 (b) Except as otherwise provided in (c) and (d) of this section and in AS 45.12.306 and  
18 45.12.308, a creditor of a lessor takes subject to the lease contract unless

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

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

23 (3) the creditor holds in the goods a security interest that was perfected  
24 (AS 45.09.303) before the lease contract became enforceable.

25 (c) A lessee in the ordinary course of business takes the leasehold interest free of a  
26 security interest in the goods created by the lessor even though the security interest is perfected  
27 (AS 45.09.303) and the lessee knows of its existence.

28 (d) A lessee other than a lessee in the ordinary course of business takes the leasehold  
29 interest free of a security interest to the extent that it secures future advances made after the  
30 secured party acquires knowledge of the lease or more than 45 days after the lease contract  
31 becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a



1 commitment entered into without knowledge of the lease and before the expiration of the 45-day  
2 period.

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

8 (b) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract  
9 (1) becomes enforceable, not in current course of trade but in satisfaction of or as security for  
10 a pre-existing claim for money, security, or the like, and (2) is made under circumstances which  
11 under any statute or rule of law apart from this chapter would constitute the transaction a  
12 fraudulent transfer or voidable preference.

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

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

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

22 (2) a "fixture filing" is the recording, in the office where a mortgage on the real  
23 estate would be recorded, of a financing statement covering goods that are or are to become fix-  
24 tures and conforming to the requirements of AS 45.09.402(e);

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

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

31 (5) "encumbrance" includes real estate mortgages and other liens on real estate

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

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

5 (c) This chapter does not prevent creation of a lease of fixtures under real estate law.

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

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

12 (2) the interest of the lessor is perfected by a fixture filing before the interest of  
13 the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting  
14 interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of  
15 record in the real estate or is in possession of the real estate.

16 (e) The interest of a lessor of fixtures, whether or not perfected, has priority over the  
17 conflicting interest of an encumbrancer or owner of the real estate if

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

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

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

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

29 (f) Notwithstanding (d)(1) of this section but otherwise subject to (d) and (e) of this  
30 section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate  
31 to the conflicting interest of an encumbrancer of the real estate under a construction mortgage

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

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

9 (h) If the interest of a lessor of fixtures, including the lessor's residual interest, has  
10 priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor  
11 or the lessee may (1) on default, expiration, termination, or cancellation of the lease agreement  
12 but subject to the lease agreement and this chapter, or (2) if necessary to enforce other rights and  
13 remedies of the lessor or the lessee under this chapter, remove the goods from the real estate, free  
14 and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the  
15 lessor or the lessee must reimburse any encumbrancer or owner of the real estate who is not the  
16 lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for  
17 any diminution in value of the real estate caused by the absence of the goods removed or by any  
18 necessity of replacing them. A person entitled to reimbursement may refuse permission to  
19 remove until the party seeking removal gives adequate security for the performance of this  
20 obligation.

21 (i) Even though the lease agreement does not create a security interest, the interest of a  
22 lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing  
23 statement as a fixture filing for leased goods that are or are to become fixtures in accordance  
24 with the relevant provisions of AS 45.09, on secured transactions.

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

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

30 (c) The interest of a lessor or a lessee under a lease contract entered into at the time or  
31 after the goods became accessions is superior to all subsequently acquired interests in the whole

1 except as stated in (d) of this section but is subordinate to interests in the whole existing at the  
2 time the lease contract was made unless the holders of those interests in the whole have in  
3 writing consented to the lease or disclaimed an interest in the goods as part of the whole.

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

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

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

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

22 Sec. 45.12.311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in this chapter  
23 prevents subordination by agreement by any person entitled to priority.

24 ARTICLE 4. PERFORMANCE OF LEASE CONTRACT:  
25 REPUDIATED, SUBSTITUTED, AND EXCUSED.

26 Sec. 45.12.401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE. (a)  
27 A lease contract imposes an obligation on each party that the other's expectation of receiving due  
28 performance will not be impaired.

29 (b) If reasonable grounds for insecurity arise with respect to the performance of either  
30 party, the insecure party may demand in writing adequate assurance of due performance. Until  
31 the insecure party receives that assurance, if commercially reasonable the insecure party may

1 suspend any performance for which he or she has not already received the agreed return.

