

HOUSE BILL No. 2454

By Committee on Judiciary

2-11

9 AN ACT concerning the uniform commercial code; article 2, sales;
10 amending K.S.A. 84-2-104, 84-2-105, 84-2-201, 84-2-202, 84-2-203,
11 84-2-204, 84-2-205, 84-2-206, 84-2-207, 84-2-209, 84-2-302, 84-2-304,
12 84-2-305, 84-2-308, 84-2-309, 84-2-310, 84-2-311, 84-2-312, 84-2-313,
13 84-2-314, 84-2-316, 84-2-318, 84-2-325, 84-2-328, 84-2-401, 84-2-402,
14 84-2-403, 84-2-501, 84-2-503, 84-2-504, 84-2-505, 84-2-506, 84-2-507,
15 84-2-508, 84-2-509, 84-2-510, 84-2-512, 84-2-513, 84-2-514, 84-2-601,
16 84-2-602, 84-2-603, 84-2-604, 84-2-605, 84-2-606, 84-2-607, 84-2-608,
17 84-2-609, 84-2-610, 84-2-611, 84-2-612, 84-2-613, 84-2-614, 84-2-615,
18 84-2-616, 84-2-702, 84-2-703, 84-2-704, 84-2-705, 84-2-706, 84-2-707,
19 84-2-708, 84-2-709, 84-2-710, 84-2-711, 84-2-712, 84-2-713, 84-2-714,
20 84-2-717, 84-2-718, 84-2-722, 84-2-723, 84-2-724, 84-2-725 and 84-7-
21 102 and K.S.A. 2004 Supp. 84-2-103, 84-2-210, 84-2-326, 84-2-502 and
22 84-2-716 and repealing the existing sections; also repealing K.S.A. 84-
23 2-319, 84-2-320, 84-2-321, 84-2-322, 84-2-323 and 84-2-324.

24

25 *Be it enacted by the Legislature of the State of Kansas:*

26 Section 1. K.S.A. 2004 Supp. 84-2-103 is hereby amended to read as
27 follows: 84-2-103. (1) In this article unless the context otherwise requires:
28 (a) “Buyer” means a person ~~who~~ that buys or contracts to buy goods.
29 (b) “Conspicuous”, *with reference to a term, means so written, dis-*
30 *played, or presented that a reasonable person against which it is to operate*
31 *ought to have noticed it. A term in an electronic record intended to evoke*
32 *a response by an electronic agent is conspicuous if it is presented in a*
33 *form that would enable a reasonably configured electronic agent to take*
34 *it into account or react to it without review of the record by an individual.*
35 *Whether a term is “conspicuous” or not is a decision for the court. Con-*
36 *spicuous terms include the following:*
37 (i) *For a person:*
38 (A) *A heading in capitals equal to or greater in size than the sur-*
39 *rounding text, or in contrasting type, font, or color to the surrounding*
40 *text of the same or lesser size; and*
41 (B) *language in the body of a record or display in larger type than*
42 *the surrounding text, or in contrasting type, font, or color to the surround-*
43 *ing text of the same size, or set off from surrounding text of the same size*

- 1 *by symbols or other marks that call attention to the language; and*
2 *(ii) for a person or an electronic agent, a term that is so placed in a*
3 *record or display that the person or electronic agent may not proceed*
4 *without taking action with respect to the particular term.*
5 *(c) “Consumer” means an individual who buys or contracts to buy*
6 *goods that, at the time of contracting, are intended by the individual to*
7 *be used primarily for personal, family, or household purposes.*
8 *(d) “Consumer contract” means a contract between a merchant seller*
9 *and a consumer.*
10 *(e) “Delivery” means the voluntary transfer of physical possession or*
11 *control of goods.*
12 *(f) “Electronic” means relating to technology having electrical, digital,*
13 *magnetic, wireless, optical, electromagnetic, or similar capabilities.*
14 *(g) “Electronic agent” means a computer program or an electronic or*
15 *other automated means used independently to initiate an action or re-*
16 *spond to electronic records or performances in whole or in part, without*
17 *review or action by an individual.*
18 *(h) “Electronic record” means a record created, generated, sent, com-*
19 *municated, received, or stored by electronic means.*
20 *(i) “Foreign exchange transaction” means a transaction in which one*
21 *party agrees to deliver a quantity of a specified money or unit of account*
22 *in consideration of the other party’s agreement to deliver another quantity*
23 *of a different money or unit of account either currently or at a future*
24 *date, and in which delivery is to be through funds transfer, book entry*
25 *accounting, or other form of payment order, or other agreed means to*
26 *transfer a credit balance. The term includes a transaction of this type*
27 *involving two or more moneys and spot, forward, option, or other prod-*
28 *ucts derived from underlying moneys and any combination of these trans-*
29 *actions. The term does not include a transaction involving two or more*
30 *moneys in which one or both of the parties is obligated to make physical*
31 *delivery, at the time of contracting or in the future, of banknotes, coins,*
32 *or other form of legal tender or specie.*
33 ~~*(b) (j) “Good faith” in the case of a merchant means honesty in fact*~~
34 ~~*and the observance of reasonable commercial standards of fair dealing in*~~
35 ~~*the trade.*~~
36 *(k) “Goods” means all things that are movable at the time of identi-*
37 *fication to a contract for sale. The term includes future goods, specially*
38 *manufactured goods, the unborn young of animals, growing crops, and*
39 *other identified things attached to realty as described in K.S.A. 84-2-107,*
40 *and amendments thereto. The term does not include information, the*
41 *money in which the price is to be paid, investment securities under article*
42 *8 of chapter 84 of the Kansas Statutes Annotated, and amendments*
43 *thereto, the subject matter of foreign exchange transactions, or choses in*

- 1 *action.*
- 2 ~~(l)~~ (l) “Receipt” of goods means taking physical possession of ~~them~~
- 3 *goods.*
- 4 (m) “Record” means information that is inscribed on a tangible me-
- 5 *di-um or that is stored in an electronic or other medium and is retrievable*
- 6 *in perceivable form.*
- 7 (n) “Remedial promise” means a promise by the seller to repair or
- 8 *replace goods or to refund all or part of the price of goods upon the*
- 9 *happening of a specified event.*
- 10 ~~(o)~~ (o) “Seller” means a person ~~who~~ that sells or contracts to sell
- 11 *goods.*
- 12 (p) “Sign” means, with present intent to authenticate or adopt a
- 13 *record:*
- 14 (i) *To execute or adopt a tangible symbol; or*
- 15 (ii) *to attach to or logically associate with the record an electronic*
- 16 *sound, symbol, or process.*
- 17 (2) Other definitions applying to this article or to specified parts
- 18 thereof, and the sections in which they appear are:
- 19 “Acceptance.” K.S.A. 84-2-606, *and amendments thereto.*
- 20 ~~“Banker’s credit.” K.S.A. 84-2-325.~~
- 21 “Between merchants.” K.S.A. 84-2-104, *and amendments thereto.*
- 22 “Cancellation.” K.S.A. 84-2-106(4), *and amendments thereto.*
- 23 “Commercial unit.” K.S.A. 84-2-105, *and amendments thereto.*
- 24 ~~“Confirmed credit.” K.S.A. 84-2-325.~~
- 25 “Conforming to contract.” K.S.A. 84-2-106, *and amendments thereto.*
- 26 “Contract for sale.” K.S.A. 84-2-106, *and amendments thereto.*
- 27 “Cover.” K.S.A. 84-2-712, *and amendments thereto.*
- 28 “Entrusting.” K.S.A. 84-2-403, *and amendments thereto.*
- 29 “Financing agency.” K.S.A. 84-2-104, *and amendments thereto.*
- 30 “Future goods.” K.S.A. 84-2-105, *and amendments thereto.*
- 31 “Goods.” K.S.A. 84-2-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. 84-2-501, *and amendments thereto.*
- 33 “Installment contract.” K.S.A. 84-2-612, *and amendments thereto.*
- 34 ~~“Letter of credit.” K.S.A. 84-2-325.~~
- 35 “Lot.” K.S.A. 84-2-105, *and amendments thereto.*
- 36 “Merchant.” K.S.A. 84-2-104, *and amendments thereto.*
- 37 ~~“Overseas.” K.S.A. 84-2-323.~~
- 38 “Person in position of seller.” K.S.A. 84-2-707, *and amendments*
- 39 *thereto.*
- 40 “Present sale.” K.S.A. 84-2-106, *and amendments thereto.*
- 41 “Sale.” K.S.A. 84-2-106, *and amendments thereto.*
- 42 “Sale on approval.” K.S.A. 84-2-326, *and amendments thereto.*
- 43 “Sale or return.” K.S.A. 84-2-326, *and amendments thereto.*

1 “Termination.” K.S.A. 84-2-106, *and amendments thereto*.

2 (3) “Control” as provided in K.S.A. 84-7-106, *and amendments*

3 *thereto*, and the following definitions in other articles apply to this article:

4 “Check.” K.S.A. 84-3-104(f), *and amendments thereto*.

5 “Consignee.” K.S.A. 84-7-102(3), *and amendments thereto*.

6 “Consignor.” K.S.A. 84-7-102(4), *and amendments thereto*.

7 “Consumer goods.” K.S.A. 2004 Supp. 84-9-102(a)(23), *and amend-*

8 *ments thereto*.

9 “Dishonor.” K.S.A. 84-3-502, *and amendments thereto*.

10 “Draft.” K.S.A. 84-3-104(e), *and amendments thereto*.

11 “Honor.” K.S.A. 84-5-102(a)(8), *and amendments thereto*.

12 “*Injunction against honor*.” K.S.A. 84-5-109(b), *and amendments*

13 *thereto*.

14 “*Letter of credit*.” K.S.A. 84-5-102(a)(10), *and amendments thereto*.

15 (4) In addition article 1 of chapter 84 of the *Kansas Statutes Anno-*

16 *tated*, and *amendments thereto*, contains general definitions and princi-

17 ples of construction and interpretation applicable throughout this article.

18 Sec. 2. K.S.A. 84-2-104 is hereby amended to read as follows: 84-2-

19 104. (1) “Merchant” means a person ~~who that~~ deals in goods of the kind

20 or otherwise ~~by his occupation holds himself out~~ *holds itself out by oc-*

21 *cupation* as having knowledge or skill peculiar to the practices or goods

22 involved in the transaction or to ~~whom such~~ *which the* knowledge or skill

23 may be attributed by ~~his the person’s~~ employment of an agent or broker

24 or other intermediary ~~who by his occupation holds himself out that holds~~

25 *itself out by occupation* as having ~~such the~~ knowledge or skill.

26 (2) “Financing agency” means a bank, finance company or other per-

27 son ~~who that~~ in the ordinary course of business makes advances against

28 goods or documents of title or ~~who that~~ by arrangement with either the

29 seller or the buyer intervenes in ordinary course to make or collect pay-

30 ment due or claimed under the contract for sale, as by purchasing or

31 paying the seller’s draft or making advances against it or by merely taking

32 it for collection whether or not documents of title accompany *or are*

33 *associated with* the draft. ~~“Financing agency”~~ *The term* includes also a

34 bank or other person ~~who that~~ similarly intervenes between persons ~~who~~

35 *that* are in the position of seller and buyer in respect to the goods ~~(section~~

36 ~~84-2-707)~~ *(K.S.A. 84-2-707, and amendments thereto)*.

37 (3) “Between merchants” means in any transaction with respect to

38 which both parties are chargeable with the knowledge or skill of

39 merchants.

40 Sec. 3. K.S.A. 84-2-105 is hereby amended to read as follows: 84-2-

41 105. (1) ~~“Goods” means all things (including specially manufactured~~

42 ~~goods) which are movable at the time of identification to the contract for~~

43 ~~sale other than the money in which the price is to be paid, investment~~

1 securities (article 8) and things in action. “Goods” also includes the un-
 2 born young of animals and growing crops and other identified things
 3 attached to realty as described in the section on goods to be severed from
 4 realty (section 84-2-107).

5 ~~(2)~~ Goods must be both existing and identified before any interest in
 6 them ~~can~~ may pass. Goods ~~which~~ that are not both existing and identified
 7 are “future” goods. A purported present sale of future goods or of any
 8 interest therein operates as a contract to sell.

9 ~~(3)~~ (2) There may be a sale of a part interest in existing identified
 10 goods.

11 ~~(4)~~ (3) An undivided share in an identified bulk of fungible goods is
 12 sufficiently identified to be sold although the quantity of the bulk is not
 13 determined. Any agreed proportion of ~~such a~~ the bulk or any quantity
 14 thereof agreed upon by number, weight or other measure may to the
 15 extent of the seller’s interest in the bulk be sold to the buyer ~~who~~ that
 16 then becomes an owner in common.

17 ~~(5)~~ (4) “Lot” means a parcel or a single article which is the subject
 18 matter of a separate sale or delivery, whether or not it is sufficient to
 19 perform the contract.

20 ~~(6)~~ (5) “Commercial unit” means such a unit of goods as by com-
 21 mercial usage is a single whole for purposes of sale and division of which
 22 materially impairs its character or value on the market or in use. A com-
 23 mercial unit may be a single article (as a machine) or a set of articles (as
 24 a suite of furniture or an assortment of sizes) or a quantity (as a bale,
 25 gross, or carload) or any other unit treated in use or in the relevant market
 26 as a single whole.

27 New Sec. 4. (UCC 2-108.) (1) A transaction subject to this article is
 28 also subject to any applicable:

29 (a) Registration of motor vehicles pursuant to K.S.A. 8-126 through
 30 8-149, and amendments thereto, except with respect to the rights of a
 31 buyer in ordinary course of business under K.S.A. 84-2-403(2), and
 32 amendments thereto, which arise before a certificate of title covering the
 33 goods is effective in the name of any other buyer;

34 (b) rule of law that establishes a different rule for consumers; or

35 (c) statute of this state applicable to the transaction, such as a statute
 36 dealing with:

37 (i) The sale or lease of agricultural products;

38 (ii) the transfer of human blood, blood products, tissues, or parts;

39 (iii) the consignment or transfer by artists of works of art or fine prints;

40 (iv) distribution agreements, franchises, and other relationships
 41 through which goods are sold;

42 (v) the misbranding or adulteration of food products or drugs; and

43 (vi) dealers in particular products, such as automobiles, motorized

1 wheelchairs, agricultural equipment, and hearing aids.

2 (2) Except for the rights of a buyer in ordinary course of business
3 under subsection (1)(a), in the event of a conflict between this article and
4 a law referred to in subsection (1), that law governs.

5 (3) For purposes of this article, failure to comply with a law referred
6 to in subsection (1) has only the effect specified in that law.

7 (4) This article modifies, limits, and supersedes the federal electronic
8 signatures in global and national commerce act, 15 U.S.C. section 7001
9 et seq., except that nothing in this article modifies, limits, or supersedes
10 section 7001(c) of that act or authorizes electronic delivery of any of the
11 notices described in section 7003(b) of that act.

12 Sec. 5. K.S.A. 84-2-201 is hereby amended to read as follows: 84-2-
13 201. (1) ~~Except as otherwise provided in this section~~ A contract for the
14 sale of goods for the price of ~~\$500~~ \$5,000 or more is not enforceable by
15 way of action or defense unless there is some ~~writing~~ *writing record* sufficient to
16 indicate that a contract for sale has been made between the parties and
17 signed by the party against ~~whom~~ *which* enforcement is sought or by ~~his~~
18 *the party's* authorized agent or broker. A ~~writing~~ *writing record* is not insufficient
19 because it omits or incorrectly states a term agreed upon, but the contract
20 is not enforceable under this ~~paragraph~~ *subsection* beyond the quantity
21 of goods shown in ~~such writing~~ *the record*.

22 (2) Between merchants if within a reasonable time a ~~writing~~ *writing record*
23 in confirmation of the contract and sufficient against the sender is re-
24 ceived and the party receiving it has reason to know its contents, it satisfies
25 the requirements of subsection (1) against ~~such party~~ *the recipient* unless
26 ~~written~~ notice of objection to its contents is given *in a record* within ~~ten~~
27 *10* days after it is received.

28 (3) A contract ~~which~~ *that* does not satisfy the requirements of sub-
29 section (1) but which is valid in other respects is enforceable:

30 (a) If the goods are to be specially manufactured for the buyer and
31 are not suitable for sale to others in the ordinary course of the seller's
32 business and the seller, before notice of repudiation is received and under
33 circumstances ~~which~~ *that* reasonably indicate that the goods are for the
34 buyer, has made either a substantial beginning of their manufacture or
35 commitments for their procurement; ~~or~~

36 (b) if the party against ~~whom~~ *which* enforcement is sought admits in
37 ~~his~~ *the party's* pleading, *or in the party's* testimony or otherwise ~~in court~~
38 *under oath* that a contract for sale was made, but the contract is not
39 enforceable under this ~~provision~~ *paragraph* beyond the quantity of goods
40 admitted; or

41 (c) with respect to goods for which payment has been made and ac-
42 cepted or which have been received and accepted (~~section 84-2-606~~)
43 (*K.S.A. 84-2-606, and amendments thereto*).

