

## HOUSE BILL No. 2455

By Committee on Judiciary

2-11

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9 AN ACT concerning the uniform commercial code; article 2a, leases;  
10 amending K.S.A. 84-2a-104, 84-2a-105, 84-2a-107, 84-2a-108, 84-2a-  
11 109, 84-2a-201, 84-2a-202, 84-2a-203, 84-2a-204, 84-2a-205, 84-2a-  
12 208, 84-2a-211, 84-2a-212, 84-2a-214, 84-2a-219, 84-2a-220, 84-2a-  
13 221, 84-2a-304, 84-2a-305, 84-2a-306, 84-2a-310, 84-2a-401,  
14 84-2a-402, 84-2a-404, 84-2a-405, 84-2a-406, 84-2a-503, 84-2a-504, 84-  
15 2a-506, 84-2a-508, 84-2a-509, 84-2a-510, 84-2a-511, 84-2a-512, 84-2a-  
16 513, 84-2a-514, 84-2a-515, 84-2a-516, 84-2a-517, 84-2a-522, 84-2a-  
17 523, 84-2a-526, 84-2a-527, 84-2a-528, 84-2a-529, 84-2a-530 and  
18 84-2a-531 and K.S.A. 2004 Supp. 84-2a-103, 84-2a-303, 84-2a-309, 84-  
19 9-102, 84-9-109, 84-9-110, 84-9-309 and 84-9-325 and repealing the  
20 existing sections; also repealing K.S.A. 84-2a-521.  
21

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

23 Section 1. K.S.A. 2004 Supp. 84-2a-103 is hereby amended to read  
24 as follows: 84-2a-103. (1) In this article, unless the context otherwise  
25 requires:

26 (a) ~~“Buyer in ordinary course of business” means a person who in~~  
27 ~~good faith and without knowledge that the sale to such person is in vio-~~  
28 ~~lation of the ownership rights or security interest or leasehold interest of~~  
29 ~~a third party in the goods buys in ordinary course from a person in the~~  
30 ~~business of selling goods of that kind but does not include a pawnbroker.~~  
31 ~~“Buying” may be for cash or by exchange of other property or on secured~~  
32 ~~or unsecured credit and includes receiving goods or documents of title~~  
33 ~~under a preexisting contract for sale but does not include a transfer in~~  
34 ~~bulk or as security for or in total or partial satisfaction of a money debt.~~

35 ~~—(b) “Cancellation” occurs when either party puts an end to the lease~~  
36 ~~contract for default by the other party.~~

37 ~~(c) (b) “Commercial unit” means such a unit of goods as by com-~~  
38 ~~mmercial usage is a single whole for purposes of lease and division of which~~  
39 ~~materially impairs its character or value on the market or in use. A com-~~  
40 ~~mmercial unit may be a single article, as a machine, or a set of articles, as~~  
41 ~~a suite of furniture or a line of machinery, or a quantity, as a gross or~~  
42 ~~carload, or any other unit treated in use or in the relevant market as a~~  
43 ~~single whole.~~

- 1     ~~(c)~~ (c) “Conforming” goods or performance under a lease contract  
2 means goods or performance that are in accordance with the obligations  
3 under the lease contract.
- 4     (d) “Conspicuous”, with reference to a term, means so written, dis-  
5 played, or presented that a reasonable person against which it is to operate  
6 ought to have noticed it. A term in an electronic record intended to evoke  
7 a response by an electronic agent is conspicuous if it is presented in a  
8 form that would enable a reasonably configured electronic agent to take  
9 it into account or react to it without review of the record by an individual.  
10 Whether a term is “conspicuous” or not is a decision for the court. Con-  
11 spicuous terms include the following:
- 12     (i) For a person:
- 13         (A) A heading in capitals equal to or greater in size than the sur-  
14 rounding text, or in contrasting type, font, or color to the surrounding  
15 text of the same or lesser size; and
- 16         (B) language in the body of a record or display in larger type than  
17 the surrounding text, or in contrasting type, font, or color to the surround-  
18 ing text of the same size, or set off from surrounding text of the same size  
19 by symbols or other marks that call attention to the language; and
- 20     (ii) for a person or an electronic agent, a term that is so placed in a  
21 record or display that the person or electronic agent cannot proceed with-  
22 out taking action with respect to the particular term.
- 23     (e) “Consumer” means an individual who leases or contracts to lease  
24 goods that, at the time of contracting, are intended by the individual to  
25 be used primarily for personal, family, or household purposes.
- 26     ~~(f)~~ (f) “Consumer lease” means a lease that a lessor regularly engaged  
27 in the business of leasing or selling makes to a lessee who is an individual  
28 and who takes under the lease primarily for a personal, family, or house-  
29 hold purpose consumer, if the total payments to be made under the lease  
30 contract, excluding payments for options to renew or buy, do not exceed  
31 \$25,000.
- 32     (g) “Delivery” means the voluntary transfer of physical possession or  
33 control of goods.
- 34     (h) “Electronic” means relating to technology having electrical, digi-  
35 tal, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 36     (i) “Electronic agent” means a computer program or an electronic or  
37 other automated means used independently to initiate an action or re-  
38 spond to electronic records or performances in whole or in part, without  
39 review or action by an individual.
- 40     (j) “Electronic record” means a record created, generated, sent, com-  
41 municated, received, or stored by electronic means.
- 42     ~~(k)~~ (k) “Fault” means wrongful act, omission, breach or default.
- 43     ~~(g)~~ “Finance lease” means a lease with respect to which.