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

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

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

9 Sec. 45.12.402. ANTICIPATORY REPUDIATION. If either party repudiates a lease  
10 contract with respect to a performance not yet due under the lease contract, the loss of which  
11 performance will substantially impair the value of the lease contract to the other, the aggrieved  
12 party may

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

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

17 (3) resort to any right or remedy upon default under the lease contract or this  
18 chapter, even though the aggrieved party has notified the repudiating party that the aggrieved  
19 party would await the repudiating party's performance and assurance and has urged retraction.  
20 In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the  
21 aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in  
22 accordance with the provisions of this chapter on the lessor's right to identify goods to the lease  
23 contract notwithstanding default or to salvage unfinished goods (AS 45.12.524).

24 Sec. 45.12.403. RETRACTION OF ANTICIPATORY REPUDIATION. (a) Until the  
25 repudiating party's next performance is due, the repudiating party can retract the repudiation  
26 unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially  
27 changed the aggrieved party's position or otherwise indicated that the aggrieved party considers  
28 the repudiation final.

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

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

3 Sec. 45.12.404. SUBSTITUTED PERFORMANCE. (a) If without fault of the lessee,  
4 the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed  
5 type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes  
6 commercially impracticable, but a commercially reasonable substitute is available, the substitute  
7 performance must be tendered and accepted.

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

10 (1) the lessor may withhold or stop delivery or cause the supplier to withhold or  
11 stop delivery unless the lessee provides a means or manner of payment that is commercially a  
12 substantial equivalent; and

13 (2) if delivery has already been taken, payment by the means or in the manner  
14 provided by the regulation discharges the lessee's obligation unless the regulation is  
15 discriminatory, oppressive, or predatory.

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

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

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

29 (3) The lessor seasonably shall notify the lessee and in the case of a finance lease  
30 the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay  
31 or nondelivery and, if allocation is required under (2) of this section, of the estimated quota thus

1 made available for the lessee.

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

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

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

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

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

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

19 (1) is effective and enforceable between the parties, and by or against the third  
20 parties including assignees of the parties; and

21 (2) is not subject to cancellation, termination, modification, repudiation, excuse,  
22 or substitution without the consent of the party to whom the promise runs.

23 (c) This section does not affect the validity, under any other law, of a covenant in any  
24 lease contract making the lessee's promises irrevocable and independent upon the lessee's  
25 acceptance of the goods.

## 26 ARTICLE 5. DEFAULT.

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

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

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

5 (d) Except as otherwise provided in AS 45.01.106(a) or this chapter or the lease  
6 agreement, the rights and remedies referred to in (b) and (c) of this section are cumulative.

7 (e) If the lease agreement covers both real property and goods, the party seeking  
8 enforcement may proceed under AS 45.12.501 - 45.12.531 as to the goods, or under other  
9 applicable law as to both the real property and the goods in accordance with that party's rights  
10 and remedies in respect of the real property, in which case AS 45.12.501 - 45.12.531 do not  
11 apply.

12 Sec. 45.12.502. NOTICE AFTER DEFAULT. Except as otherwise provided in this  
13 chapter or the lease agreement, the lessor or lessee in default under the lease contract is not  
14 entitled to notice of default or notice of enforcement from the other party to the lease agreement.

15 Sec. 45.12.503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.

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

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

23 (c) Consequential damages may be liquidated under AS 45.12.504, or may otherwise be  
24 limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable.  
25 Limitation, alteration, or exclusion of consequential damages for injury to the person in the case  
26 of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of  
27 damages where the loss is commercial is not prima facie unconscionable.

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

30 Sec. 45.12.504. LIQUIDATION OF DAMAGES. (a) Damages payable by either party  
31 for default, or any other act or omission, including indemnity for loss or diminution of anticipated

1 tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease  
2 agreement but only at an amount or by a formula that is reasonable in light of the then  
3 anticipated harm caused by the default or other act or omission.

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

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

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

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

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

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

20 (2) the amount or value of any benefits received by the lessee directly or  
21 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 that are still executory on both  
25 sides are discharged, but any right based on prior default or performance survives, and the  
26 cancelling party also retains any remedy for default of the whole lease contract or any  
27 unperformed balance.

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

30 (c) Unless the contrary intention clearly appears, expressions of "cancellation,"  
31 "rescission," or the like of the lease contract may not be construed as a renunciation or discharge

1 of any claim in damages for an antecedent default.