1 (4) *A contract that is enforceable under this section is not unenfor-*
2 *ceable merely because it is not capable of being performed within one year*
3 *or any other period after its making.*

4 Sec. 6. K.S.A. 84-2-202 is hereby amended to read as follows: 84-2-
5 202. (1) Terms with respect to which the confirmatory ~~memoranda re-~~
6 ~~ords~~ of the parties agree or which are otherwise set forth in a ~~writing~~
7 ~~record~~ intended by the parties as a final expression of their agreement
8 with respect to such terms as are included therein may not be contra-
9 dicted by evidence of any prior agreement or of a contemporaneous oral
10 agreement but may be ~~explained or~~ supplemented *by evidence of:*

11 (a) ~~by~~ Course of dealing or usage of trade (~~section 84-1-205~~) (K.S.A.
12 84-1-205, *and amendments thereto*) or ~~by~~ course of performance (~~section~~
13 ~~84-2-208~~) (K.S.A. 84-2-208, *and amendments thereto*); and

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

17 (2) *Terms in a record may be explained by evidence of course of per-*
18 *formance, course of dealing, or usage of trade without a preliminary de-*
19 *termination by the court that the language used is ambiguous.*

20 Sec. 7. K.S.A. 84-2-203 is hereby amended to read as follows: 84-2-
21 203. The affixing of a seal to a ~~writing record~~ evidencing a contract for
22 sale or an offer to buy or sell goods does not constitute the ~~writing record~~
23 a sealed instrument ~~and~~. The law with respect to sealed instruments does
24 not apply to such a contract or offer.

25 Sec. 8. K.S.A. 84-2-204 is hereby amended to read as follows: 84-2-
26 204. (1) A contract for sale of goods may be made in any manner sufficient
27 to show agreement, including *after an acceptance*, conduct by both parties
28 which recognizes the existence of ~~such~~ a contract, *the interaction of elec-*
29 *tronic agents, and the interaction of an electronic agent and an individual.*

30 (2) An agreement sufficient to constitute a contract for sale may be
31 found even ~~though~~ *if* the moment of its making is undetermined.

32 (3) Even ~~though~~ *if* one or more terms are left open a contract for sale
33 does not fail for indefiniteness if the parties have intended to make a
34 contract and there is a reasonably certain basis for giving an appropriate
35 remedy.

36 (4) *Except as otherwise provided in K.S.A. 84-2-211 through 84-2-*
37 *213, and amendments thereto, the following rules apply:*

38 (a) *A contract may be formed by the interaction of electronic agents*
39 *of the parties, even if no individual was aware of or reviewed the elec-*
40 *tronic agents' actions or the resulting terms and agreements.*

41 (b) *A contract may be formed by the interaction of an electronic agent*
42 *and an individual acting on the individual's own behalf or for another*
43 *person. A contract is formed if the individual takes actions that the in-*

1 *dividual is free to refuse to take or makes a statement, and the individual*
 2 *has reason to know that the actions or statement will:*

3 (i) *Cause the electronic agent to complete the transaction or perform-*
 4 *ance; or*

5 (ii) *indicate acceptance of an offer, regardless of other expressions or*
 6 *actions by the individual to which the electronic agent cannot react.*

7 Sec. 9. K.S.A. 84-2-205 is hereby amended to read as follows: 84-2-
 8 205. An offer by a merchant to buy or sell goods in a signed ~~writing which~~
 9 *record that* by its terms gives assurance that it will be held open is not
 10 revocable, for lack of consideration, during the time stated or if no time
 11 is stated for a reasonable time, but in no event may ~~such the~~ period of
 12 irrevocability exceed three months, ~~but any~~. *Any* such term of assurance
 13 ~~on~~ in a form supplied by the offeree must be separately signed by the
 14 offeror.

15 Sec. 10. K.S.A. 84-2-206 is hereby amended to read as follows: 84-
 16 2-206. (1) Unless otherwise unambiguously indicated by the language or
 17 circumstances:

18 (a) An offer to make a contract shall be construed as inviting accep-
 19 tance in any manner and by any medium reasonable in the circumstances;

20 (b) an order or other offer to buy goods for prompt or current ship-
 21 ment shall be construed as inviting acceptance either by a prompt promise
 22 to ship or by the prompt or current shipment of conforming or noncon-
 23 forming goods, but ~~such a the~~ shipment of nonconforming goods ~~does~~
 24 ~~not constitute~~ *is not* an acceptance if the seller seasonably notifies the
 25 buyer that the shipment is offered only as an accommodation to the buyer.

26 (2) ~~Where~~ *If* the beginning of a requested performance is a reason-
 27 able mode of acceptance, an offeror ~~who that~~ is not notified of acceptance
 28 within a reasonable time may treat the offer as having lapsed before
 29 acceptance.

30 (3) *A definite and seasonable expression of acceptance in a record*
 31 *operates as an acceptance even if it contains terms additional to or dif-*
 32 *ferent from the offer.*

33 Sec. 11. K.S.A. 84-2-207 is hereby amended to read as follows: 84-
 34 2-207. (1) ~~A definite and seasonable expression of acceptance or a written~~
 35 ~~confirmation which is sent within a reasonable time operates as an ac-~~
 36 ~~ceptance even though it states terms additional to or different from those~~
 37 ~~offered or agreed upon, unless acceptance is expressly made conditional~~
 38 ~~on assent to the additional or different terms.~~

39 ~~—(2)—~~ *The additional terms are to be construed as proposals for addition*
 40 *to the contract. Between merchants such terms become part of the con-*
 41 *tract unless:*

42 ~~—(a)—~~ *the offer expressly limits acceptance to the terms of the offer;*

43 ~~—(b)—~~ *they materially alter it, or*

1 ~~—(c)— notification of objection to them has already been given or is given~~
 2 ~~within a reasonable time after notice of them is received.~~

3 ~~—(3)— Conduct by both parties which recognizes the existence of a con-~~
 4 ~~tract is sufficient to establish a contract for sale although the writings of~~
 5 ~~the parties do not otherwise establish a contract. In such case the terms~~
 6 ~~of the particular contract consist of those terms on which the writings of~~
 7 ~~the parties agree, together with any supplementary terms incorporated~~
 8 ~~under any other provisions of this act. Subject to K.S.A. 84-2-202, and~~
 9 ~~amendments thereto, if (i) conduct by both parties recognizes the existence~~
 10 ~~of a contract although their records do not otherwise establish a contract,~~
 11 ~~(ii) a contract is formed by an offer and acceptance, or (iii) a contract~~
 12 ~~formed in any manner is confirmed by a record that contains terms ad-~~
 13 ~~ditional to or different from those in the contract being confirmed, the~~
 14 ~~terms of the contract are:~~

15 (a) *Terms that appear in the records of both parties;*
 16 (b) *terms, whether in a record or not, to which both parties agree;*
 17 *and*
 18 (c) *terms supplied or incorporated under any provision of this act.*

19 Sec. 12. K.S.A. 84-2-209 is hereby amended to read as follows: 84-
 20 2-209. (1) An agreement modifying a contract within this article needs
 21 no consideration to be binding.

22 (2) ~~A signed~~ An agreement *in a signed record* which excludes mod-
 23 ification or rescission except by a signed ~~writing cannot~~ *record may not*
 24 be otherwise modified or rescinded, but except as between merchants
 25 such a requirement ~~on~~ *in* a form supplied by the merchant must be sep-
 26 arately signed by the other party.

27 (3) The requirements of ~~the statute of frauds section of this article~~
 28 ~~(section 84-2-201)~~ K.S.A. 84-2-201, *and amendments thereto*, must be
 29 satisfied if the contract as modified is within its provisions.

30 (4) Although an attempt at modification or rescission does not satisfy
 31 the requirements of subsection (2) or (3) it ~~can~~ *may* operate as a waiver.

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

37 Sec. 13. K.S.A. 2004 Supp. 84-2-210 is hereby amended to read as
 38 follows: 84-2-210. (1) ~~A party may perform his duty through a delegate~~
 39 ~~unless otherwise agreed or unless the other party has a substantial interest~~
 40 ~~in having his original promisor perform or control the acts required by~~
 41 ~~the contract. No delegation of performance relieves the party delegating~~
 42 ~~of any duty to perform or any liability for breach.~~

43 ~~—(2)— Except as otherwise provided in K.S.A. 2004 Supp. 84-9-406 and~~

1 amendments thereto, unless otherwise agreed all rights of either seller or
2 buyer can be assigned except where the assignment would materially
3 change the duty of the other party, or increase materially the burden or
4 risk imposed on him by his contract, or impair materially his chance of
5 obtaining return performance. A right to damages for breach of the whole
6 contract or a right arising out of the assignor's due performance of his
7 entire obligation can be assigned despite agreement otherwise.

8 ~~—(3)—~~ The creation, attachment, perfection, or enforcement of a security
9 interest in the seller's interest under a contract is not a transfer that
10 materially changes the duty of or increases materially the burden or risk
11 imposed on the buyer or impairs materially the buyer's chance of obtain-
12 ing return performance within the purview of subsection (2) unless, and
13 then only to the extent that, enforcement actually results in a delegation
14 of material performance of the seller. Even in that event, the creation,
15 attachment, perfection, and enforcement of the security interest remain
16 effective, but (i) the seller is liable to the buyer for damages caused by
17 the delegation to the extent that the damages could not reasonably be
18 prevented by the buyer, and (ii) a court having jurisdiction may grant
19 other appropriate relief, including cancellation of the contract for sale or
20 an injunction against enforcement of the security interest or consum-
21 mation of the enforcement.

22 ~~—(4)—~~ Unless the circumstances indicate the contrary a prohibition of
23 assignment of "the contract" is to be construed as barring only the del-
24 egation to the assignee of the assignor's performance.

25 ~~—(5)—~~ An assignment of "the contract" or of "all my rights under the
26 contract" or an assignment in similar general terms is an assignment of
27 rights and unless the language or the circumstances (as in an assignment
28 for security) indicate the contrary, it is a delegation of performance of
29 the duties of the assignor and its acceptance by the assignee constitutes
30 a promise by him to perform those duties. This promise is enforceable
31 by either the assignor or the other party to the original contract.

32 ~~—(6)—~~ The other party may treat any assignment which delegates per-
33 formance as creating reasonable grounds for insecurity and may without
34 prejudice to his rights against the assignor demand assurances from the
35 assignee (K.S.A. 84-2-609). *(1) If the seller or buyer assigns rights under*
36 *a contract, the following rules apply:*

37 *(a) Subject to paragraph (b) and except as otherwise provided in*
38 *K.S.A. 2004 Supp. 84-9-406, and amendments thereto, or as otherwise*
39 *agreed, all rights of the seller or the buyer may be assigned unless the*
40 *assignment would materially change the duty of the other party, increase*
41 *materially the burden or risk imposed on that party by the contract, or*
42 *impair materially that party's chance of obtaining return performance. A*
43 *right to damages for breach of the whole contract or a right arising out*

1 of the assignor's due performance of its entire obligation may be assigned
2 despite an agreement otherwise.

3 (b) The creation, attachment, perfection, or enforcement of a security
4 interest in the seller's interest under a contract is not an assignment that
5 materially changes the duty of or materially increases the burden or risk
6 imposed on the buyer or materially impairs the buyer's chance of obtain-
7 ing return performance under paragraph (a) unless, and only to the extent
8 that, enforcement of the security interest results in a delegation of a ma-
9 terial performance of the seller. Even in that event, the creation, attach-
10 ment, perfection, and enforcement of the security interest remain effective.
11 However, the seller is liable to the buyer for damages caused by the dele-
12 gation to the extent that the damages could not reasonably be prevented
13 by the buyer, and a court may grant other appropriate relief, including
14 cancellation of the contract or an injunction against enforcement of the
15 security interest or consummation of the enforcement.

16 (2) If the seller or buyer delegates performance of its duties under a
17 contract, the following rules apply:

18 (a) A party may perform its duties through a delegate unless other-
19 wise agreed or unless the other party has a substantial interest in having
20 the original promisor perform or control the acts required by the contract.
21 Delegation of performance does not relieve the delegating party of any
22 duty to perform or liability for breach.

23 (b) Acceptance of a delegation of duties by the assignee constitutes a
24 promise to perform those duties. The promise is enforceable by either the
25 assignor or the other party to the original contract.

26 (c) The other party may treat any delegation of duties as creating
27 reasonable grounds for insecurity and may without prejudice to its rights
28 against the assignor demand assurances from the assignee under K.S.A.
29 84-2-609, and amendments thereto.

30 (d) A contractual term prohibiting the delegation of duties otherwise
31 delegable under paragraph (a) is enforceable, and an attempted delegation
32 is not effective.

33 (3) An assignment of "the contract" or of "all my rights under the
34 contract" or an assignment in similar general terms is an assignment of
35 rights and unless the language or the circumstances, as in an assignment
36 for security, indicate the contrary, it is also a delegation of performance
37 of the duties of the assignor.

38 (4) Unless the circumstances indicate the contrary, a prohibition of
39 assignment of "the contract" is to be construed as barring only the dele-
40 gation to the assignee of the assignor's performance.

41 New Sec. 14. (UCC 2-211.) (1) A record or signature may not be
42 denied legal effect or enforceability solely because it is in electronic form.

43 (2) A contract may not be denied legal effect or enforceability solely

1 because an electronic record was used in its formation.

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

5 (4) A contract formed by the interaction of an individual and an elec-
6 tronic agent under K.S.A. 84-2-204(4)(b), and amendments thereto, does
7 not include terms provided by the individual if the individual had reason
8 to know that the agent could not react to the terms as provided.

9 New Sec. 15. (UCC 2-212.) An electronic record or electronic sig-
10 nature is attributable to a person if it was the act of the person or the
11 person's electronic agent or the person is otherwise legally bound by the
12 act.

13 New Sec. 16. (UCC 2-213.) (1) If the receipt of an electronic com-
14 munication has a legal effect, it has that effect even if no individual is
15 aware of its receipt.

16 (2) Receipt of an electronic acknowledgment of an electronic com-
17 munication establishes that the communication was received but, in itself,
18 does not establish that the content sent corresponds to the content
19 received.

20 Sec. 17. K.S.A. 84-2-302 is hereby amended to read as follows: 84-
21 2-302. (1) If the court as a matter of law finds the contract or any ~~clause~~
22 *term* of the contract to have been unconscionable at the time it was made,
23 the court may refuse to enforce the contract, or it may enforce the re-
24 mainder of the contract without the unconscionable ~~clause term~~, or it may
25 so limit the application of any unconscionable ~~clause term~~ as to avoid any
26 unconscionable result.

27 (2) ~~When~~ *If* it is claimed or appears to the court that the contract or
28 any ~~clause term~~ thereof may be unconscionable, the parties shall be af-
29 farded a reasonable opportunity to present evidence as to its commercial
30 setting, purpose and effect to aid the court in making the determination.

31 Sec. 18. K.S.A. 84-2-304 is hereby amended to read as follows: 84-
32 2-304. (1) The price ~~can~~ *may* be made payable in money or otherwise. If
33 it is payable in whole or in part in goods each party is a seller of the goods
34 ~~which he that the party~~ is to transfer.

35 (2) Even ~~though~~ *if* all or part of the price is payable in an interest in
36 ~~realty~~ *real property* the transfer of the goods and the seller's obligations
37 with reference to them are subject to this article, but not the transfer of
38 the interest in ~~realty~~ *real property* or the transferor's obligations in con-
39 nection therewith.