- 1 ~~—(i) The lessor does not select, manufacture or supply the goods;~~  
2 ~~—(ii) the lessor acquires the goods or the right to possession and use~~  
3 ~~of the goods in connection with the lease, and~~  
4 ~~—(iii) one of the following occurs:~~  
5 ~~—(A) The lessee receives a copy of the contract by which the lessor~~  
6 ~~acquired the goods or the right to possession and use of the goods before~~  
7 ~~signing the lease contract;~~  
8 ~~—(B) the lessee’s approval of the contract by which the lessor acquired~~  
9 ~~the goods or the right to possession and use of the goods is a condition~~  
10 ~~to effectiveness of the lease contract;~~  
11 ~~—(C) the lessee, before signing the lease contract, receives an accurate~~  
12 ~~and complete statement designating the promises and warranties, and any~~  
13 ~~disclaimers of warranties, limitations or modifications of remedies, or li-~~  
14 ~~quidated damages, including those of a third party, such as the manufac-~~  
15 ~~turer of the goods, provided to the lessor by the person supplying the~~  
16 ~~goods in connection with or as part of the contract by which the lessor~~  
17 ~~acquired the goods or the right to possession and use of the goods; or~~  
18 ~~—(D) if the lease is not a consumer lease, the lessor, before the lessee~~  
19 ~~signs the lease contract, informs the lessee in writing (a) of the identity~~  
20 ~~of the person supplying the goods to the lessor, unless the lessee has~~  
21 ~~selected that person and directed the lessor to acquire the goods or the~~  
22 ~~right to possession and use of the goods from that person, (b) that the~~  
23 ~~lessee is entitled under this article to the promises and warranties, in-~~  
24 ~~cluding those of any third party, provided to the lessor by the person~~  
25 ~~supplying the goods in connection with or as part of the contract by which~~  
26 ~~the lessor acquired the goods or the right to possession and use of the~~  
27 ~~goods, and (c) that the lessee may communicate with the person supplying~~  
28 ~~the goods to the lessor and receive an accurate and complete statement~~  
29 ~~of those promises and warranties, including any disclaimers and limita-~~  
30 ~~tions of them or of remedies.~~  
31 *(l) “Finance lease” means a lease with respect to which:*  
32 *(i) The lessor does not select, manufacture, or supply the goods;*  
33 *(ii) the lessor acquires the goods or the right to possession and use of*  
34 *the goods in connection with the lease or, in the case of goods that have*  
35 *been leased previously by the lessor and are not being leased to a con-*  
36 *sumer, in connection with another lease; and*  
37 *(iii) one of the following occurs:*  
38 *(A) The lessee receives a copy of the agreement by which the lessor*  
39 *acquired, or proposes to acquire, the goods or the right to possession and*  
40 *use of the goods before signing the lease agreement;*  
41 *(B) the lessee’s approval of the agreement or of the general contractual*  
42 *terms under which the lessor acquired or proposes to acquire the goods*  
43 *or the right to possession and use of the goods is a condition to the ef-*