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

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

6 Sec. 45.12.506. STATUTE OF LIMITATIONS. (a) An action for default under a lease  
7 contract, including breach of warranty or indemnity, must be commenced within four years after  
8 the cause of action accrued. By the original lease contract the parties may reduce the period of  
9 limitation to not less than one year.

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

15 (c) If an action commenced within the time limited by (a) of this section is so terminated  
16 as to leave available a remedy by another action for the same default or breach of warranty or  
17 indemnity, the other action may be commenced after the expiration of the time limited and within  
18 six months after the termination of the first action unless the termination resulted from voluntary  
19 discontinuance or from dismissal for failure or neglect to prosecute.

20 (d) This section does not alter the law on tolling of the statute of limitations nor does it  
21 apply to causes of action that have accrued before this chapter takes effect.

22 Sec. 45.12.507. PROOF OF MARKET RENT: TIME AND PLACE. (a) Damages  
23 based on market rent (AS 45.12.519 or 45.12.528) are determined according to the rent for the  
24 use of the goods concerned for a lease term identical to the remaining lease term of the original  
25 lease agreement and prevailing at the time of the default.

26 (b) If evidence of rent for the use of the goods concerned for a lease term identical to  
27 the remaining lease term of the original lease agreement and prevailing at the times or places  
28 described in this chapter is not readily available, the rent prevailing within any reasonable time  
29 before or after the time described or at any other place or for a different lease term which in  
30 commercial judgment or under usage of trade would serve as a reasonable substitute for the one  
31 described may be used, making any proper allowance for the difference, including the cost of

1 transporting the goods to or from the other place.

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

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

10 Sec. 45.12.508. LESSEE'S REMEDIES. (a) If a lessor fails to deliver the goods in  
11 conformity with the lease contract (AS 45.12.509) or repudiates the lease contract  
12 (AS 45.12.402), or a lessee rightfully rejects the goods (AS 45.12.509) or justifiably revokes  
13 acceptance of the goods (AS 45.12.517), then with respect to any goods involved, and with  
14 respect to all of the goods if under an installment lease contract the value of the whole lease  
15 contract is substantially impaired (AS 45.12.510), the lessor is in default under the lease contract  
16 and the lessee may

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

18 (2) recover so much of the rent and security as has been paid and as is just under  
19 the circumstances;

20 (3) cover and recover damages as to all goods affected whether or not they have  
21 been identified to the lease contract (AS 45.12.518 and 45.12.520), or recover damages for  
22 nondelivery (AS 45.12.519 and 45.12.520);

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

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

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

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

30 (c) If a lessor is otherwise in default under a lease contract, the lessee may exercise the  
31 rights and pursue the remedies provided in the lease contract, which may include a right to cancel

1 the lease, and AS 45.12.519(c).

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

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

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

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

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

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

25 (b) If nonconformity or default with respect to one or more deliveries substantially  
26 impairs the value of the installment lease contract as a whole, there is a default with respect to  
27 the whole. But the aggrieved party reinstates the installment lease contract as a whole if the  
28 aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation  
29 or brings an action with respect only to past deliveries or demands performance as to future  
30 deliveries.

31 Sec. 45.12.511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED

1       **GOODS. (a) Subject to any security interest of a lessee (AS 45.12.508(e)), if a lessor or a**  
2       **supplier has no agent or place of business at the market of rejection, a merchant lessee, after re-**  
3       **jection of goods in his or her possession or control, shall follow any reasonable instructions**  
4       **received from the lessor or the supplier with respect to the goods. In the absence of those**  
5       **instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose**  
6       **of the goods for the lessor's account if they threaten to decline in value speedily. Instructions**  
7       **are not reasonable if on demand indemnity for expenses is not forthcoming.**

8               **(b) If a merchant lessee ((a) of this section) or any other lessee (AS 45.12.512) disposes**  
9       **of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of**  
10       **the proceeds for reasonable expenses of caring for and disposing of the goods and, if the**  
11       **expenses include no disposition commission, to such commission as is usual in the trade, or if**  
12       **there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.**

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

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

19               **Sec. 45.12.512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (a)**  
20       **Except as otherwise provided with respect to goods that threaten to decline in value speedily**  
21       **(AS 45.12.511) and subject to any security interest of a lessee (AS 45.12.508(e)),**