40 Sec. 19. K.S.A. 84-2-305 is hereby amended to read as follows: 84-
41 2-305. (1) The parties if they so intend ~~can~~ *may* conclude a contract for
42 sale even ~~though~~ *if* the price is not settled. In such a case the price is a
43 reasonable price at the time for delivery if:

- 1 (a) Nothing is said as to price; ~~or~~
 2 (b) the price is left to be agreed by the parties and they fail to agree;
 3 or
 4 (c) the price is to be fixed in terms of some agreed market or other
 5 standard as set or recorded by a third person or agency and it is not so
 6 set or recorded.
- 7 (2) A price to be fixed by the seller or by the buyer means a price ~~for~~
 8 ~~him to fix~~ *to be fixed* in good faith.
- 9 (3) ~~When~~ *If* a price left to be fixed otherwise than by agreement of
 10 the parties fails to be fixed through fault of one party, the other may at
 11 ~~his~~ *the party's* option treat the contract as canceled or ~~himself~~ *the party*
 12 *may* fix a reasonable price.
- 13 (4) ~~Where~~ *If*, however, the parties intend not to be bound unless the
 14 price ~~be~~ *is* fixed or agreed and it is not fixed or agreed there is no contract.
 15 In such a case the buyer must return any goods already received or if
 16 unable ~~so~~ to do *so* must pay their reasonable value at the time of delivery
 17 and the seller must return any portion of the price paid on account.
- 18 Sec. 20. K.S.A. 84-2-308 is hereby amended to read as follows: 84-
 19 2-308. Unless otherwise agreed:
- 20 (a) The place for delivery of goods is the seller's place of business or
 21 if ~~he has~~ none ~~his~~, *the seller's* residence; but
- 22 (b) in a contract for sale of identified goods ~~which~~ *that* to the knowl-
 23 edge of the parties at the time of contracting are in some other place,
 24 that place is the place for their delivery; and
- 25 (c) documents of title may be delivered through customary banking
 26 channels.
- 27 Sec. 21. K.S.A. 84-2-309 is hereby amended to read as follows: 84-
 28 2-309. (1) The time for shipment or delivery or any other action under a
 29 contract if not provided in this article or agreed upon shall be a reasonable
 30 time.
- 31 (2) ~~Where~~ *If* the contract provides for successive performances but
 32 is indefinite in duration it is valid for a reasonable time but unless oth-
 33 erwise agreed may be terminated at any time by either party.
- 34 (3) Termination of a contract by one party except on the happening
 35 of an agreed event requires that reasonable notification be received by
 36 the other party and an agreement dispensing with notification is invalid
 37 if its operation would be unconscionable. *A term specifying standards for*
 38 *the nature and timing of notice is enforceable if the standards are not*
 39 *manifestly unreasonable.*
- 40 Sec. 22. K.S.A. 84-2-310 is hereby amended to read as follows: 84-
 41 2-310. Unless otherwise agreed:
- 42 (a) Payment is due at the time and place at which the buyer is to
 43 receive the goods even though the place of shipment is the place of de-

1 livery; ~~and~~

2 (b) if the seller is *required or* authorized to send the goods ~~he, the~~
 3 *seller* may ship them under reservation, and may tender the documents
 4 of title, but the buyer may inspect the goods after their arrival before
 5 payment is due unless ~~such the~~ inspection is inconsistent with the terms
 6 of the contract (~~section 84-2-513~~) (K.S.A. 84-2-513, *and amendments*
 7 *thereto*); ~~and~~

8 (c) if *tender of delivery is authorized and agreed to be* made by way
 9 of documents of title otherwise than by ~~subsection~~ *paragraph* (b) then
 10 payment is due *regardless of where the goods are to be received* (i) at the
 11 time and place at which the buyer is to receive *delivery of the tangible*
 12 documents ~~regardless of where the goods are to be received, or~~ (ii) *at the*
 13 *time the buyer is to receive delivery of the electronic documents and at*
 14 *the seller's place of business or if none, the seller's residence*; and

15 (d) ~~where~~ if the seller is required or authorized to ship the goods on
 16 credit, the credit period runs from the time of shipment but ~~post-dating~~
 17 *postdating* the invoice or delaying its dispatch will correspondingly delay
 18 the starting of the credit period.

19 Sec. 23. K.S.A. 84-2-311 is hereby amended to read as follows: 84-
 20 2-311. (1) An agreement for sale which is otherwise sufficiently definite
 21 (~~subsection (3) of section 84-2-204~~) (K.S.A. 84-2-204(3), *and amendments*
 22 *thereto*) to be a contract is not made invalid by the fact that it leaves
 23 particulars of performance to be specified by one of the parties. Any such
 24 specification must be made in good faith and within limits set by com-
 25 mercial reasonableness.

26 (2) Unless otherwise agreed, specifications relating to assortment of
 27 the goods are at the buyer's option and ~~except as otherwise provided in~~
 28 ~~subsections (1) (c) and (3) of section 84-2-311~~ specifications or arrange-
 29 ments relating to shipment are at the seller's option.

30 (3) ~~Where such~~ *If the* specification would materially affect the other
 31 party's performance but is not seasonably made or ~~where~~ *if* one party's
 32 cooperation is necessary to the agreed performance of the other but is
 33 not seasonably forthcoming, the other party in addition to all other
 34 remedies:

35 (a) Is excused for any resulting delay in ~~his own~~ *that party's* perform-
 36 ance; and

37 (b) may also either proceed to perform in any reasonable manner or
 38 after the time for a material part of ~~his own~~ *that party's* performance
 39 treat the failure to specify or to cooperate as a breach by failure to deliver
 40 or accept the goods.

41 Sec. 24. K.S.A. 84-2-312 is hereby amended to read as follows: 84-
 42 2-312. (1) Subject to subsection ~~(2)~~ (3), there is in a contract for sale a
 43 warranty by the seller that:

1 (a) The title conveyed shall be good, and its transfer rightful *and shall*
 2 *not unreasonably expose the buyer to litigation because of any colorable*
 3 *title claims to or interest in the goods; and*

4 (b) the goods shall be delivered free from any security interest or
 5 other lien or encumbrance of which the buyer at the time of contracting
 6 has no knowledge.

7 ~~(2) A warranty under subsection (1) will be excluded or modified only~~
 8 ~~by specific language or by circumstances which give the buyer reason to~~
 9 ~~know that the person selling does not claim title in himself or that he is~~
 10 ~~purporting to sell only such right or title as he or a third person may have.~~

11 ~~(3) Unless otherwise agreed a seller who is a merchant regularly deal-~~
 12 ~~ing in goods of the kind warrants that the goods shall be delivered free~~
 13 ~~of the rightful claim of any third person by way of infringement or the~~
 14 ~~like but a buyer who furnishes specifications to the seller must hold the~~
 15 ~~seller harmless against any such claim which arises out of compliance with~~
 16 ~~the specifications.~~

17 (2) *Unless otherwise agreed, a seller that is a merchant regularly deal-*
 18 *ing in goods of the kind warrants that the goods shall be delivered free of*
 19 *the rightful claim of any third person by way of infringement or the like*
 20 *but a buyer that furnishes specifications to the seller must hold the seller*
 21 *harmless against any such claim that arises out of compliance with the*
 22 *specifications.*

23 (3) *A warranty under this section may be disclaimed or modified only*
 24 *by specific language or by circumstances that give the buyer reason to*
 25 *know that the seller does not claim title, that the seller is purporting to*
 26 *sell only the right or title as the seller or a third person may have, or that*
 27 *the seller is selling subject to any claims of infringement or the like.*

28 Sec. 25. K.S.A. 84-2-313 is hereby amended to read as follows: 84-
 29 2-313. (1) *In this section, "immediate buyer" means a buyer that enters*
 30 *into a contract with the seller.*

31 (2) Express warranties by the seller *to the immediate buyer* are cre-
 32 ated as follows:

33 (a) Any affirmation of fact or promise made by the seller ~~to the buyer~~
 34 which relates to the goods and becomes part of the basis of the bargain
 35 creates an express warranty that the goods shall conform to the affirma-
 36 tion or promise.

37 (b) Any description of the goods which is made part of the basis of
 38 the bargain creates an express warranty that the goods shall conform to
 39 the description.

40 (c) Any sample or model ~~which~~ *that* is made part of the basis of the
 41 bargain creates an express warranty that the whole of the goods shall
 42 conform to the sample or model.

43 ~~(2)~~ (3) It is not necessary to the creation of an express warranty that

1 the seller use formal words such as “warrant” or “guarantee” or that ~~he~~
2 *the seller* have a specific intention to make a warranty, but an affirmation
3 merely of the value of the goods or a statement purporting to be merely
4 the seller’s opinion or commendation of the goods does not create a
5 warranty.

6 (4) *Any remedial promise made by the seller to the immediate buyer*
7 *creates an obligation that the promise will be performed upon the hap-*
8 *pening of the specified event.*

9 New Sec. 26. (UCC 2-313a.) (1) In this section:

10 (a) “Immediate buyer” means a buyer that enters into a contract with
11 the seller.

12 (b) “Remote purchaser” means a person that buys or leases goods
13 from an immediate buyer or other person in the normal chain of
14 distribution.

15 (2) This section applies only to new goods and goods sold or leased
16 as new goods in a transaction of purchase in the normal chain of
17 distribution.

18 (3) If in a record packaged with or accompanying the goods the seller
19 makes an affirmation of fact or promise that relates to the goods, provides
20 a description that relates to the goods, or makes a remedial promise, and
21 the seller reasonably expects the record to be, and the record is, furnished
22 to the remote purchaser, the seller has an obligation to the remote pur-
23 chaser that:

24 (a) The goods will conform to the affirmation of fact, promise, or
25 description unless a reasonable person in the position of the remote pur-
26 chaser would not believe that the affirmation of fact, promise, or descrip-
27 tion created an obligation; and

28 (b) the seller will perform the remedial promise.

29 (4) It is not necessary to the creation of an obligation under this sec-
30 tion that the seller use formal words such as “warrant” or “guarantee” or
31 that the seller have a specific intention to undertake an obligation, but an
32 affirmation merely of the value of the goods or a statement purporting to
33 be merely the seller’s opinion or commendation of the goods does not
34 create an obligation.

35 (5) The following rules apply to the remedies for breach of an obli-
36 gation created under this section:

37 (a) The seller may modify or limit the remedies available to the re-
38 mote purchaser if the modification or limitation is furnished to the remote
39 purchaser no later than the time of purchase or if the modification or
40 limitation is contained in the record that contains the affirmation of fact,
41 promise, or description.

42 (b) Subject to a modification or limitation of remedy, a seller in
43 breach is liable for incidental or consequential damages under K.S.A. 84-

1 2-715, and amendments thereto, but not for lost profits.

2 (c) The remote purchaser may recover as damages for breach of a
3 seller's obligation arising under subsection (3) the loss resulting in the
4 ordinary course of events as determined in any reasonable manner.

5 (6) An obligation that is not a remedial promise is breached if the
6 goods did not conform to the affirmation of fact, promise, or description
7 creating the obligation when the goods left the seller's control.

8 New Sec. 27. (UCC 2-313b.) (1) In this section:

9 (a) "Immediate buyer" means a buyer that enters into a contract with
10 the seller.

11 (b) "Remote purchaser" means a person that buys or leases goods
12 from an immediate buyer or other person in the normal chain of
13 distribution.

14 (2) This section applies only to new goods and goods sold or leased
15 as new goods in a transaction of purchase in the normal chain of
16 distribution.

17 (3) If in an advertisement or a similar communication to the public
18 a seller makes an affirmation of fact or promise that relates to the goods,
19 provides a description that relates to the goods, or makes a remedial
20 promise, and the remote purchaser enters into a transaction of purchase
21 with knowledge of and with the expectation that the goods will conform
22 to the affirmation of fact, promise, or description, or that the seller will
23 perform the remedial promise, the seller has an obligation to the remote
24 purchaser that:

25 (a) The goods will conform to the affirmation of fact, promise, or
26 description unless a reasonable person in the position of the remote pur-
27 chaser would not believe that the affirmation of fact, promise, or descrip-
28 tion created an obligation; and

29 (b) the seller will perform the remedial promise.

30 (4) It is not necessary to the creation of an obligation under this sec-
31 tion that the seller use formal words such as "warrant" or "guarantee" or
32 that the seller have a specific intention to undertake an obligation, but an
33 affirmation merely of the value of the goods or a statement purporting to
34 be merely the seller's opinion or commendation of the goods does not
35 create an obligation.

36 (5) The following rules apply to the remedies for breach of an obli-
37 gation created under this section:

38 (a) The seller may modify or limit the remedies available to the re-
39 mote purchaser if the modification or limitation is furnished to the remote
40 purchaser no later than the time of purchase. The modification or limi-
41 tation may be furnished as part of the communication that contains the
42 affirmation of fact, promise, or description.

43 (b) Subject to a modification or limitation of remedy, a seller in

1 breach is liable for incidental or consequential damages under K.S.A. 84-
2 2-715, and amendments thereto, but not for lost profits.

3 (c) The remote purchaser may recover as damages for breach of a
4 seller's obligation arising under subsection (3) the loss resulting in the
5 ordinary course of events as determined in any reasonable manner.

6 (6) An obligation that is not a remedial promise is breached if the
7 goods did not conform to the affirmation of fact, promise, or description
8 creating the obligation when the goods left the seller's control.

9 Sec. 28. K.S.A. 84-2-314 is hereby amended to read as follows: 84-
10 2-314. (1) Unless excluded or modified (~~section 84-2-316~~) (K.S.A. 84-2-
11 316, *and amendments thereto*), a warranty that the goods shall be mer-
12 chantable is implied in a contract for their sale if the seller is a merchant
13 with respect to goods of that kind. Under this section the serving for value
14 of food or drink to be consumed either on the premises or elsewhere is
15 a sale.

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

17 (a) Pass without objection in the trade under the contract description;
18 ~~and~~

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

21 (c) are fit for the ordinary purposes for which ~~such~~ *goods of that*
22 *description* are used; ~~and~~

23 (d) run, within the variations permitted by the agreement, of even
24 kind, quality and quantity within each unit and among all units involved;
25 ~~and~~

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

28 (f) conform to the promises or affirmations of fact made on the con-
29 tainer or label if any.

30 (3) Unless excluded or modified (~~section 84-2-316~~) (K.S.A. 84-2-316,
31 *and amendments thereto*) other implied warranties may arise from course
32 of dealing or usage of trade.

33 Sec. 29. K.S.A. 84-2-316 is hereby amended to read as follows: 84-
34 2-316. (1) Words or conduct relevant to the creation of an express war-
35 ranty and words or conduct tending to negate or limit warranty shall be
36 construed wherever reasonable as consistent with each other; but subject
37 to ~~the provisions of this article on parol or extrinsic evidence~~ (K.S.A. 84-
38 2-202), *and amendments thereto*, negation or limitation is inoperative to
39 the extent that such construction is unreasonable.

40 (2) Subject to subsection (3), to exclude or modify the implied war-
41 ranty of merchantability or any part of it *in a consumer contract the lan-*
42 *guage must be in a record, be conspicuous, and state "The seller under-*
43 *takes no responsibility for the quality of the goods except as otherwise*

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

14 (3) Notwithstanding subsection (2):

15 (a) Unless the circumstances indicate otherwise, all implied warran-
 16 ties are excluded by expressions like “as is,” “with all faults” or other
 17 language ~~which that~~ in common understanding calls the buyer’s attention
 18 to the exclusion of warranties ~~and~~, makes plain that there is no implied
 19 warranty, *and, in a consumer contract evidenced by a record, is set forth*
 20 *conspicuously in the record; ~~and~~*

21 (b) ~~when~~ if the buyer before entering into the contract has examined
 22 the goods or the sample or model as fully as ~~such buyer~~ desired or has
 23 refused to examine the goods *after a demand by the seller* there is no
 24 implied warranty with regard to defects ~~which that~~ an examination ~~ought~~
 25 in the circumstances ~~to should~~ have revealed to ~~such the~~ buyer; ~~and~~

26 (c) an implied warranty ~~can may~~ also be excluded or modified by
 27 course of dealing or course of performance or usage of trade; and

28 (d) with respect to the sale of livestock, other than the sale of livestock
 29 for immediate slaughter, there shall be no implied warranties, except that
 30 the provisions of this paragraph shall not apply in any case where the
 31 seller knowingly sells livestock which is diseased.

32 (4) Remedies for breach of warranty ~~can may~~ be limited in accord-
 33 ~~ance with the provisions of this article on liquidation or limitation of~~
 34 ~~damages and on contractual modification of remedy (K.S.A. 84-2-718~~
 35 ~~and 84-2-719), and amendments thereto.~~

36 Sec. 30. K.S.A. 84-2-318 is hereby amended to read as follows: 84-
 37 2-318. (1) *In this section:*

38 (a) *“Immediate buyer” means a buyer that enters into a contract with*
 39 *the seller.*

40 (b) *“Remote purchaser” means a person that buys or leases goods*
 41 *from an immediate buyer or other person in the normal chain of*
 42 *distribution.*

43 (2) A seller’s warranty to an immediate buyer, whether express or

1 implied, *a seller's remedial promise to an immediate buyer, or a seller's*
 2 *obligation to a remote purchaser under section 26 or 27, and amendments*
 3 *thereto*, extends to any ~~natural person~~ *individual* who may reasonably be
 4 expected to use, consume or be affected by the goods and who is injured
 5 in person by breach of the warranty, *remedial promise, or obligation*. A
 6 seller may not exclude or limit the operation of this section.

7 Sec. 31. K.S.A. 84-2-325 is hereby amended to read as follows: 84-
 8 2-325. ~~(1) Failure of the buyer seasonably to furnish an agreed letter of~~
 9 ~~credit is a breach of the contract for sale.~~

10 ~~—(2)—The delivery to the seller of a proper letter of credit suspends the~~
 11 ~~buyer's obligation to pay. If the letter of credit is dishonored, the seller~~
 12 ~~may on reasonable notification to the buyer require payment directly from~~
 13 ~~him.~~

14 ~~—(3)—Unless otherwise agreed the term "letter of credit" or "banker's~~
 15 ~~credit" in a contract for sale means an irrevocable credit issued by a~~
 16 ~~financing agency of good repute and, where the shipment is overseas, of~~
 17 ~~good international repute. The term "confirmed credit" means that the~~
 18 ~~credit must also carry the direct obligation of such an agency which does~~
 19 ~~business in the seller's financial market. If the parties agree that the pri-~~
 20 ~~mary method of payment will be by letter of credit, the following rules~~
 21 ~~apply:~~

22 *(a) The buyer's obligation to pay is suspended by seasonable delivery*
 23 *to the seller of a letter of credit issued or confirmed by a financing agency*
 24 *of good repute in which the issuer and any confirmer undertake to pay*
 25 *against presentation of documents that evidence delivery of the goods.*

26 *(b) Failure of a party seasonably to furnish a letter of credit as agreed*
 27 *is a breach of the contract for sale.*

28 *(c) If the letter of credit is dishonored or repudiated, the seller, on*
 29 *seasonable notification, may require payment directly from the buyer.*

30 Sec. 32. K.S.A. 2004 Supp. 84-2-326 is hereby amended to read as
 31 follows: 84-2-326. (1) Unless otherwise agreed, if delivered goods may be
 32 returned by the buyer even ~~though~~ *if* they conform to the contract, the
 33 transaction is:

34 (a) A "sale on approval" if the goods are delivered primarily for use;
 35 and

36 (b) a "sale or return" if the goods are delivered primarily for resale.