1 *fectiveness of the lease contract;*

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

9 (D) *if the lease is not a consumer lease, before the lessee signs the*  
10 *lease agreement, the lessor informs the lessee in a record:*

11 (I) *Of the identity of the person supplying the goods to the lessor,*  
12 *unless the lessee has selected that person and directed the lessor to acquire*  
13 *the goods or the right to possession and use of the goods from that person;*

14 (II) *that the lessee is entitled under this article to the promises and*  
15 *warranties, including those of any third party, provided to the lessor by*  
16 *the person supplying the goods in connection with or as part of the con-*  
17 *tract by which the lessor acquired the goods or the right to possession*  
18 *and use of the goods; and*

19 (III) *that the lessee may communicate with the person supplying the*  
20 *goods to the lessor and receive an accurate and complete statement of*  
21 *those promises and warranties, including any disclaimers and limitations*  
22 *of them, or a statement of remedies.*

23 (m) *“Good faith” means honesty in fact and the observance of rea-*  
24 *sonable commercial standards of fair dealing.*

25 ~~(n)~~ (n) *“Goods” means all things that are movable at the time of*  
26 *identification to the lease contract, or are fixtures (K.S.A. 84-2a-309, and*  
27 *amendments thereto), but the term does not include money, documents,*  
28 *instruments, accounts, chattel paper, general intangibles, or minerals or*  
29 *the like, including oil and gas, before extraction. The term also includes*  
30 *the unborn young of animals. The term includes future goods, specially*  
31 *manufactured goods, and the unborn young of animals. The term does*  
32 *not include information, the money in which the price is to be paid, in-*  
33 *vestment securities under article 8, or choses in action.*

34 ~~(o)~~ (o) *“Installment lease contract” means a lease contract that au-*  
35 *thorizes or requires the delivery of goods in separate lots to be separately*  
36 *accepted, even though the lease contract contains a clause “each delivery*  
37 *is a separate lease” or its equivalent.*

38 ~~(p)~~ (p) *“Lease” means a transfer of the right to possession and use of*  
39 *goods for a term period in return for consideration, but a sale, including*  
40 *a sale on approval or a sale or return, or retention or creation of a security*  
41 *interest, or license of information is not a lease. Unless the context clearly*  
42 *indicates otherwise, the term includes a sublease.*

43 ~~(q)~~ (q) *“Lease agreement” as distinguished from “lease contract”,*

1 means the bargain, with respect to the lease, of the lessor and the lessee  
 2 in fact as found in their language or ~~by implication~~ *inferred* from other  
 3 circumstances including course of dealing or usage of trade or course of  
 4 performance, *course of dealing, or usage of trade*, as provided in ~~this~~  
 5 ~~article~~ K.S.A. 84-1-303, *and amendments thereto*. Unless the context  
 6 clearly indicates otherwise, the term includes a sublease agreement.

7 ~~(r)~~ (r) “Lease contract” *as distinguished from “lease agreement”*,  
 8 means the total legal obligation that results from the lease agreement as  
 9 ~~affected by this article and~~ *determined by the uniform commercial code*  
 10 *as supplemented by* any other applicable rules of law. Unless the context  
 11 clearly indicates otherwise, the term includes a sublease contract.

12 ~~(m)~~ (s) “Leasehold interest” means the interest of the lessor or the  
 13 lessee under a lease contract.

14 ~~(n)~~ (t) “Lessee” means a person ~~who~~ *that* acquires the right to pos-  
 15 session and use of goods under a lease. Unless the context clearly indicates  
 16 otherwise, the term includes a sublessee.