22               **(1) the lessee, after rejection of goods in the lessee's possession, shall hold them**  
23       **with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the**  
24       **lessee's seasonable notification of rejection;**

25               **(2) if the lessor or the supplier gives no instructions within a reasonable time after**  
26       **notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's**  
27       **account or ship them to the lessor or the supplier or dispose of them for the lessor's or the**  
28       **supplier's account with reimbursement in the manner provided in AS 45.12.511; but**

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

30               **(b) Action by the lessee under (a) of this section is not acceptance or conversion.**

31               **Sec. 45.12.513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY;**

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

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

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

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

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

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

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

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

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

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

26 Sec. 45.12.516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT;  
27 BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR  
28 LITIGATION TO PERSON ANSWERABLE OVER. (a) A lessee must pay rent for any goods  
29 accepted in accordance with the lease contract, with due allowance for goods rightfully rejected  
30 or not delivered.

31 (b) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case

1 of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked  
2 because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot  
3 be revoked because of it unless the acceptance was on the reasonable assumption that the  
4 nonconformity would be seasonably cured. Acceptance does not of itself impair any other  
5 remedy provided by this chapter or the lease agreement for nonconformity.

6 (c) If a tender has been accepted

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

10 (2) except in the case of a consumer lease, within a reasonable time after the  
11 lessee receives notice of litigation for infringement or the like (AS 45.12.211) the lessee shall  
12 notify the lessor or be barred from any remedy over for liability established by the litigation; and

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

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

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

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

26 (e) Subsections (c) and (d) of this section apply to any obligation of a lessee to hold the  
27 lessor or the supplier harmless against infringement or the like (AS 45.12.211).

28 Sec. 45.12.517. REVOCATION OF ACCEPTANCE OF GOODS. (a) A lessee may  
29 revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its  
30 value to the lessee if the lessee has accepted it

31 (1) except in the case of a finance lease, on the reasonable assumption that its

1 nonconformity would be cured and it has not been seasonably cured; or

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

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

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

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

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

16 Sec. 45.12.518. COVER; SUBSTITUTE GOODS. (a) After a default by a lessor under  
17 the lease contract of the type described in AS 45.12.508(a), or, if agreed, after other default by  
18 the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or  
19 lease goods in substitution for those due from the lessor.

20 (b) Except as otherwise provided with respect to damages liquidated in the lease  
21 agreement (AS 45.12.504) or otherwise determined under agreement of the parties  
22 (AS 45.01.102(c) and AS 45.12.503), if a lessee's cover is by lease agreement substantially  
23 similar to the original lease agreement and the lease agreement is made in good faith and in a  
24 commercially reasonable manner, the lessee may recover from the lessor as damages (1) the  
25 present value, as of the date of the commencement of the term of the new lease agreement, of  
26 the rent under the new lease agreement applicable to that period of the new lease term which is  
27 comparable to the then remaining term of the original lease agreement minus the present value  
28 as of the same date of the total rent for the then remaining lease term of the original lease  
29 agreement, and (2) any incidental or consequential damages, less expenses saved in consequence  
30 of the lessor's default.

31 (c) If a lessee's cover is by lease agreement that for any reason does not qualify for

1 treatment under (b) of this section, or is by purchase or otherwise, the lessee may recover from  
2 the lessor as if the lessee had elected not to cover and AS 45.12.519 governs.

3 Sec. 45.12.519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION,  
4 DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (a)  
5 Except as otherwise provided with respect to damages liquidated in the lease agreement  
6 (AS 45.12.504) or otherwise determined under agreement of the parties (AS 45.01.102(c) and  
7 AS 45.12.503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease  
8 agreement that for any reason does not qualify for treatment under AS 45.12.518(b), or is by  
9 purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or  
10 for rejection or revocation of acceptance by the lessee is the present value, as of the date of the  
11 default, of the then market rent minus the present value, as of the same date, of the original rent,  
12 computed for the remaining lease term of the original lease agreement, together with incidental  
13 and consequential damages, less expenses saved in consequence of the lessor's default.