37 (2) Goods held on approval are not subject to the claims of the
 38 buyer's creditors until acceptance; goods held on sale or return are subject
 39 to such claims while in the buyer's possession.

40 (3) Any "or return" term of a contract for sale is to be treated as a
 41 separate contract for sale ~~within the statute of frauds section of this article~~
 42 ~~(under K.S.A. 84-2-201), and amendments thereto~~, and as contradicting
 43 the sale aspect of the contract ~~within the provisions of this article on parol~~

1 ~~or extrinsic evidence (under K.S.A. 84-2-202), and amendments thereto.~~

2 (4) If a person delivers or consigns for sale goods which the person
3 used or bought for use of personal, family, or household purposes, these
4 goods do not become the property of the deliverer or consignee unless
5 the deliverer or consignee purchases and fully pays for the goods. Nothing
6 in this subsection shall prevent the deliverer or consignee from acting as
7 the deliverer's agent to transfer title to these goods to a buyer who pays
8 the full purchase price. Any payment received by the deliverer or con-
9 signee from a buyer of these goods, less any amount which the deliverer
10 expressly agreed could be deducted from the payment for commissions,
11 fees, or expenses, is the property of the deliverer and shall not be subject
12 to the claims of the deliverer's or consignee's creditors.

13 Sec. 33. K.S.A. 84-2-328 is hereby amended to read as follows: 84-
14 2-328. (1) In a sale by auction, if goods are put up in lots, each lot is the
15 subject of a separate sale.

16 (2) A sale by auction is complete when the auctioneer so announces
17 by the fall of the hammer or in other customary manner. ~~Where~~ If a bid
18 is made ~~while the hammer is falling in acceptance of~~ *during the process*
19 *of completing the sale but before a prior bid is accepted*, the auctioneer
20 ~~may in his~~ *has* discretion to reopen the bidding or to declare the goods
21 sold under the *prior bid on which the hammer was falling*.

22 (3) ~~Such a sale is with reserve unless the goods are in explicit terms~~
23 ~~put up without reserve. In an auction with reserve the auctioneer may~~
24 ~~withdraw the goods at any time until he announces completion of the~~
25 ~~sale. In an auction without reserve, after the auctioneer calls for bids on~~
26 ~~an article or lot, that article or lot cannot be withdrawn unless no bid is~~
27 ~~made within a reasonable time. In either case a bidder may retract his~~
28 ~~bid until the auctioneer's announcement of completion of the sale, but a~~
29 ~~bidder's retraction does not revive any previous bid. A sale by auction is~~
30 ~~subject to the seller's right to withdraw the goods unless at the time the~~
31 ~~goods are put up or during the course of the auction it is announced in~~
32 ~~express terms that the right to withdraw the goods is not reserved. In an~~
33 ~~auction in which the right to withdraw the goods is reserved, the auc-~~
34 ~~tioneer may withdraw the goods at any time until completion of the sale~~
35 ~~is announced by the auctioneer. In an auction in which the right to with-~~
36 ~~draw the goods is not reserved, after the auctioneer calls for bids on an~~
37 ~~article or lot, the article or lot may not be withdrawn unless no bid is~~
38 ~~made within a reasonable time. In either case a bidder may retract a bid~~
39 ~~until the auctioneer's announcement of completion of the sale, but a bid-~~
40 ~~der's retraction does not revive any previous bid.~~

41 (4) If the auctioneer knowingly receives a bid on the seller's behalf
42 or the seller makes or procures such a bid, and notice has not been given
43 that liberty for such bidding is reserved, the buyer may at ~~his~~ *the buyer's*

1 option avoid the sale or take the goods at the price of the last ~~good faith~~
 2 *good-faith* bid prior to the completion of the sale. This subsection shall
 3 not apply to any bid at ~~a forced sale~~ *an auction required by law*.

4 Sec. 34. K.S.A. 84-2-401 is hereby amended to read as follows: 84-
 5 2-401. Each provision of this article with regard to the rights, obligations
 6 and remedies of the seller, the buyer, purchasers or other third parties
 7 applies irrespective of title to the goods except where the provision refers
 8 to such title. Insofar as situations are not covered by the other provisions
 9 of this article and matters concerning title become material the following
 10 rules apply:

11 (1) Title to goods cannot pass under a contract for sale prior to their
 12 identification to the contract (~~section 84-2-501~~) (*K.S.A. 84-2-501, and*
 13 *amendments thereto*), and unless otherwise explicitly agreed the buyer
 14 acquires by their identification a special property as limited by this act.
 15 Any retention or reservation by the seller of the title (property) in goods
 16 shipped or delivered to the buyer is limited in effect to a reservation of
 17 a security interest. Subject to these provisions and ~~to the provisions of~~
 18 ~~the article on secured transactions (article 9) of chapter 84 of the Kansas~~
 19 *Statutes Annotated, and amendments thereto*, title to goods passes from
 20 the seller to the buyer in any manner and on any conditions explicitly
 21 agreed on by the parties.

22 (2) Unless otherwise explicitly agreed title passes to the buyer at the
 23 time and place at which the seller completes ~~his~~ performance with ref-
 24 erence to the ~~physical~~ delivery of the goods, despite any reservation of a
 25 security interest and even ~~though~~ *if* a document of title is to be delivered
 26 at a different time or place; and in particular and despite any reservation
 27 of a security interest by the bill of lading:

28 (a) If the contract requires or authorizes the seller to send the goods
 29 to the buyer but does not require ~~him~~ *the seller* to deliver them at des-
 30 tination, title passes to the buyer at the time and place of shipment; but

31 (b) if the contract requires delivery at destination, title passes on
 32 tender there.

33 (3) Unless otherwise explicitly agreed ~~where~~, *if* delivery is to be made
 34 without moving the goods:-

35 (a) If the seller is to deliver a *tangible* document of title, title passes
 36 at the time when and the place where ~~he~~ *the seller* delivers ~~such docu-~~
 37 ~~ments~~ *the document, and if the seller is to deliver an electronic document*
 38 *of title, title passes when the seller delivers the document; or*

39 (b) if the goods are at the time of contracting already identified and
 40 no documents *of title* are to be delivered, title passes at the time and place
 41 of contracting.

42 (4) A rejection or other refusal by the buyer to receive or retain the
 43 goods, whether or not justified, or a justified revocation of acceptance

1 reverts title to the goods in the seller. Such reversion occurs by operation
2 of law and is not a “sale.”

3 Sec. 35. K.S.A. 84-2-402 is hereby amended to read as follows: 84-
4 2-402. (1) Except as provided in subsections (2) and (3), rights of unse-
5 curred creditors of the seller with respect to goods ~~which~~ *that* have been
6 identified to a contract for sale are subject to the buyer’s rights to recover
7 the goods under ~~this article (sections K.S.A. 84-2-502 and 84-2-716), and~~
8 *amendments thereto.*

9 (2) A creditor of the seller may treat a sale or an identification of
10 goods to a contract for sale as void if as against ~~him~~ *the creditor* a retention
11 of possession by the seller is fraudulent under any rule of law of the state
12 where the goods are situated, ~~except that.~~ *However,* retention of posses-
13 sion in good faith and current course of trade by a merchant-seller for a
14 commercially reasonable time after a sale or identification is not
15 fraudulent.

16 (3) *Except as otherwise provided in K.S.A. 84-2-403(2), and amend-*
17 *ments thereto,* nothing in this article shall be deemed to impair the rights
18 of creditors of the seller:

19 (a) ~~Under the provisions of the article on secured transactions (article~~
20 ~~9) of chapter 84 of the Kansas Statutes Annotated, and amendments~~
21 ~~thereto; or~~

22 (b) ~~where~~ *if* identification to the contract or delivery is made not in
23 current course of trade but in satisfaction of or as security for a preexisting
24 claim for money, security, or the like and is made under circumstances
25 ~~which~~ *that* under any rule of law of the state where the goods are situated
26 would apart from this article constitute the transaction a fraudulent trans-
27 fer or voidable preference.

28 Sec. 36. K.S.A. 84-2-403 is hereby amended to read as follows: 84-
29 2-403. (1) A purchaser of goods acquires all title ~~which~~ *his* ~~that~~ *the pur-*
30 *chaser’s* transferor had or had power to transfer except that a purchaser
31 of a limited interest acquires rights only to the extent of the interest
32 purchased. A person with voidable title has power to transfer a good title
33 to a ~~good-faith~~ *good-faith* purchaser for value. ~~When~~ *If* goods have been
34 delivered under a transaction of purchase, the purchaser has such power
35 even ~~though~~ *if*:

36 (a) The transferor was deceived as to the identity of the purchaser;
37 ~~or;~~

38 (b) the delivery was in exchange for a check ~~which~~ *that* is later dis-
39 honored, ~~or;~~

40 (c) it was agreed that the transaction was to be a “cash sale;” or

41 (d) the delivery was procured through *criminal* fraud ~~punishable as~~
42 ~~larcenous under the criminal law.~~

43 (2) Any entrusting ~~of possession~~ of goods to a merchant ~~who~~ *that*

1 deals in goods of that kind gives ~~him~~ *the merchant* power to transfer all
 2 ~~rights of the entruster's rights to the goods and to transfer the goods free~~
 3 ~~of any interest~~ of the entruster to a buyer in ordinary course of business.

4 (3) "Entrusting" includes any delivery and any acquiescence in re-
 5 tention of possession regardless of any condition expressed between the
 6 parties to the delivery or acquiescence and regardless of whether the
 7 procurement of the entrusting or the possessor's disposition of the goods
 8 ~~have been such as to be larcenous~~ *was punishable* under the criminal law.

9 (4) The rights of other purchasers of goods and of lien creditors are
 10 governed by ~~the articles on secured transactions (article 9) and documents~~
 11 ~~of title (article 7)~~ *articles 7 and 9 of chapter 84 of the Kansas Statutes*
 12 *Annotated, and amendments thereto.*

13 Sec. 37. K.S.A. 84-2-501 is hereby amended to read as follows: 84-
 14 2-501. (1) The buyer obtains a special property and an insurable interest
 15 in goods by identification of existing goods as goods to which the contract
 16 refers even ~~though~~ *if* the goods so identified are nonconforming and ~~he~~
 17 ~~the buyer~~ has an option to return or reject them. Such identification ~~can~~
 18 ~~may~~ be made at any time and in any manner explicitly agreed to by the
 19 parties. In the absence of explicit agreement identification occurs:

20 (a) When the contract is made if it is for the sale of goods already
 21 existing and identified;

22 (b) if the contract is for the sale of future goods other than those
 23 described in paragraph (c), when goods are shipped, marked or otherwise
 24 designated by the seller as goods to which the contract refers;

25 (c) when the crops are planted or otherwise become growing crops
 26 or the young are conceived if the contract is for the sale of unborn young
 27 to be born within ~~twelve~~ 12 months after contracting or for the sale of
 28 crops to be harvested within ~~twelve~~ 12 months or the next normal harvest
 29 season after contracting whichever is longer.

30 (2) The seller retains an insurable interest in goods so long as title to
 31 or any security interest in the goods remains in ~~him and where~~ *the seller*.
 32 *If* the identification is by the seller alone ~~he~~, *the seller* may until default
 33 or insolvency or notification to the buyer that the identification is final
 34 substitute other goods for those identified.

35 (3) Nothing in this section impairs any insurable interest recognized
 36 under any other statute or rule of law.

37 Sec. 38. K.S.A. 2004 Supp. 84-2-502 is hereby amended to read as
 38 follows: 84-2-502. (1) Subject to subsections (2) and (3) and even ~~though~~
 39 ~~if~~ the goods have not been shipped, a buyer ~~who~~ *that* has paid a part or
 40 all of the price of goods in which ~~he~~ *the buyer* has a special property
 41 under ~~the provisions of the immediately preceding section~~ *K.S.A. 84-2-*
 42 *501, and amendments thereto*, may on making and keeping good a tender
 43 of any unpaid portion of their price recover them from the seller if:

- 1 (a) In the case of goods bought ~~for personal, family or household~~
 2 ~~purposes by a consumer~~, the seller repudiates or fails to deliver as re-
 3 quired by the contract; or
- 4 (b) in all cases, the seller becomes insolvent within ten days after
 5 receipt of the first installment on their price.
- 6 (2) The buyer's right to recover the goods under subsection (1)(a)
 7 vests upon acquisition of a special property, even if the seller had not
 8 then repudiated or failed to deliver.
- 9 (3) If the identification creating ~~his~~ a special property has been made
 10 by the buyer ~~he~~, *the buyer* acquires the right to recover the goods only
 11 if they conform to the contract for sale.
- 12 Sec. 39. K.S.A. 84-2-503 is hereby amended to read as follows: 84-
 13 2-503. (1) Tender of delivery requires that the seller put and hold con-
 14 forming goods at the buyer's disposition and give the buyer any notifi-
 15 cation reasonably necessary to enable ~~him~~ *the buyer* to take delivery. The
 16 manner, time, and place for tender are determined by the agreement and
 17 this article, and in particular:
- 18 (a) Tender must be made at a reasonable hour, and if it is of goods
 19 they must be kept available for the period reasonably necessary to enable
 20 the buyer to take possession; but
- 21 (b) unless otherwise agreed the buyer must furnish facilities reason-
 22 ably suited to the receipt of the goods.
- 23 (2) ~~Where~~ *If* the case is within ~~the next section respecting shipment~~
 24 *K.S.A. 84-2-504, and amendments thereto*, tender requires that the seller
 25 comply with its provisions.
- 26 (3) ~~Where~~ *If* the seller is required to deliver at a particular destina-
 27 tion, tender requires that ~~he~~ *the seller* comply with subsection (1) and
 28 also in any appropriate case tender documents as described in subsections
 29 (4) and (5) of this section.
- 30 (4) ~~Where~~ *If* goods are in the possession of a bailee and are to be
 31 delivered without being moved:
- 32 (a) Tender requires that the seller either tender a negotiable docu-
 33 ment of title covering such goods or procure acknowledgment by the
 34 bailee *to the buyer* of the buyer's right to possession of the goods; but
- 35 (b) tender to the buyer of a nonnegotiable document of title or of a
 36 ~~written direction to record directing~~ the bailee to deliver is sufficient
 37 tender unless the buyer seasonably objects, and *except as otherwise pro-*
 38 *vided in article 9 of chapter 84 of the Kansas Statutes Annotated, and*
 39 *amendments thereto*, receipt by the bailee of notification of the buyer's
 40 rights fixes those rights as against the bailee and all third persons; but risk
 41 of loss of the goods and of any failure by the bailee to honor the nonne-
 42 gotiable document of title or to obey the direction remains on the seller
 43 until the buyer has had a reasonable time to present the document or

1 direction, ~~and a refusal~~. *Refusal* by the bailee to honor the document or
2 to obey the direction defeats the tender.

3 (5) ~~Where~~ *If* the contract requires the seller to deliver documents:

4 (a) ~~he~~ *The seller* must tender all such documents in correct form;
5 ~~except as provided in this article with respect to bills of lading in a set~~
6 ~~(subsection (2) of section 84-2-323); and~~

7 (b) tender through customary banking channels is sufficient and dis-
8 honor of a draft accompanying *or associated with* the documents consti-
9 tutes nonacceptance or rejection.

10 Sec. 40. K.S.A. 84-2-504 is hereby amended to read as follows: 84-
11 2-504. ~~Where~~ *If* the seller is required or authorized to send the goods to
12 the buyer and the contract does not require ~~him~~ *the seller* to deliver them
13 at a particular destination, then unless otherwise agreed ~~he~~ *the seller*
14 must:

15 (a) Put ~~the~~ *conforming* goods in the possession of ~~such~~ a carrier and
16 make ~~such a~~ *proper* contract for their transportation ~~as may be reasonable,~~
17 having regard to the nature of the goods and other circumstances of the
18 case; ~~and~~

19 (b) obtain and promptly deliver or tender in due form any document
20 necessary to enable the buyer to obtain possession of the goods or oth-
21 erwise required by the agreement or by usage of trade; and

22 (c) promptly notify the buyer of the shipment.

23 Failure to notify the buyer under paragraph (c) or to make a proper
24 contract under paragraph (a) is a ground for rejection only if material
25 delay or loss ensues.

26 Sec. 41. K.S.A. 84-2-505 is hereby amended to read as follows: 84-
27 2-505. (1) ~~Where~~ *If* the seller has identified goods to the contract by or
28 before shipment:

29 (a) ~~His~~ *The seller's* procurement of a negotiable bill of lading to ~~his~~
30 *the seller's* own order or otherwise reserves in ~~him~~ *the seller* a security
31 interest in the goods. ~~His~~ *The seller's* procurement of the bill to the order
32 of a financing agency or of the buyer indicates in addition only the seller's
33 expectation of transferring that interest to the person named.

34 (b) A nonnegotiable bill of lading to ~~himself~~ *the seller* or ~~his~~ *the seller's*
35 nominee reserves possession of the goods as security ~~but except in a case~~
36 ~~of conditional delivery (subsection (2) of section 84-2-507). However, un-~~
37 ~~less a seller has a right to reclaim the goods under K.S.A. 84-2-507(2),~~
38 ~~and amendments thereto,~~ a nonnegotiable bill of lading naming the buyer
39 as consignee reserves no security interest even ~~though~~ *if* the seller retains
40 possession *or control* of the bill of lading.

41 (2) ~~When~~ *If* shipment by the seller with reservation of a security in-
42 terest is in violation of the contract for sale, it constitutes an improper
43 contract for transportation ~~within the preceding section~~ *under K.S.A. 84-*

1 2-504, and amendments thereto, but impairs neither the rights given to
 2 the buyer by shipment and identification of the goods to the contract nor
 3 the seller's powers as a holder of a negotiable document of title.

4 Sec. 42. K.S.A. 84-2-506 is hereby amended to read as follows: 84-
 5 2-506. (1) *Except as otherwise provided in article 5 of chapter 84 of the*
 6 *Kansas Statutes Annotated, and amendments thereto*, a financing agency
 7 by paying or purchasing for value a draft ~~which that~~ relates to a shipment
 8 of goods acquires to the extent of the payment or purchase and in addition
 9 to its own rights under the draft and any document of title securing it
 10 any rights of the shipper in the goods including the right to stop delivery
 11 and the shipper's right to have the draft honored by the buyer.

12 (2) The right to reimbursement of a financing agency ~~which that~~ has
 13 in good faith honored or purchased the draft under commitment to or
 14 authority from the buyer is not impaired by subsequent discovery of de-
 15 fects with reference to any relevant document ~~which that~~ was apparently
 16 regular ~~on its face~~.

17 Sec. 43. K.S.A. 84-2-507 is hereby amended to read as follows: 84-
 18 2-507. (1) Tender of delivery is a condition to the buyer's duty to accept
 19 the goods and, unless otherwise agreed, to ~~his~~ *the buyer's* duty to pay for
 20 them. Tender entitles the seller to acceptance of the goods and to pay-
 21 ment according to the contract.

22 (2) ~~Where~~ *If* payment is due and demanded on the delivery to the
 23 buyer of goods or documents of title, ~~his right as against the seller to~~
 24 ~~retain or dispose of them is conditional upon his making the payment due~~
 25 *the seller may reclaim the goods delivered upon a demand made within*
 26 *a reasonable time after the seller discovers or should have discovered that*
 27 *payment was not made.*

28 (3) *The seller's right to reclaim under subsection (2) is subject to the*
 29 *rights of a buyer in ordinary course of business or other good-faith pur-*
 30 *chaser for value under K.S.A. 84-2-403, and amendments thereto.*

31 Sec. 44. K.S.A. 84-2-508 is hereby amended to read as follows: 84-
 32 2-508. ~~(1) Where any tender or delivery by the seller is rejected because~~
 33 ~~nonconforming and the time for performance has not yet expired, the~~
 34 ~~seller may seasonably notify the buyer of his intention to cure and may~~
 35 ~~then within the contract time make a conforming delivery.~~

36 ~~—(2) Where the buyer rejects a nonconforming tender which the seller~~
 37 ~~had reasonable grounds to believe would be acceptable with or without~~
 38 ~~money allowance the seller may if he seasonably notifies the buyer have~~
 39 ~~a further reasonable time to substitute a conforming tender.~~

40 (1) *If the buyer rejects goods or a tender of delivery under K.S.A. 84-*
 41 *2-601 or 84-2-612, and amendments thereto, or, except in a consumer*
 42 *contract, justifiably revokes acceptance under K.S.A. 84-2-608(1)(b), and*
 43 *amendments thereto, and the agreed time for performance has not ex-*

1 *pired, a seller that has performed in good faith, upon reasonable notice*
 2 *to the buyer and at the seller's own expense, may cure the breach of*
 3 *contract by making a conforming tender of delivery within the agreed*
 4 *time. The seller shall compensate the buyer for all of the buyer's reasonable*
 5 *expenses caused by the seller's breach of contract and subsequent cure.*

6 (2) *If the buyer rejects goods or a tender of delivery under K.S.A. 84-*
 7 *2-601 or 84-2-612, and amendments thereto, or, except in a consumer*
 8 *contract, justifiably revokes acceptance under K.S.A. 84-2-608(1)(b), and*
 9 *amendments thereto, and the agreed time for performance has expired, a*
 10 *seller that has performed in good faith, upon reasonable notice to the*
 11 *buyer and at the seller's own expense, may cure the breach of contract, if*
 12 *the cure is appropriate and timely under the circumstances, by making a*
 13 *tender of conforming goods. The seller shall compensate the buyer for all*
 14 *of the buyer's reasonable expenses caused by the seller's breach of contract*
 15 *and subsequent cure.*

16 Sec. 45. K.S.A. 84-2-509 is hereby amended to read as follows: 84-
 17 2-509. (1) ~~Where~~ *If the contract requires or authorizes the seller to ship*
 18 *the goods by carrier:*

19 (a) *If it does not require ~~him~~ the seller to deliver them at a particular*
 20 *destination, the risk of loss passes to the buyer when the goods are ~~duly~~*
 21 *delivered to the carrier even ~~though~~ if the shipment is under reservation*
 22 *(~~section 84-2-505~~) (K.S.A. 84-2-505, and amendments thereto); but*

23 (b) *if it does require ~~him~~ the seller to deliver them at a particular*
 24 *destination and the goods are there ~~duly~~ tendered while in the possession*
 25 *of the carrier, the risk of loss passes to the buyer when the goods are*
 26 *there ~~duly~~ so tendered as to enable the buyer to take delivery.*

27 (2) ~~Where~~ *If the goods are held by a bailee to be delivered without*
 28 *being moved, the risk of loss passes to the buyer:*

29 (a) *On ~~his~~ the buyer's receipt of possession or control of a negotiable*
 30 *document of title covering the goods; ~~or~~*

31 (b) *on acknowledgment by the bailee to the buyer of the buyer's right*
 32 *to possession of the goods; or*

33 (c) *after ~~his~~ the buyer's receipt of possession or control of a nonne-*
 34 *gotiable document of title or other ~~written~~ direction to deliver in a record,*
 35 *as provided in ~~subsection (4) (b) of section~~ K.S.A. 84-2-503(4)(b), and*
 36 *amendments thereto.*

37 (3) *In any case not within subsection (1) or (2), the risk of loss passes*
 38 *to the buyer on ~~his~~ the buyer's receipt of the goods if the seller is a*
 39 *merchant, otherwise the risk passes to the buyer on tender of delivery.*

40 (4) *The provisions of this section are subject to contrary agreement*
 41 *of the parties and to the provisions of this article on sale on approval*
 42 *(~~section 84-2-327~~) and on effect of breach on risk of loss (~~section~~ K.S.A.*
 43 *84-2-327 and 84-2-510), and amendments thereto.*

1 Sec. 46. K.S.A. 84-2-510 is hereby amended to read as follows: 84-
 2 2-510. (1) ~~Where~~ *If* a tender or delivery of goods so fails to conform to
 3 the contract as to give a right of rejection the risk of their loss remains
 4 on the seller until cure or acceptance.

5 (2) ~~Where~~ *If* the buyer rightfully revokes acceptance ~~he~~ *the buyer*
 6 may to the extent of any deficiency in ~~his~~ *the buyer's* effective insurance
 7 coverage treat the risk of loss as having rested on the seller from the
 8 beginning.

9 (3) ~~Where~~ *If* the buyer as to conforming goods already identified to
 10 the contract for sale repudiates or is otherwise in breach before risk of
 11 their loss has passed to ~~him~~ *the buyer*, the seller may to the extent of any
 12 deficiency in ~~his~~ *the seller's* effective insurance coverage treat the risk of
 13 loss as resting on the buyer for a commercially reasonable time.

14 Sec. 47. K.S.A. 84-2-512 is hereby amended to read as follows: 84-
 15 2-512. (1) ~~Where~~ *If* the contract requires payment before inspection,
 16 nonconformity of the goods does not excuse the buyer from so making
 17 payment unless:

18 (a) The nonconformity appears without inspection; or
 19 (b) despite tender of the required documents the circumstances
 20 would justify injunction against honor under the provisions of this act
 21 (K.S.A. 84-5-109(b), *and amendments thereto*).

22 (2) Payment pursuant to subsection (1) does not constitute an accep-
 23 tance of goods or impair the buyer's right to inspect or any of the buyer's
 24 remedies.

25 Sec. 48. K.S.A. 84-2-513 is hereby amended to read as follows: 84-
 26 2-513. (1) Unless otherwise agreed and subject to subsection (3), ~~where~~
 27 *if* goods are tendered or delivered or identified to the contract for sale,
 28 the buyer has a right before payment or acceptance to inspect them at
 29 any reasonable place and time and in any reasonable manner. ~~When~~ *If*
 30 the seller is required or authorized to send the goods to the buyer, the
 31 inspection may be after their arrival.

32 (2) Expenses of inspection must be borne by the buyer but may be
 33 recovered from the seller if the goods do not conform and are rejected.

34 (3) Unless otherwise agreed ~~and subject to the provisions of this ar-~~
 35 ~~article on C.I.F. contracts (subsection (3) of section 84-2-321)~~, the buyer is
 36 not entitled to inspect the goods before payment of the price ~~when~~ *if* the
 37 contract provides:

38 (a) For delivery "~~C.O.D.~~" ~~or on other like terms~~ *on terms that under*
 39 *applicable course of performance, course of dealing, or usage of trade are*
 40 *interpreted to preclude inspection before payment*; or

41 (b) for payment against documents of title, except where ~~such~~ *the*
 42 payment is due only after the goods are to become available for
 43 inspection.

1 (4) A place ~~or~~, method, *or standard* of inspection fixed by the parties
 2 is presumed to be exclusive, but unless otherwise expressly agreed it does
 3 not postpone identification or shift the place for delivery or for passing
 4 the risk of loss. If compliance becomes impossible, inspection shall be as
 5 provided in this section unless the place ~~or~~, method, *or standard* fixed
 6 was clearly intended as an indispensable condition failure of which avoids
 7 the contract.

8 Sec. 49. K.S.A. 84-2-514 is hereby amended to read as follows: 84-
 9 2-514. Unless otherwise agreed *and except as otherwise provided in ar-*
 10 *article 5 of chapter 84 of the Kansas Statutes Annotated, and amendments*
 11 *thereto*, documents against which a draft is drawn are to be delivered to
 12 the drawee on acceptance of the draft if it is payable more than three
 13 days after presentment; otherwise, only on payment.

14 Sec. 50. K.S.A. 84-2-601 is hereby amended to read as follows: 84-
 15 2-601. Subject to ~~the provisions of this article on breach in installment~~
 16 ~~contracts (section K.S.A. 84-2-504 and 84-2-612), and amendments~~, and
 17 unless otherwise agreed under ~~the sections on contractual limitations of~~
 18 ~~remedy (sections K.S.A. 84-2-718 and 84-2-719), and amendments~~
 19 *thereto*, if the goods or the tender of delivery fail in any respect to conform
 20 to the contract, the buyer may:

- 21 (a) Reject the whole; ~~or~~
- 22 (b) accept the whole; or
- 23 (c) accept any commercial unit or units and reject the rest.

24 Sec. 51. K.S.A. 84-2-602 is hereby amended to read as follows: 84-
 25 2-602. (1) Rejection of goods must be within a reasonable time after their
 26 delivery or tender. It is ineffective unless the buyer seasonably notifies
 27 the seller.

28 (2) Subject to ~~the provisions of the two following sections on rejected~~
 29 ~~goods (sections 84-2-603 and 84-2-604) K.S.A. 84-2-603, 84-2-604 and~~
 30 ~~84-2-608(4), and amendments thereto:~~

- 31 (a) After rejection any exercise of ownership by the buyer with re-
 32 spect to any commercial unit is wrongful as against the seller; and
- 33 (b) if the buyer has before rejection taken physical possession of
 34 goods in which ~~he~~ *the buyer* does not have a security interest under ~~the~~
 35 ~~provisions of this article (subsection (3) of section 84-2-711), he~~ K.S.A.
 36 ~~84-2-711(3), and amendments thereto~~, *the buyer* is under a duty after
 37 rejection to hold them with reasonable care at the seller's disposition for
 38 a time sufficient to permit the seller to remove them; but
- 39 (c) the buyer has no further obligations with regard to goods rightfully
 40 rejected.

41 (3) The seller's rights with respect to goods wrongfully rejected are
 42 governed by the provisions of this article on seller's remedies in general
 43 ~~(section 84-2-703) (K.S.A. 84-2-703, and amendments thereto).~~

1 Sec. 52. K.S.A. 84-2-603 is hereby amended to read as follows: 84-
 2 2-603. (1) Subject to any security interest in the buyer (~~subsection (3) of~~
 3 ~~section 84-2-711~~), ~~when~~ *under* K.S.A. 84-2-711(3), if the seller has no
 4 agent or place of business at the market of rejection a merchant buyer is
 5 under a duty after rejection, of goods in ~~his~~ *the buyer's* possession or
 6 control to follow any reasonable instructions received from the seller with
 7 respect to the goods and in the absence of such instructions to make
 8 reasonable efforts to sell them for the seller's account if they are perish-
 9 able or threaten to decline in value speedily. *In the case of a rightful*
 10 *rejection*, instructions are not reasonable if on demand indemnity for ex-
 11 penses is not forthcoming.

12 (2) ~~When~~ *If* the buyer sells goods under subsection (1), ~~he~~ *following*
 13 *a rightful rejection, the buyer* is entitled to reimbursement from the seller
 14 or out of the proceeds for reasonable expenses of caring for and selling
 15 them, and if the expenses include no selling commission then to such
 16 commission as is usual in the trade or if there is none to a reasonable
 17 sum not exceeding ~~ten percent~~ *10%* on the gross proceeds.

18 (3) In complying with this section the buyer is held only to good faith
 19 and ~~good faith~~ *good-faith* conduct ~~hereunder~~ *under this section* is neither
 20 acceptance nor conversion nor the basis of an action for damages.

21 Sec. 53. K.S.A. 84-2-604 is hereby amended to read as follows: 84-
 22 2-604. Subject to the provisions of ~~the immediately preceding section~~
 23 *K.S.A. 84-2-603, and amendments thereto*, on perishables, if the seller
 24 gives no instructions within a reasonable time after notification of rejec-
 25 tion the buyer may store the rejected goods for the seller's account or
 26 reship them to ~~him~~ *the seller* or resell them for the seller's account with
 27 reimbursement as provided in ~~the preceding section~~ *K.S.A. 84-2-603, and*
 28 *amendments thereto*. Such action is not acceptance or conversion.

29 Sec. 54. K.S.A. 84-2-605 is hereby amended to read as follows: 84-
 30 2-605. (1) ~~The~~ *A* buyer's failure to state in connection with rejection a
 31 particular defect ~~which is ascertainable by reasonable inspection or in~~
 32 *connection with revocation of acceptance or defect that justifies revocation*
 33 precludes ~~him~~ *the buyer* from relying on the unstated defect to justify
 34 rejection or ~~to establish breach~~ *revocation of acceptance if the defect is*
 35 *ascertainable by reasonable inspection*:

36 (a) ~~where~~ *If* the seller ~~had a right to cure the defect and~~ could have
 37 cured it if stated seasonably; or

38 (b) between merchants ~~when~~, *if* the seller has after rejection or rev-
 39 *ocation of acceptance* made a request in ~~writing~~ *a record* for a full and
 40 final ~~written~~ *statement in a record* of all defects on which the buyer
 41 proposes to rely.

42 (2) *A buyer's* payment against documents ~~tendered to the buyer~~ made
 43 without reservation of rights precludes recovery of the payment for de-

1 facts apparent ~~on the face of~~ *in* the documents.

2 Sec. 55. K.S.A. 84-2-606 is hereby amended to read as follows: 84-
3 2-606. (1) Acceptance of goods occurs when the buyer:

4 (a) After a reasonable opportunity to inspect the goods signifies to
5 the seller that the goods are conforming or that ~~he~~ *the buyer* will take or
6 retain them in spite of their nonconformity; ~~or~~

7 (b) fails to make an effective rejection (~~subsection (1) of section 84-~~
8 ~~2-602~~) *under K.S.A. 84-2-602(1), and amendments thereto*, but such ac-
9 ceptance does not occur until the buyer has had a reasonable opportunity
10 to inspect them; or

11 (c) ~~subject to K.S.A. 84-2-608(4), and amendments thereto~~, does any
12 act inconsistent with the seller's ownership; ~~but if such act is wrongful as~~
13 ~~against the seller it is an acceptance only if ratified by him.~~

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

16 Sec. 56. K.S.A. 84-2-607 is hereby amended to read as follows: 84-
17 2-607. (1) The buyer must pay at the contract rate for any goods accepted.