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

16 (c) Except as otherwise agreed, if the lessee has accepted goods and given notification  
17 (AS 45.12.516(c)), the measure of damages for non-conforming tender or delivery or other  
18 default by a lessor is the loss resulting in the ordinary course of events from the lessor's default  
19 as determined in any manner that is reasonable together with incidental and consequential  
20 damages, less expenses saved in consequence of the lessor's default.

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

27 Sec. 45.12.520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES. (a)  
28 Incidental damages resulting from a lessor's default include expenses reasonably incurred in  
29 inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the  
30 acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or  
31 commissions in connection with effecting cover, and any other reasonable expense incident to

1 the default.

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

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

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

8 Sec. 45.12.521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

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

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

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

16 Sec. 45.12.522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY. (a)  
17 Subject to (b) of this section and even though the goods have not been shipped, a lessee who has  
18 paid a part or all of the rent and security for goods identified to a lease contract (AS 45.12.217)  
19 on making and keeping good a tender of any unpaid portion of the rent and security due under  
20 the lease contract may recover the goods identified from the lessor if the lessor becomes  
21 insolvent within 10 days after receipt of the first installment of rent and security.

22 (b) A lessee acquires the right to recover goods identified to a lease contract only if they  
23 conform to the lease contract.

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

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

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

31 (3) withhold delivery of the goods and take possession of goods previously

1 delivered (AS 45.12.525);

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

3 (5) dispose of the goods and recover damages (AS 45.12.527), or retain the goods  
4 and recover damages (AS 45.12.528), or in a proper case recover rent (AS 45.12.529);

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

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

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

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

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

19 **Sec. 45.12.524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.**

20 (a) A lessor aggrieved under AS 45.12.523(a) may

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

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

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

31 **Sec. 45.12.525. LESSOR'S RIGHT TO POSSESSION OF GOODS.** (a) If a lessor

1 discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

2 (b) After a default by the lessee under the lease contract of the type described in  
3 AS 45.12.523(a) or 45.12.523(c)(1), or, if agreed, after other default by the lessee, the lessor has  
4 the right to take possession of the goods. If the lease contract so provides, the lessor may require  
5 the lessee to assemble the goods and make them available to the lessor at a place to be  
6 designated by the lessor which is reasonably convenient to both parties. Without removal, the  
7 lessor may render unusable any goods employed in trade or business, and may dispose of goods  
8 on the lessee's premises (AS 45.12.527).

9 (c) The lessor may proceed under (b) of this section without judicial process if it can be  
10 done without breach of the peace, or the lessor may proceed by action.

11 Sec. 45.12.526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR  
12 OTHERWISE. (a) A lessor may stop delivery of goods in the possession of a carrier or other  
13 bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload,  
14 truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to  
15 make a payment due before delivery, whether for rent, security, or otherwise under the lease  
16 contract, or for any other reason the lessor has a right to withhold or take possession of the  
17 goods.

18 (b) In pursuing its remedies under (a) of this section, the lessor may stop delivery until

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

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

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

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

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

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

30 Sec. 45.12.527. LESSOR'S RIGHTS TO DISPOSE OF GOODS. (a) After a default by  
31 a lessee under the lease contract of the type described in AS 45.12.523(a) or 45.12.523(c)(1) or

1 after the lessor refuses to deliver or takes possession of goods (AS 45.12.525 or 45.12.526), or,  
2 if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the  
3 undelivered balance of them by lease, sale, or otherwise.

4 (b) Except as otherwise provided with respect to damages liquidated in the lease  
5 agreement (AS 45.12.504) or otherwise determined under agreement of the parties  
6 (AS 45.01.102(c) and AS 45.12.503), if the disposition is by lease agreement substantially similar  
7 to the original lease agreement and the new lease agreement is made in good faith and in a  
8 commercially reasonable manner, the lessor may recover from the lessee as damages (1) accrued  
9 and unpaid rent as of the date of the commencement of the term of the new lease agreement, (2)  
10 the present value, as of the same date, of the total rent for the then remaining lease term of the  
11 original lease agreement minus the present value, as of the same date, of the rent under the new  
12 lease agreement applicable to that period of the new lease term which is comparable to the then  
13 remaining term of the original lease agreement, and (3) any incidental damages allowed under  
14 AS 45.12.530, less expenses saved in consequence of the lessee's default.