18 (2) Acceptance of goods by the buyer precludes rejection of the goods
19 accepted and if made with knowledge of nonconformity ~~cannot~~ *may not*
20 be revoked because of it unless the acceptance was on the reasonable
21 assumption that the nonconformity would be seasonably cured, but ac-
22 ceptance does not of itself impair any other remedy provided by this
23 article for nonconformity.

24 (3) ~~Where~~ *If* a tender has been accepted:

25 (a) The buyer must within a reasonable time after ~~he~~ *the buyer* dis-
26 covers or should have discovered any breach notify the seller ~~of breach~~
27 ~~or be barred from any remedy~~, *but failure to give timely notice bars the*
28 *buyer from a remedy only to the extent that the seller is prejudiced by the*
29 *failure*; and

30 (b) if the claim is one for infringement or the like (~~subsection (3) of~~
31 ~~section 84-2-312~~) *under K.S.A. 84-2-312(2), and amendments thereto*, and
32 the buyer is sued as a result of such a breach ~~he~~, *the buyer* must so notify
33 the seller within a reasonable time after ~~he~~ *the buyer* receives notice of
34 the litigation or be barred from any remedy over for liability established
35 by the litigation.

36 (4) The burden is on the buyer to establish any breach with respect
37 to the goods accepted.

38 (5) ~~Where~~ *If* the buyer is sued for *indemnity*, breach of a warranty
39 or other obligation for which ~~his seller~~ *another party* is answerable over:
40 (a) ~~he~~ *The buyer* may give ~~his seller~~ *written the other party* notice of
41 the litigation. ~~If~~ *in a record, and if* the notice states that the ~~seller~~ *other*
42 *party* may come in and defend and that if the ~~seller~~ *other party* does not
43 do so ~~he~~ *the other party* will be bound in any action against ~~him~~ *the other*

1 party by ~~his~~ *the* buyer by any determination of fact common to the two
 2 litigations, then unless the ~~seller~~ *other party* after reasonable receipt of
 3 the notice does come in and defend ~~he~~ *the other party* is so bound.

4 (b) if the claim is one for infringement or the like (~~subsection (3) of~~
 5 ~~section 84-2-312~~) under K.S.A. 84-2-312(2), and amendments thereto, the
 6 original seller may demand in ~~writing that his~~ *a record that its* buyer turn
 7 over to ~~him~~ *it* control of the litigation including settlement or else be
 8 barred from any remedy over and if ~~he~~ *it* also agrees to bear all expense
 9 and to satisfy any adverse judgment, ~~then the buyer is so barred~~ unless
 10 the buyer after reasonable receipt of the demand does turn over control
 11 ~~the buyer is so barred.~~

12 (6) ~~The provisions of Subsections (3), (4), and (5) apply to any obli-~~
 13 ~~gation of a buyer to hold the seller harmless against infringement or the~~
 14 ~~like subsection (3) of section 84-2-312) under K.S.A. 84-2-312(2), and~~
 15 ~~amendments thereto.~~

16 Sec. 57. K.S.A. 84-2-608 is hereby amended to read as follows: 84-
 17 2-608. (1) ~~The~~ A buyer may revoke ~~his~~ acceptance of a lot or commercial
 18 unit whose nonconformity substantially impairs its value to ~~him~~ *if he the*
 19 *buyer if the buyer* has accepted it:

20 (a) On the reasonable assumption that its nonconformity would be
 21 cured and it has not been seasonably cured; or

22 (b) without discovery of ~~such~~ *the* nonconformity if ~~his~~ *the buyer's*
 23 acceptance was reasonably induced either by the difficulty of discovery
 24 before acceptance or by the seller's assurances.

25 (2) Revocation of acceptance must occur within a reasonable time
 26 after the buyer discovers or should have discovered the ground for it and
 27 before any substantial change in condition of the goods which is not
 28 caused by their own defects. ~~It~~ *The revocation* is not effective until the
 29 buyer notifies the seller of it.

30 (3) A buyer ~~who~~ *that* so revokes has the same rights and duties with
 31 regard to the goods involved as if ~~he~~ *the buyer* had rejected them.

32 (4) *If a buyer uses the goods after a rightful rejection or justifiable*
 33 *revocation of acceptance, the following rules apply:*

34 (a) *Any use by the buyer that is unreasonable under the circum-*
 35 *stances is wrongful as against the seller and is an acceptance only if rat-*
 36 *ified by the seller.*

37 (b) *Any use of the goods that is reasonable under the circumstances*
 38 *is not wrongful as against the seller and is not an acceptance, but in an*
 39 *appropriate case the buyer is obligated to the seller for the value of the*
 40 *use to the buyer.*

41 Sec. 58. K.S.A. 84-2-609 is hereby amended to read as follows: 84-
 42 2-609. (1) A contract for sale imposes an obligation on each party that the
 43 other's expectation of receiving due performance will not be impaired.

1 ~~When~~ If reasonable grounds for insecurity arise with respect to the per-
 2 formance of either party, the other may ~~in writing~~ demand *in a record*
 3 adequate assurance of due performance and until ~~he~~ *the party* receives
 4 such assurance may if commercially reasonable suspend any performance
 5 for which ~~he~~ *it* has not already received the agreed return.

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

9 (3) Acceptance of any improper delivery or payment does not prej-
 10 udice the aggrieved party's right to demand adequate assurance of future
 11 performance.

12 (4) After receipt of a justified demand, failure to provide within a
 13 reasonable time not exceeding ~~thirty~~ 30 days such assurance of due per-
 14 formance as is adequate under the circumstances of the particular case
 15 is a repudiation of the contract.

16 Sec. 59. K.S.A. 84-2-610 is hereby amended to read as follows: 84-
 17 2-610. ~~When~~ (1) If either party repudiates the contract with respect to a
 18 performance not yet due the loss of which will substantially impair the
 19 value of the contract to the other, the aggrieved party may:

20 (a) For a commercially reasonable time await performance by the
 21 repudiating party; or

22 (b) resort to any remedy for breach (~~section 84-2-703 or section 84-~~
 23 ~~2-711~~) (K.S.A. 84-2-703 or 84-2-711, and amendments thereto) even
 24 ~~though he~~ *if the aggrieved party* has notified the repudiating party that
 25 ~~he~~ *it* would await the latter's performance and has urged retraction; and

26 (c) in either case suspend ~~his own~~ performance or proceed in ac-
 27 cordance with the provisions of this article on the seller's right to identify
 28 goods to the contract notwithstanding breach or to salvage unfinished
 29 goods (~~section 84-2-704~~) (K.S.A. 84-2-704, and amendments thereto).

30 (2) *Repudiation includes language that a reasonable person would*
 31 *interpret to mean that the other party will not or cannot make a perform-*
 32 *ance still due under the contract or voluntary, affirmative conduct that*
 33 *would appear to a reasonable person to make a future performance by*
 34 *the other party impossible.*

35 Sec. 60. K.S.A. 84-2-611 is hereby amended to read as follows: 84-
 36 2-611. (1) Until the repudiating party's next performance is due ~~he can~~
 37 *that party may* retract ~~his~~ *the* repudiation unless the aggrieved party has
 38 since the repudiation canceled or materially changed ~~his~~ position or oth-
 39 erwise indicated that ~~he considers~~ the repudiation is final.

40 (2) Retraction may be by any method ~~which~~ *that* clearly indicates to
 41 the aggrieved party that the repudiating party intends to perform, but
 42 must include any assurance justifiably demanded under ~~the provisions of~~
 43 ~~this article (section 84-2-609)~~ K.S.A. 84-2-609, and amendments thereto.

1 (3) Retraction reinstates the repudiating party's rights under the con-
 2 tract with due excuse and allowance to the aggrieved party for any delay
 3 occasioned by the repudiation.

4 Sec. 61. K.S.A. 84-2-612 is hereby amended to read as follows: 84-
 5 2-612. (1) An "installment contract" is one ~~which~~ *that* requires or au-
 6 thORIZES the delivery of goods in separate lots to be separately accepted,
 7 even ~~though~~ *if* the contract contains a clause "each delivery is a separate
 8 contract" or its equivalent.

9 (2) The buyer may reject any installment ~~which~~ *that* is nonconform-
 10 ing if the nonconformity substantially impairs the value of that installment
 11 ~~and cannot be cured to the buyer~~ or if the nonconformity is a defect in
 12 the required documents, ~~but~~ *However*, if the nonconformity does not
 13 fall within subsection (3) and the seller gives adequate assurance of its
 14 cure the buyer must accept that installment.

15 (3) ~~Whenever~~ *If* nonconformity or default with respect to one or
 16 more installments substantially impairs the value of the whole contract,
 17 there is a breach of the whole. But the aggrieved party reinstates the
 18 contract if ~~he~~ *the party* accepts a nonconforming installment without sea-
 19 sonably notifying of cancellation or if ~~he~~ *the party* brings an action with
 20 respect only to past installments or demands performance as to future
 21 installments.

22 Sec. 62. K.S.A. 84-2-613 is hereby amended to read as follows: 84-
 23 2-613. ~~Where~~ *If* the contract requires for its performance goods identified
 24 when the contract is made, and the goods suffer casualty without fault of
 25 either party before the risk of loss passes to the buyer, ~~or in a proper case~~
 26 ~~under a "no arrival, no sale" term (section 84-2-324)~~ then:

27 (a) If the loss is total the contract is ~~avoided~~ *terminated*; and
 28 (b) if the loss is partial or the goods have so deteriorated ~~as that they~~
 29 no longer ~~to~~ conform to the contract, the buyer may nevertheless demand
 30 inspection and at ~~his~~ *the buyer's* option either treat the contract as ~~avoided~~
 31 *terminated* or accept the goods with due allowance from the contract
 32 price for the deterioration or the deficiency in quantity but without fur-
 33 ther right against the seller.

34 Sec. 63. K.S.A. 84-2-614 is hereby amended to read as follows: 84-
 35 2-614. (1) ~~Where~~ *If* without fault of either party the agreed berthing,
 36 loading, or unloading facilities fail or an agreed type of carrier becomes
 37 unavailable or the agreed manner of ~~delivery~~ *performance* otherwise be-
 38 comes commercially impracticable but a commercially reasonable substi-
 39 tute is available, ~~such~~ *the* substitute performance must be tendered and
 40 accepted.

41 (2) If the agreed means or manner of payment fails because of do-
 42 mestic or foreign governmental regulation, the seller may withhold or
 43 stop delivery unless the buyer provides a means or manner of payment

1 which is commercially a substantial equivalent. If delivery has already
 2 been taken, payment by the means or in the manner provided by the
 3 regulation discharges the buyer's obligation unless the regulation is dis-
 4 criminatory, oppressive or predatory.

5 Sec. 64. K.S.A. 84-2-615 is hereby amended to read as follows: 84-
 6 2-615. Except ~~so far as to the extent that~~ a seller may have assumed a
 7 greater obligation and subject to ~~the preceding section on substituted~~
 8 ~~performance K.S.A. 84-2-614, and amendments thereto:~~

9 (a) ~~Delay in delivery or nondelivery performance or nonperformance~~
 10 in whole or in part by a seller ~~who that~~ complies with paragraphs (b) and
 11 (c) is not a breach of ~~his the~~ seller's duty under a contract for sale if
 12 performance as agreed has been made impracticable by the occurrence
 13 of a contingency the nonoccurrence of which was a basic assumption on
 14 which the contract was made or by compliance in good faith with any
 15 applicable foreign or domestic governmental regulation or order whether
 16 or not it later proves to be invalid.

17 (b) ~~Where~~ *If* the causes mentioned in paragraph (a) affect only a part
 18 of the seller's capacity to perform, ~~he the~~ seller must allocate production
 19 and deliveries among ~~his its~~ customers but may at ~~his its~~ option include
 20 regular customers not then under contract as well as ~~his its~~ own require-
 21 ments for further manufacture. ~~He~~ *The* seller may so allocate in any man-
 22 ner ~~which that~~ is fair and reasonable.

23 (c) The seller must notify the buyer seasonably that there will be
 24 delay or ~~non-delivery nonperformance~~ and, ~~when~~ *if* allocation is required
 25 under paragraph (b), of the estimated quota thus made available for the
 26 buyer.

27 Sec. 65. K.S.A. 84-2-616 is hereby amended to read as follows: 84-
 28 2-616. (1) ~~Where the~~ *If* a buyer receives notification of a material or
 29 indefinite delay or an allocation justified under ~~the preceding section he~~
 30 ~~K.S.A. 84-2-615, and amendments thereto, the buyer~~ may by ~~written~~
 31 notification *in a record* to the seller as to any ~~delivery performance~~ con-
 32 cerned, and ~~where~~ *if* the prospective deficiency substantially impairs the
 33 value of the whole contract under ~~the provisions of this article relating to~~
 34 ~~breach of installment contracts (section 84-2-612) K.S.A. 84-2-612, and~~
 35 ~~amendments thereto, then also as to the whole;~~

36 (a) Terminate and thereby discharge any unexecuted portion of the
 37 contract; or

38 (b) modify the contract by agreeing to take ~~his the~~ buyer's available
 39 quota in substitution.

40 (2) If after receipt of ~~such~~ notification from the seller the buyer fails
 41 ~~so~~ to modify the contract within a reasonable time not exceeding ~~thirty~~
 42 30 days, the contract ~~lapses~~ *is terminated* with respect to any ~~deliveries~~
 43 ~~performance~~ affected.

1 (3) The provisions of this section may not be negated by agreement
 2 except insofar as the seller has assumed a greater obligation under ~~the~~
 3 ~~preceding section K.S.A. 84-2-615, and amendments thereto.~~

4 Sec. 66. K.S.A. 84-2-702 is hereby amended to read as follows: 84-
 5 2-702. (1) ~~Where~~ *If the seller discovers that the buyer to be is insolvent*
 6 ~~he, the seller~~ may refuse delivery except for cash including payment for
 7 all goods theretofore delivered under the contract, and stop delivery un-
 8 der ~~this article (section 84-2-705)~~ K.S.A. 84-2-705, ~~and amendments~~
 9 ~~thereto.~~

10 (2) ~~Where~~ *If the seller discovers that the buyer has received goods*
 11 *on credit while insolvent he, the seller* may reclaim the goods upon de-
 12 *mand made within ten (10) days a reasonable time after the buyer's re-*
 13 *ceipt, but if misrepresentation of solvency has been made to the particular*
 14 *seller in writing within three (3) months before delivery the ten-day limi-*
 15 *tation does not apply of the goods.* Except as provided in this subsection
 16 the seller may not base a right to reclaim goods on the buyer's fraudulent
 17 or innocent misrepresentation of solvency or of intent to pay.

18 (3) The seller's right to reclaim under subsection (2) is subject to the
 19 rights of a buyer in ordinary course of *business* or other good faith pur-
 20 *chaser for value* under ~~this article (section 84-2-403)~~ K.S.A. 84-2-403, ~~and~~
 21 ~~amendments thereto.~~ Successful reclamation of goods excludes all other
 22 remedies with respect to them.

23 Sec. 67. K.S.A. 84-2-703 is hereby amended to read as follows: 84-
 24 2-703. ~~Where the buyer wrongfully rejects or revokes acceptance of goods~~
 25 ~~or fails to make a payment due on or before delivery or repudiates with~~
 26 ~~respect to a part or the whole, then with respect to any goods directly~~
 27 ~~affected and, if the breach is of the whole contract (section 84-2-612),~~
 28 ~~then also with respect to the whole undelivered balance, the aggrieved~~
 29 ~~seller may~~

30 ~~—(a)—withhold delivery of such goods;~~

31 ~~—(b)—stop delivery by any bailee as hereafter provided (section 84-2-~~
 32 ~~705);~~

33 ~~—(c)—proceed under the next section respecting goods still unidentified~~
 34 ~~to the contract;~~

35 ~~—(d)—resell and recover damages as hereafter provided (section 84-2-~~
 36 ~~706);~~

37 ~~—(e)—recover damages for nonacceptance (section 84-2-708) or in a~~
 38 ~~proper case the price (section 84-2-709);~~

39 ~~—(f)—cancel. (1) A breach of contract by the buyer includes the buyer's~~
 40 ~~wrongful rejection or wrongful attempt to revoke acceptance of goods,~~
 41 ~~wrongful failure to perform a contractual obligation, failure to make a~~
 42 ~~payment when due, and repudiation.~~

43 (2) *If the buyer is in breach of contract the seller, to the extent pro-*

- 1 *vided for by this act or other law, may:*
 2 (a) *Withhold delivery of the goods;*
 3 (b) *stop delivery of the goods under K.S.A. 84-2-705, and amend-*
 4 *ments thereto;*
 5 (c) *proceed under K.S.A. 84-2-704, and amendments thereto, with*
 6 *respect to goods unidentified to the contract or unfinished;*
 7 (d) *reclaim the goods under K.S.A. 84-2-507(2) or 84-2-702(2), and*
 8 *amendments thereto;*
 9 (e) *require payment directly from the buyer under K.S.A. 84-2-*
 10 *325(c), and amendments thereto;*
 11 (f) *cancel;*
 12 (g) *resell and recover damages under K.S.A. 84-2-706, and amend-*
 13 *ments thereto;*
 14 (h) *recover damages for nonacceptance or repudiation under K.S.A.*
 15 *84-2-708(1), and amendments thereto;*
 16 (i) *recover lost profits under K.S.A. 84-2-708(2), and amendments*
 17 *thereto;*
 18 (j) *recover the price under K.S.A. 84-2-709, and amendments thereto;*
 19 (k) *obtain specific performance under K.S.A. 84-2-716, and amend-*
 20 *ments thereto;*
 21 (l) *recover liquidated damages under K.S.A. 84-2-718, and amend-*
 22 *ments thereto;*
 23 (m) *in other cases, recover damages in any manner that is reasonable*
 24 *under the circumstances.*
 25 (3) *If the buyer becomes insolvent, the seller may:*
 26 (a) *Withhold delivery under K.S.A. 84-2-702(1), and amendments*
 27 *thereto;*
 28 (b) *stop delivery of the goods under K.S.A. 84-2-705, and amend-*
 29 *ments thereto;*
 30 (c) *reclaim the goods under K.S.A. 84-2-702(2), and amendments*
 31 *thereto.*
 32 Sec. 68. K.S.A. 84-2-704 is hereby amended to read as follows: 84-
 33 2-704. (1) An aggrieved seller ~~under the preceding section~~ may in an
 34 appropriate case involving breach by the buyer:
 35 (a) Identify to the contract conforming goods not already identified
 36 if at the time ~~he the seller~~ learned of the breach ~~they the goods~~ are in ~~his~~
 37 the seller's possession or control;
 38 (b) treat as the subject of resale goods ~~which that~~ have demonstrably
 39 been intended for the particular contract even ~~though~~ if those goods are
 40 unfinished.
 41 (2) ~~Where~~ If the goods are unfinished, an aggrieved seller may in the
 42 exercise of reasonable commercial judgment for the purposes of avoiding
 43 loss and of effective realization either complete the manufacture and

1 wholly identify the goods to the contract or cease manufacture and resell
 2 for scrap or salvage value or proceed in any other reasonable manner.

3 Sec. 69. K.S.A. 84-2-705 is hereby amended to read as follows: 84-
 4 2-705. (1) ~~The~~ A seller may stop delivery of goods in the possession of a
 5 carrier or other bailee ~~when he~~ *if the seller* discovers the buyer to be
 6 insolvent ~~(section 84-2-702)~~ *(K.S.A. 84-2-702, and amendments thereto)*,
 7 ~~and may stop delivery of carload, truckload, placeload or larger shipments~~
 8 ~~of express or freight when~~ *or if* the buyer repudiates or fails to make a
 9 payment due before delivery or if for any other reason the seller has a
 10 right to withhold or reclaim the goods.

11 (2) As against such buyer the seller may stop delivery until:
 12 (a) Receipt of the goods by the buyer; ~~or~~
 13 (b) acknowledgment to the buyer by any bailee of the goods except
 14 a carrier that the bailee holds the goods for the buyer; ~~or~~
 15 (c) such acknowledgment to the buyer by a carrier by reshipment or
 16 as ~~warehouseman~~ *warehouse*; or
 17 (d) negotiation to the buyer of any negotiable document of title cov-
 18 ering the goods.

19 (3) (a) To stop delivery the seller must so notify as to enable the
 20 bailee by reasonable diligence to prevent delivery of the goods.
 21 (b) After such notification the bailee must hold and deliver the goods
 22 according to the directions of the seller but the seller is liable to the bailee
 23 for any ensuing charges or damages.
 24 (c) If a negotiable document of title has been issued for goods, the
 25 bailee is not obliged to obey a notification to stop until surrender of
 26 *possession or control* of the document.
 27 (d) A carrier ~~who~~ *that* has issued a nonnegotiable bill of lading is not
 28 obliged to obey a notification to stop received from a person other than
 29 the consigner.

30 Sec. 70. K.S.A. 84-2-706 is hereby amended to read as follows: 84-
 31 2-706. (1) ~~Under the conditions stated in section 84-2-703 on seller's~~
 32 ~~remedies~~ *In an appropriate case involving breach by the buyer*, the seller
 33 may resell the goods concerned or the undelivered balance thereof.
 34 ~~Where~~ *If* the resale is made in good faith and in a commercially reason-
 35 able manner, the seller may recover the difference between the *contract*
 36 *price and the resale price* ~~and the contract price~~ together with any inci-
 37 dental *or consequential* damages allowed under ~~the provisions of this ar-~~
 38 ~~icle (section 84-2-710)~~ *K.S.A. 84-2-710, and amendments thereto*, but
 39 less expenses saved in consequence of the buyer's breach.

40 (2) Except as otherwise provided in subsection (3) or unless otherwise
 41 agreed, resale may be at public or private sale including sale by way of
 42 one or more contracts to sell or of identification to an existing contract
 43 of the seller. Sale may be as a unit or in parcels and at any time and place

1 and on any terms but every aspect of the sale including the method,
 2 manner, time, place and terms must be commercially reasonable. The
 3 resale must be reasonably identified as referring to the broken contract,
 4 but it is not necessary that the goods be in existence or that any or all of
 5 them have been identified to the contract before the breach.

6 (3) ~~Where~~ *If* the resale is at private sale, the seller must give the buyer
 7 reasonable notification of ~~his~~ *an* intention to resell.

8 (4) ~~Where~~ *If* the resale is at public sale:

9 (a) Only identified goods ~~can~~ *may* be sold ~~except where~~ *unless* there
 10 is a recognized market for a public sale of futures in goods of the kind;
 11 ~~and~~

12 (b) it must be made at a usual place or market for public sale if one
 13 is reasonably available and except in the case of goods which are perish-
 14 able or threaten to decline in value speedily the seller must give the buyer
 15 reasonable notice of the time and place of the resale; ~~and~~

16 (c) if the goods are not to be within the view of those attending the
 17 sale the notification of sale must state the place where the goods are
 18 located and provide for their reasonable inspection by prospective bid-
 19 ders; and

20 (d) the seller may buy.

21 (5) A purchaser ~~who~~ *that* buys in good faith at a resale takes the goods
 22 free of any rights of the original buyer even ~~though~~ *if* the seller fails to
 23 comply with one or more of the requirements of this section.

24 (6) The seller is not accountable to the buyer for any profit made on
 25 any resale. A person in the position of a seller (~~section 84-2-707~~) (K.S.A.
 26 *84-2-707, and amendments thereto*) or a buyer ~~who~~ *that* has rightfully
 27 rejected or justifiably revoked acceptance must account for any excess
 28 over the amount of ~~his~~ *the buyer's* security interest, ~~as hereinafter defined~~
 29 (~~subsection (3) of section 84-2-711~~) *under K.S.A. 84-2-711(3), and*
 30 *amendments thereto.*

31 (7) *Failure of a seller to resell under this section does not bar the*
 32 *seller from any other remedy.*

33 Sec. 71. K.S.A. 84-2-707 is hereby amended to read as follows: 84-
 34 2-707. (1) A "person in the position of a seller" includes as against a
 35 principal an agent ~~who~~ *that* has paid or become responsible for the price
 36 of goods on behalf of ~~his~~ *the* principal or ~~anyone who~~ *a person that* oth-
 37 erwise holds a security interest or other right in goods similar to that of
 38 a seller.

39 (2) A person in the position of a seller ~~may as provided in this article~~
 40 ~~withhold or stop delivery (section 84-2-705) and resell (section 84-2-706)~~
 41 ~~and recover incidental damages (section 84-2-710) has the same remedies~~
 42 *as a seller under this article.*

43 Sec. 72. K.S.A. 84-2-708 is hereby amended to read as follows: 84-

1 2-708. (1) Subject to subsection (2) and ~~to the provisions of this article~~
 2 ~~with respect to proof of market price (section 84-2-723), K.S.A. 84-2-723,~~
 3 ~~and amendments thereto:~~

4 (a) The measure of damages for nonacceptance ~~or repudiation~~ by the
 5 buyer is the difference between the *contract price and the market price*
 6 at the time and place for tender ~~and the unpaid contract price~~ together
 7 with any incidental *and consequential* damages provided in ~~this article~~
 8 ~~(section 84-2-710) K.S.A. 84-2-710, and amendments thereto,~~ but less
 9 expenses saved in consequence of the buyer's breach; *and*

10 (b) *the measure of damages for repudiation by the buyer is the dif-*
 11 *ference between the contract price and the market price at the place for*
 12 *tender at the expiration of a commercially reasonable time after the seller*
 13 *learned of the repudiation, but no later than the time stated in paragraph*
 14 *(a), together with any incidental or consequential damages provided in*
 15 *K.S.A. 84-2-710, and amendments thereto, less expenses saved in conse-*
 16 *quence of the buyer's breach.*

17 (2) If the measure of damages provided in subsection (1) *or in K.S.A.*
 18 *84-2-706, and amendments thereto,* is inadequate to put the seller in as
 19 good a position as performance would have done ~~then,~~ the measure of
 20 damages is the profit (including reasonable overhead) ~~which that~~ the
 21 seller would have made from full performance by the buyer, together
 22 with any incidental *or consequential* damages provided in this article ~~(see-~~
 23 ~~tion 84-2-710), due allowance for costs reasonably incurred and due credit~~
 24 ~~for payments or proceeds of resale K.S.A. 84-2-710, and amendments~~
 25 ~~thereto.~~

26 Sec. 73. K.S.A. 84-2-709 is hereby amended to read as follows: 84-
 27 2-709. (1) ~~When~~ *If* the buyer fails to pay the price as it becomes due, the
 28 seller may recover, together with any incidental *or consequential* damages
 29 under ~~the next section~~ *K.S.A. 84-2-710, and amendments there,* the price:

30 (a) Of goods accepted or of conforming goods lost or damaged within
 31 a commercially reasonable time after risk of their loss has passed to the
 32 buyer; and

33 (b) of goods identified to the contract if the seller is unable after
 34 reasonable effort to resell them at a reasonable price or the circumstances
 35 reasonably indicate that such effort will be unavailing.

36 (2) ~~Where~~ *If* the seller sues for the price ~~he,~~ *the seller,* must hold for
 37 the buyer any goods ~~which that~~ have been identified to the contract and
 38 are still in ~~his~~ *the seller's* control ~~except that.~~ *However,* if resale becomes
 39 possible ~~he,~~ *the seller* may resell them at any time prior to the collection
 40 of the judgment. The net proceeds of any such resale must be credited
 41 to the buyer, and payment of the judgment entitles ~~him~~ *the buyer* to any
 42 goods not resold.

43 (3) After the buyer has wrongfully rejected or revoked acceptance of

1 the goods or has failed to make a payment due or has repudiated (~~section~~
2 ~~84-2-610~~) (K.S.A. 84-2-610, and amendments thereto), a seller ~~who that~~
3 is held not entitled to the price under this section shall nevertheless be
4 awarded damages for nonacceptance under ~~the preceding section~~ K.S.A.
5 84-2-708, and amendments thereto.

6 Sec. 74. K.S.A. 84-2-710 is hereby amended to read as follows: 84-
7 2-710. (1) Incidental damages to an aggrieved seller include any com-
8 mercially reasonable charges, expenses or commissions incurred in stop-
9 ping delivery, in the transportation, care, and custody of goods after the
10 buyer's breach, in connection with return or resale of the goods or oth-
11 erwise resulting from the breach.

12 (2) *Consequential damages resulting from the buyer's breach include*
13 *any loss resulting from general or particular requirements and needs of*
14 *which the buyer at the time of contracting had reason to know and which*
15 *could not reasonably be prevented by resale or otherwise.*

16 (3) *In a consumer contract, a seller may not recover consequential*
17 *damages from a consumer.*

18 Sec. 75. K.S.A. 84-2-711 is hereby amended to read as follows: 84-
19 2-711. ~~(1) Where the seller fails to make delivery or repudiates or the~~
20 ~~buyer rightfully rejects or justifiably revokes acceptance then with respect~~
21 ~~to any goods involved, and with respect to the whole if the breach goes~~
22 ~~to the whole contract (section 84-2-612), the buyer may cancel and~~
23 ~~whether or not he has done so may in addition to recovering so much of~~
24 ~~the price as has been paid~~

25 ~~—(a) “cover” and have damages under the next section as to all the~~
26 ~~goods affected whether or not they have been identified to the contract;~~
27 ~~or~~

28 ~~—(b) recover damages for nondelivery as provided in this article (sec-~~
29 ~~tion 84-2-713).~~

30 ~~—(2) Where the seller fails to deliver or repudiates the buyer may also~~

31 ~~—(a) if the goods have been identified recover them as provided in this~~
32 ~~article (section 84-2-502); or~~

33 ~~—(b) in a proper case obtain specific performance or replevy the goods~~
34 ~~as provided in this article (section 84-2-716).~~ (1) *A breach of contract by*

35 *the seller includes the seller's wrongful failure to deliver or to perform a*
36 *contractual obligation, making of a nonconforming tender of delivery or*
37 *performance, and repudiation.*

38 (2) *If the seller is in breach of contract under subsection (1), the*
39 *buyer, to the extent provided for by this act or other law, may:*

40 (a) *In the case of rightful cancellation, rightful rejection, or justifiable*
41 *revocation of acceptance, recover so much of the price as has been paid;*

42 (b) *deduct damages from any part of the price still due under K.S.A.*
43 *84-2-717, and amendments thereto;*

- 1 (c) cancel;
- 2 (d) cover and have damages under K.S.A. 84-2-712, and amendments
3 thereto, as to all goods affected whether or not they have been identified
4 to the contract;
- 5 (e) recover damages for nondelivery or repudiation under K.S.A. 84-
6 2-713, and amendments thereto;
- 7 (f) recover damages for breach with regard to accepted goods or
8 breach with regard to a remedial promise under K.S.A. 84-2-714, and
9 amendments thereto;
- 10 (g) recover identified goods under K.S.A. 84-2-502, and amendments
11 thereto;
- 12 (h) obtain specific performance or obtain the goods by replevin or
13 similar remedy under K.S.A. 84-2-716, and amendments thereto;
- 14 (i) recover liquidated damages under K.S.A. 84-2-718, and amend-
15 ments thereto;
- 16 (j) in other cases, recover damages in any manner that is reasonable
17 under the circumstances.
- 18 (3) On rightful rejection or justifiable revocation of acceptance a
19 buyer has a security interest in goods in ~~his~~ *the buyer's* possession or
20 control for any payments made on their price and any expenses reasonably
21 incurred in their inspection, receipt, transportation, care and custody and
22 may hold such goods and resell them in like manner as an aggrieved seller
23 ~~(section 84-2-706)~~ (K.S.A. 84-2-706, and amendments thereto).
- 24 Sec. 76. K.S.A. 84-2-712 is hereby amended to read as follows: 84-
25 2-712. (1) ~~After a breach within the preceding section~~ *If the seller wrong-*
26 *fully fails to deliver or repudiates or the buyer rightfully rejects or justi-*
27 *fiably revokes acceptance*, the buyer may "cover" by making in good faith
28 and without unreasonable delay any reasonable purchase of or contract
29 to purchase goods in substitution for those due from the seller.
- 30 (2) ~~The~~ A buyer may recover from the seller as damages the differ-
31 ence between the cost of cover and the contract price together with any
32 incidental or consequential damages ~~as hereinafter defined (section 84-~~
33 ~~2-715)~~ under K.S.A. 84-2-715, and amendments thereto, but less expenses
34 saved in consequence of the seller's breach.
- 35 (3) Failure of the buyer to effect cover within this section does not
36 bar ~~him~~ *the buyer* from any other remedy.
- 37 Sec. 77. K.S.A. 84-2-713 is hereby amended to read as follows: 84-
38 2-713. (1) Subject to ~~the provisions of this article with respect to proof~~
39 ~~of market price (section 84-2-723)~~, K.S.A. 84-2-723, and amendments
40 thereto, *if the seller wrongfully fails to deliver or repudiates or the buyer*
41 *rightfully rejects or justifiably revokes acceptance*:
- 42 (a) The measure of damages ~~for nondelivery or repudiation~~ *in the*
43 *case of wrongful failure to deliver* by the seller or *rightful rejection* or

1 *justifiable revocation of acceptance by the buyer* is the difference between
2 the market price at the time ~~when the buyer learned of the breach for~~
3 *tender under the contract* and the contract price together with any inci-
4 dental ~~and or~~ consequential damages ~~provided in this article (section 84-~~
5 ~~2-715)~~ under K.S.A. 84-2-715, and amendments thereto, but less expenses
6 saved in consequence of the seller's breach; and

7 (b) *the measure of damages for repudiation by the seller is the differ-*
8 *ence between the market price at the expiration of a commercially rea-*
9 *sonable time after the buyer learned of the repudiation, but no later than*
10 *the time stated in paragraph (a), and the contract price together with any*
11 *incidental or consequential damages provided in this article (K.S.A. 84-*
12 *2-715, and amendments thereto), less expenses saved in consequence of*
13 *the seller's breach.*

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

17 Sec. 78. K.S.A. 84-2-714 is hereby amended to read as follows: 84-
18 2-714. (1) ~~Where~~ *If the buyer has accepted goods and given notification*
19 ~~(subsection (3) of section 84-2-607) he pursuant to K.S.A. 84-2-607(3),~~
20 *and amendments thereto, the buyer may recover as damages for any non-*
21 *conformity of tender the loss resulting in the ordinary course of events*
22 *from the seller's breach as determined in any reasonable manner which*
23 ~~is reasonable.~~

24 (2) The measure of damages for breach of warranty is the difference
25 at the time and place of acceptance between the value of the goods ac-
26 cepted and the value they would have had if they had been as warranted,
27 unless special circumstances show proximate damages of a different
28 amount.