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

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

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

25 Sec. 45.12.528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE, FAILURE TO PAY,  
26 REPUDIATION, OR OTHER DEFAULT. (a) Except as otherwise provided with respect to  
27 damages liquidated in the lease agreement (AS 45.12.504) or otherwise determined under  
28 agreement of the parties (AS 45.01.102(c) and AS 45.12.503), if a lessor elects to retain the  
29 goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for  
30 any reason does not qualify for treatment under AS 45.12.527(b), or is by sale or otherwise, the  
31 lessor may recover from the lessee as damages for a default described in AS 45.12.523(a) or

1 45.12.523(c)(1), or, if agreed, for other default of the lessee, (1) accrued and unpaid rent as of  
2 the date of default if the lessee has never taken possession of the goods, or, if the lessee has  
3 taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date  
4 on which the lessee makes a tender of the goods to the lessor, (2) the present value as of the date  
5 determined under (1) of this subsection of the total rent for the then remaining lease term of the  
6 original lease agreement minus the present value as of the same date of the market rent at the  
7 place where the goods are located, computed for the same lease term, and (3) any incidental dam-  
8 ages allowed under AS 45.12.530, less expenses saved in consequence of the lessee's default.

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

14 Sec. 45.12.529. LESSOR'S ACTION FOR THE RENT. (a) After default by the lessee  
15 under the lease contract of the type described in AS 45.12.523(a) or 45.12.523(c)(1) or, if agreed,  
16 after other default by the lessee, if the lessor complies with (b) of this section, the lessor may  
17 recover from the lessee as damages

18 (1) for goods accepted by the lessee and not repossessed by or tendered to the  
19 lessor, and for conforming goods lost or damaged within a commercially reasonable time after  
20 risk of loss passes to the lessee (AS 45.12.219), (A) accrued and unpaid rent as of the date of  
21 entry of judgment in favor of the lessor, (B) the present value as of the same date of the rent for  
22 the then remaining lease term of the lease agreement, and (C) any incidental damages allowed  
23 under AS 45.12.530, less expenses saved in consequence of the lessee's default; and

24 (2) for goods identified to the lease contract if the lessor is unable after reasonable  
25 effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort  
26 will be unavailing, (A) accrued and unpaid rent as of the date of entry of judgment in favor of  
27 the lessor, (B) the present value as of the same date of the rent for the then remaining lease term  
28 of the lease agreement, and (C) any incidental damages allowed under AS 45.12.530, less  
29 expenses saved in consequence of the lessee's default.

30 (b) Except as provided in (c) of this section, the lessor shall hold for the lessee for the  
31 remaining lease term of the lease agreement any goods that have been identified to the lease

1 contract and are in the lessor's control.

2 (c) The lessor may dispose of the goods at any time before collection of the judgment  
3 for damages obtained under (a) of this section. If the disposition is before the end of the  
4 remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages  
5 will be governed by AS 45.12.527 or 45.12.528, and the lessor will cause an appropriate credit  
6 to be provided against a judgment for damages to the extent that the amount of the judgment  
7 exceeds the recovery available under AS 45.12.527 or 45.12.528.

8 (d) Payment of the judgment for damages obtained under (a) of this section entitles the  
9 lessee to the use and possession of the goods not then disposed of for the remaining lease term  
10 of and in accordance with the lease agreement.

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

15 Sec. 45.12.530. LESSOR'S INCIDENTAL DAMAGES. Incidental damages to an  
16 aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred  
17 in stopping delivery, in the transportation, care, and custody of goods after the lessee's default,  
18 in connection with return or disposition of the goods, or otherwise resulting from the default.

19 Sec. 45.12.531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.

20 (a) If a third party so deals with goods that have been identified to a lease contract as to cause  
21 actionable injury to a party to the lease contract

22 (1) the lessor has a right of action against the third party; and

23 (2) the lessee also has a right of action against the third party if the lessee

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

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

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

28 (b) If at the time of the injury the party plaintiff did not bear the risk of loss as against  
29 the other party to the lease contract and there is no arrangement between them for disposition of  
30 the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for  
31 the other party to the lease contract.

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

3 Sec. 45.12.532. LESSOR'S RIGHTS TO RESIDUAL INTEREST. In addition to any  
4 other recovery permitted by this chapter or other law, the lessor is entitled to recover from the  
5 lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's  
6 residual interest in the goods caused by the default of the lessee.

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