29 (3) In a proper case any incidental and consequential damages under
30 ~~the next section~~ K.S.A. 84-2-715, and amendments thereto, may also be
31 recovered.

32 Sec. 79. K.S.A. 2004 Supp. 84-2-716 is hereby amended to read as
33 follows: 84-2-716. (1) Specific performance may be decreed ~~where~~ *if the*
34 *goods are unique or in other proper circumstances. In a contract other*
35 *than a consumer contract, specific performance may be decreed if the*
36 *parties have agreed to that remedy. However, even if the parties agree to*
37 *specific performance, specific performance may not be decreed if the*
38 *breaching party's sole remaining contractual obligation is the payment of*
39 *money.*

40 (2) The decree for specific performance may include such terms and
41 conditions as to payment of the price, damages, or other relief as the
42 court may deem just.

43 (3) The buyer has a right of replevin *or similar remedy* for goods

1 identified to the contract if after reasonable effort ~~he~~ *the buyer* is unable
 2 to effect cover for such goods or the circumstances reasonably indicate
 3 that such effort will be unavailing or if the goods have been shipped under
 4 reservation and satisfaction of the security interest in them has been made
 5 or tendered. ~~In the case of goods bought for personal, family or household~~
 6 ~~purposes, the buyer's right of replevin vests upon acquisition of a special~~
 7 ~~property, even if the seller had not then repudiated or failed to deliver.~~

8 (4) *The buyer's right under subsection (3) vests upon acquisition of a*
 9 *special property, even if the seller had not then repudiated or failed to*
 10 *deliver.*

11 Sec. 80. K.S.A. 84-2-717 is hereby amended to read as follows: 84-
 12 2-717. The buyer on notifying the seller of ~~his~~ *the* intention to do so may
 13 deduct all or any part of the damages resulting from any breach of the
 14 contract from any part of the price still due under the same contract.

15 Sec. 81. K.S.A. 84-2-718 is hereby amended to read as follows: 84-
 16 2-718. (1) Damages for breach by either party may be liquidated in the
 17 agreement but only at an amount ~~which~~ *that* is reasonable in the light of
 18 the anticipated or actual harm caused by the breach *and, in a consumer*
 19 *contract* the difficulties of proof of loss, and the inconvenience or non-
 20 feasibility of otherwise obtaining an adequate remedy. ~~A term fixing un-~~
 21 ~~reasonably large liquidated damages is void as a penalty. K.S.A. 84-2-719,~~
 22 *and amendments thereto, determines the enforceability of a term that*
 23 *limits but does not liquidate damages.*

24 (2) ~~Where~~ *If* the seller justifiably withholds delivery of goods or *stops*
 25 *performance* because of the buyer's breach or *insolvency* the buyer is
 26 entitled to restitution of any amount by which the sum of ~~his~~ *the buyer's*
 27 payments exceeds

28 (a) the amount to which the seller is entitled by virtue of terms liq-
 29 uidating the seller's damages in accordance with subsection (1); ~~or~~

30 ~~(b) in the absence of such terms, twenty percent of the value of the~~
 31 ~~total performance for which the buyer is obligated under the contract or~~
 32 ~~\$500, whichever is smaller.~~

33 (3) The buyer's right to restitution under subsection (2) is subject to
 34 offset to the extent that the seller establishes:

35 (a) A right to recover damages under the provisions of this article
 36 other than subsection (1); and

37 (b) the amount or value of any benefits received by the buyer directly
 38 or indirectly by reason of the contract.

39 (4) ~~Where~~ *If* a seller has received payment in goods, their reasonable
 40 value or the proceeds of their resale shall be treated as payments for the
 41 purposes of subsection (2); ~~but~~ *However*, if the seller has notice of the
 42 buyer's breach before reselling goods received in part performance, ~~his~~
 43 *the* resale is subject to the conditions ~~laid down in~~ *of* this article on resale

1 by an aggrieved seller (~~section 84-2-706~~) (K.S.A. 84-2-706, and amend-
2 *ments thereto*).

3 Sec. 82. K.S.A. 84-2-722 is hereby amended to read as follows: 84-
4 2-722. ~~Where~~ *If* a third party so deals with goods ~~which~~ *that* have been
5 identified to a contract for sale as to cause actionable injury to a party to
6 that contract:

7 (a) A right of action against the third party is in either party to the
8 contract for sale ~~who~~ *that* has title to or a security interest or a special
9 property or an insurable interest in the goods, and if the goods have been
10 destroyed or converted, a right of action is also in the party ~~who~~ *that*
11 either bore the risk of loss under the contract for sale or has since the
12 injury assumed that risk as against the other;

13 (b) if at the time of the injury the party plaintiff did not bear the risk
14 of loss as against the other party to the contract for sale and there is no
15 arrangement between them for disposition of the recovery, ~~his~~ *the party*
16 *plaintiff's* suit or settlement is, subject to ~~his~~ *its* own interest, as a fiduciary
17 for the other party to the contract; *and*

18 (c) either party may with the consent of the other sue for the benefit
19 of whom it may concern.

20 Sec. 83. K.S.A. 84-2-723 is hereby amended to read as follows: 84-
21 2-723. (1) ~~If an action based on anticipatory repudiation comes to trial~~
22 ~~before the time for performance with respect to some or all of the goods,~~
23 ~~any damages based on market price (section 84-2-708 or section 84-2-~~
24 ~~713) shall be determined according to the price of such goods prevailing~~
25 ~~at the time when the aggrieved party learned of the repudiation.~~

26 ~~—(2)~~ If evidence of a price prevailing at the times or places described
27 in this article is not readily available, the price prevailing within any rea-
28 sonable time before or after the time described or at any other place
29 ~~which~~ *that* in commercial judgment or under usage of trade would serve
30 as a reasonable substitute for the one described may be used, making any
31 proper allowance for the cost of transporting the goods to or from ~~such~~
32 *the* other place.

33 ~~—(3)~~ (2) Evidence of a relevant price prevailing at a time or place other
34 than the one described in this article offered by one party is not admissible
35 unless and until ~~he~~ *the party* has given the other party such notice as the
36 court finds sufficient to prevent unfair surprise.

37 Sec. 84. K.S.A. 84-2-724 is hereby amended to read as follows: 84-
38 2-724. ~~Whenever~~ *If* the prevailing price or value of any goods regularly
39 bought and sold in any established commodity market is in issue, reports
40 in official publications or trade journals or in newspapers ~~or~~, periodicals
41 ~~or~~ *or other means of communication in* general circulation published as
42 the reports of ~~such~~ *the* market ~~shall be~~ *are* admissible in evidence. The
43 circumstances of the preparation of such a report may be shown to affect

1 its weight but not its admissibility.

2 Sec. 85. K.S.A. 84-2-725 is hereby amended to read as follows: 84-
3 2-725. ~~(1) An action for breach of any contract for sale must be com-~~
4 ~~menced within four years after the cause of action has accrued. By the~~
5 ~~original agreement the parties may reduce the period of limitation to not~~
6 ~~less than one year but may not extend it.~~

7 ~~—(2) A cause of action accrues when the breach occurs, regardless of~~
8 ~~the aggrieved party's lack of knowledge of the breach. A breach of war-~~
9 ~~ranty occurs when tender of delivery is made, except that where a war-~~
10 ~~ranty explicitly extends to future performance of the goods and discovery~~
11 ~~of the breach must await the time of such performance the cause of action~~
12 ~~accrues when the breach is or should have been discovered.~~

13 ~~—(3) Where (1) Except as otherwise provided in this section, an action~~
14 ~~for breach of any contract for sale must be commenced within the later~~
15 ~~of four years after the right of action has accrued under subsection (2) or~~
16 ~~(3) or one year after the breach was or should have been discovered, but~~
17 ~~no longer than five years after the right of action accrued. By the original~~
18 ~~agreement the parties may reduce the period of limitation to not less than~~
19 ~~one year but may not extend it. However, in a consumer contract, the~~
20 ~~period of limitation may not be reduced.~~

21 (2) Except as otherwise provided in subsection (3), the following rules
22 apply:

23 (a) Except as otherwise provided in this subsection, a right of action
24 for breach of a contract accrues when the breach occurs, even if the ag-
25 grieved party did not have knowledge of the breach.

26 (b) For breach of a contract by repudiation, a right of action accrues
27 at the earlier of when the aggrieved party elects to treat the repudiation
28 as a breach or when a commercially reasonable time for awaiting per-
29 formance has expired.

30 (c) For breach of a remedial promise, a right of action accrues when
31 the remedial promise is not performed when performance is due.

32 (d) In an action by a buyer against a person that is answerable over
33 to the buyer for a claim asserted against the buyer, the buyer's right of
34 action against the person answerable over accrues at the time the claim
35 was originally asserted against the buyer.

36 (3) If a breach of a warranty arising under K.S.A. 84-2-312, 84-2-
37 313(2), 84-2-314, or 84-2-315, and amendments thereto, or a breach of
38 an obligation, other than a remedial promise, arising under section 26 or
39 27, and amendments thereto, is claimed, the following rules apply:

40 (a) Except as otherwise provided in paragraph (c), a right of action
41 for breach of a warranty arising under K.S.A. 84-2-313(2), 84-2-314, or
42 84-2-315, and amendments thereto, accrues when the seller has tendered
43 delivery to the immediate buyer, as defined in K.S.A. 84-2-313, and

1 amendments thereto, and has completed performance of any agreed in-
2 stallation or assembly of the goods.

3 (b) Except as otherwise provided in paragraph (c), a right of action
4 for breach of an obligation, other than a remedial promise, arising under
5 section 26 or 27, and amendments thereto, accrues when the remote pur-
6 chaser, as defined in section 26 or 27, and amendments thereto, receives
7 the goods.

8 (c) If a warranty arising under K.S.A. 84-2-313(2), and amendments
9 thereto, or an obligation, other than a remedial promise, arising under
10 section 26 or 27, and amendments thereto, explicitly extends to future
11 performance of the goods and discovery of the breach must await the time
12 for performance, the right of action accrues when the immediate buyer
13 as defined in K.S.A. 84-2-313, and amendments thereto, or the remote
14 purchaser as defined in section 26 or 27, and amendments thereto, dis-
15 covers or should have discovered the breach.

16 (d) A right of action for breach of warranty arising under K.S.A. 84-
17 2-312, and amendments thereto, accrues when the aggrieved party dis-
18 covers or should have discovered the breach. However, an action for
19 breach of the warranty of noninfringement may not be commenced more
20 than six years after tender of delivery of the goods to the aggrieved party.

21 (4) If an action commenced within the time limited by subsection (1)
22 is so terminated as to leave available a remedy by another action for the
23 same breach ~~such~~, the other action may be commenced after the expi-
24 ration of the time limited and within six months after the termination of
25 the first action unless the termination resulted from voluntary discontin-
26 uance or from dismissal for failure or neglect to prosecute.

27 ~~(4)~~ (5) This section does not alter the law on tolling of the statute of
28 limitations nor does it apply to causes of action ~~which have that~~ accrued
29 before this act becomes effective.

30 New Sec. 86. (UCC 2-801.) This act amends the existing article 2 of
31 chapter 84, of the Kansas Statutes Annotated.

32 New Sec. 87 (UCC 2-803.) (1) This act applies to a transaction within
33 its scope that is entered into on or after the effective date of this act.

34 (2) This act does not apply to a transaction that is entered into before
35 the effective date of this act even if the transaction would be subject to
36 this act if it had been entered into after the effective date of this act.

37 (3) This act does not apply to a right of action that accrued before
38 the effective date of this act.

39 (4) Section 27, and amendments thereto, does not apply to an ad-
40 vertisement or similar communication made before the effective date of
41 this act.

42 New Sec. 88. (UCC 2-804.) A transaction entered into before the
43 effective date of this act, and the rights, obligations, and interests flowing

1 from that transaction, are governed by any statute or other law amended
2 or repealed by this act as if amendment or repeal had not occurred and
3 may be terminated, completed, consummated, or enforced under that
4 statute or other law.

5 Sec. 89. K.S.A. 84-7-102 is hereby amended to read as follows: 84-
6 7-102. (1) In this article, unless the context otherwise requires:

7 (a) "Bailee" means the person who by a warehouse receipt, bill of
8 lading or other document of title acknowledges possession of goods and
9 contracts to deliver them.

10 (b) "Consignee" means the person named in a bill to whom or to
11 whose order the bill promises delivery.

12 (c) "Consignor" means the person named in a bill as the person from
13 whom the goods have been received for shipment.

14 (d) "Delivery order" means a written order to deliver goods directed
15 to a warehouseman, carrier or other person who in the ordinary course
16 of business issues warehouse receipts or bills of lading.

17 (e) "Document" means document of title as defined in the general
18 definitions in article 1 (section 84-1-201, *and amendments thereto*).

19 (f) "Goods" means all things which are treated as movable for the
20 purposes of a contract of storage or transportation.

21 (g) "Issuer" means a bailee who issues a document except that in
22 relation to an unaccepted delivery order it means the person who orders
23 the possessor of goods to deliver. Issuer includes any person for whom
24 an agent or employee purports to act in issuing a document if the agent
25 or employee has real or apparent authority to issue documents, notwith-
26 standing that the issuer received no goods or that the goods were mis-
27 described or that in any other respect the agent or employee violated his
28 instructions.

29 (h) "Warehouseman" is a person engaged in the business of storing
30 goods for hire.

31 (2) Other definitions applying to this article or to specific parts
32 thereof, and the sections in which they appear are:

33 "Duly negotiate." Section 84-7-501, *and amendments thereto*.

34 "Person entitled under the document." Section 84-7-403 (4), *and*
35 *amendments thereto*.

36 (3) Definitions in other articles applying to this article and the sec-
37 tions in which they appear are:

38 "Contract for sale." Section 84-2-106, *and amendments thereto*.

39 ~~"Overseas." Section 84-2-323.~~

40 "Receipt" of goods. Section 84-2-103, *and amendments thereto*.

41 (4) In addition article 1 of *chapter 84 of the Kansas Statutes Anno-*
42 *tated, and amendments thereto*, contains general definitions and princi-
43 ples of construction and interpretation applicable throughout this article.

1 Sec. 90. K.S.A. 84-2-104, 84-2-105, 84-2-201, 84-2-202, 84-2-203,
2 84-2-204, 84-2-205, 84-2-206, 84-2-207, 84-2-209, 84-2-302, 84-2-304,
3 84-2-305, 84-2-308, 84-2-309, 84-2-310, 84-2-311, 84-2-312, 84-2-313,
4 84-2-314, 84-2-316, 84-2-318, 84-2-319, 84-2-320, 84-2-321, 84-2-322,
5 84-2-323, 84-2-324, 84-2-325, 84-2-328, 84-2-401, 84-2-402, 84-2-403,
6 84-2-501, 84-2-503, 84-2-504, 84-2-505, 84-2-506, 84-2-507, 84-2-508,
7 84-2-509, 84-2-510, 84-2-512, 84-2-513, 84-2-514, 84-2-601, 84-2-602,
8 84-2-603, 84-2-604, 84-2-605, 84-2-606, 84-2-607, 84-2-608, 84-2-609,
9 84-2-610, 84-2-611, 84-2-612, 84-2-613, 84-2-614, 84-2-615, 84-2-616,
10 84-2-702, 84-2-703, 84-2-704, 84-2-705, 84-2-706, 84-2-707, 84-2-708,
11 84-2-709, 84-2-710, 84-2-711, 84-2-712, 84-2-713, 84-2-714, 84-2-717,
12 84-2-718, 84-2-722, 84-2-723, 84-2-724, 84-2-725 and 84-7-102 and
13 K.S.A. 2004 Supp. 84-2-103, 84-2-210, 84-2-326, 84-2-502 and 84-2-716
14 are hereby repealed.
15 Sec. 91. This act shall take effect and be in force from July 1, 2006,
16 and after its publication in the statute book.