17 ~~(o)~~ (u) “Lessee in ordinary course of business” means a person ~~who~~  
 18 ~~in good faith and without knowledge that the lease is in violation of the~~  
 19 ~~ownership rights or security interest or leasehold interest of a third party~~  
 20 ~~in the goods leases in ordinary course from a person in the business of~~  
 21 ~~selling or leasing goods of that kind but does not include a pawnbroker.~~  
 22 ~~“Leasing” may be for cash or by exchange of other property or on secured~~  
 23 ~~or unsecured credit and includes receiving goods or documents of title~~  
 24 ~~under a preexisting lease contract but does not include a transfer in bulk~~  
 25 ~~or as security for or in total or partial satisfaction of a money debt. that~~  
 26 ~~leases goods in good faith, without knowledge that the lease violates the~~  
 27 ~~rights of another person, and in the ordinary course from a person, other~~  
 28 ~~than a pawnbroker, in the business of selling or leasing goods of that kind.~~  
 29 ~~A person leases in ordinary course if the lease to the person comports with~~  
 30 ~~the usual or customary practices in the kind of business in which the lessor~~  
 31 ~~is engaged or with the lessor’s own usual or customary practices. A lessee~~  
 32 ~~in ordinary course of business may lease for cash, by exchange of other~~  
 33 ~~property, or on secured or unsecured credit, and may acquire goods or~~  
 34 ~~documents of title under a preexisting lease contract. Only a lessee that~~  
 35 ~~takes possession of the goods or has a right to recover the goods from the~~  
 36 ~~lessor under this article may be a lessee in ordinary course of business. A~~  
 37 ~~person that acquires goods in a transfer in bulk or as security for or in~~  
 38 ~~total or partial satisfaction of a money debt is not a lessee in ordinary~~  
 39 ~~course of business.~~

40 ~~(p)~~ (v) “Lessor” means a person ~~who~~ *that* transfers the right to pos-  
 41 session and use of goods under a lease. Unless the context clearly indicates  
 42 otherwise, the term includes a sublessor.

43 ~~(q)~~ (w) “Lessor’s residual interest” means the lessor’s interest in the

- 1 goods after expiration, termination or cancellation of the lease contract.
- 2 ~~(x)~~ (x) “Lien” means a charge against or interest in goods to secure  
3 payment of a debt or performance of an obligation, ~~but~~. The term does  
4 not include a security interest.
- 5 ~~(y)~~ (y) “Lot” means a parcel or a single article that is the subject  
6 matter of a separate lease or delivery, whether or not it is sufficient to  
7 perform the lease contract.
- 8 ~~(z)~~ (z) “Merchant lessee” means a lessee that is a merchant with re-  
9 spect to goods of the kind subject to the lease.
- 10 ~~(aa)~~ (aa) “Present value” means the amount as of a date certain of one  
11 or more sums payable in the future, discounted to the date certain. ~~The~~  
12 ~~discount is determined by the interest rate specified by the parties if the~~  
13 ~~rate was not manifestly unreasonable at the time the transaction was en-~~  
14 ~~tered into; otherwise, the discount is determined by a commercially rea-~~  
15 ~~sonable rate that takes into account the facts and circumstances of each~~  
16 ~~case at the time the transaction was entered into. by use of either an~~  
17 ~~interest rate specified by the parties if that rate is not manifestly unrea-~~  
18 ~~sonable at the time the transaction is entered into or, if an interest rate is~~  
19 ~~not so specified, a commercially reasonable rate that takes into account~~  
20 ~~the facts and circumstances at the time the transaction is entered into.~~
- 21 ~~(bb)~~ (bb) “Purchase” includes taking by sale, lease, mortgage, security  
22 interest, pledge, gift, or any other voluntary transaction creating an in-  
23 terest in goods.
- 24 (cc) “Record” means information that is inscribed on a tangible me-  
25 dium or that is stored in an electronic or other medium and is retrievable  
26 in perceivable form.
- 27 (dd) “Sign” means, with present intent to authenticate or adopt a  
28 record:  
29 (i) To execute or adopt a tangible symbol; or  
30 (ii) to attach to or logically associate with the record an electronic  
31 sound, symbol, or process.
- 32 ~~(ee)~~ (ee) “Sublease” means a lease of goods the right to possession  
33 and use of which was acquired by the lessor as a lessee under an existing  
34 lease.
- 35 ~~(ff)~~ (ff) “Supplier” means a person from ~~whom~~ *which* a lessor buys or  
36 leases goods to be leased under a finance lease.
- 37 ~~(gg)~~ (gg) “Supply contract” means a contract under which a lessor buys  
38 or leases goods to be leased.
- 39 ~~(hh)~~ (hh) “Termination” occurs when either party pursuant to a power  
40 created by agreement or law puts an end to the lease contract otherwise  
41 than for default.
- 42 (2) Other definitions applying to this article and the sections in which  
43 they appear are:

1 “Accessions,” K.S.A. 84-2a-310(1), *and amendments thereto*;  
 2 “Construction mortgage,” K.S.A. 84-2a-309(1)(d), *and amendments*  
 3 *thereto*;  
 4 “Encumbrance,” K.S.A. 84-2a-309(1)(e), *and amendments there*;  
 5 “Fixtures,” K.S.A. 84-2a-309(1)(a), *and amendments thereto*;  
 6 “Fixture filing,” K.S.A. 84-2a-309(1)(b), *and amendments thereto*; and  
 7 “Purchase money lease,” K.S.A. 84-2a-309(1)(c), *and amendments*  
 8 *thereto*.  
 9 (3) The following definitions in other articles apply to this article:  
 10 ~~“Account,” K.S.A. 2004 Supp. 84-9-102, and amendments thereto;~~  
 11 “Between merchants,” K.S.A. 84-2-104(3), and amendments thereto;  
 12 “Buyer,” K.S.A. 84-2-103(1)(a), and amendments thereto;  
 13 ~~“Chattel paper,” K.S.A. 2004 Supp. 84-9-102(a)(11), and amendments~~  
 14 ~~thereto;~~  
 15 “Consumer goods,” K.S.A. 2004 Supp. 84-9-102(a)(23), and amend-  
 16 ments thereto;  
 17 ~~“Document,” K.S.A. 2004 Supp. 84-9-102(a)(30), and amendments~~  
 18 ~~thereto;~~  
 19 “Entrusting,” K.S.A. 84-2-403(3), and amendments thereto;  
 20 ~~“General intangible,” K.S.A. 2004 Supp. 84-9-102(a)(42), and amend-~~  
 21 ~~ments thereto;~~  
 22 ~~“Good faith,” K.S.A. 84-2-103(1)(b), and amendments thereto;~~  
 23 ~~“Instrument,” K.S.A. 2004 Supp. 84-9-102(a)(47), and amendments~~  
 24 ~~thereto;~~  
 25 “*Letter of credit*,” K.S.A. 84-5-102(a)(10), *and amendments thereto*;  
 26 “Merchant,” K.S.A. 84-2-104(1), and amendments thereto;  
 27 ~~“Mortgage,” K.S.A. 2004 Supp. 84-9-102(a)(55), and amendments~~  
 28 ~~thereto;~~  
 29 ~~“Pursuant to commitment,” K.S.A. 2004 Supp. 84-9-102(a)(68), and~~  
 30 ~~amendments thereto;~~  
 31 “*Receipt of goods*,” K.S.A. 84-2-103(1)(c), and amendments thereto;  
 32 “Sale,” K.S.A. 84-2-106(1), and amendments thereto;  
 33 “Sale on approval,” K.S.A. 84-2-326, and amendments thereto;  
 34 “Sale or return,” K.S.A. 84-2-326, and amendments thereto; and  
 35 “Seller,” K.S.A. 84-2-103(1)(~~d~~)(n), and amendments thereto.  
 36 (4) In addition, article 1 of *chapter 84, of the Kansas Statutes Anno-*  
 37 *tated, and amendments thereto*, contains general definitions and princi-  
 38 ples of construction and interpretation applicable throughout this article.  
 39 Sec. 2. K.S.A. 84-2a-104 is hereby amended to read as follows: 84-  
 40 2a-104. (1) A lease, ~~although~~ subject to this article, is also subject to any  
 41 applicable:  
 42 (a) ~~Certificate of title statute of this state. (List any certificate of title~~  
 43 ~~statutes covering automobiles, trailers, mobile homes, boats, farm trac-~~

1 ~~tors, and the like) Registration of motor vehicles pursuant to K.S.A. 8-126~~  
 2 ~~through 8-149, and amendments thereto;~~

3 (b) ~~certificate of title statute of another jurisdiction (K.S.A. 84-2a-~~  
 4 ~~105, and amendments thereto); or~~

5 (c) ~~consumer protection statute of this state, or final consumer pro-~~  
 6 ~~tection decision of a court of this state existing on the effective date of~~  
 7 ~~this article rule of law that establishes different rules for consumers.~~

8 (2) ~~In case of~~ *To the extent there is a conflict between this article,*  
 9 *other than K.S.A. 84-2a-105, 84-2a-304(3) and 84-2a-305(3), and amend-*  
 10 *ments thereto, and a statute or decision referred to in subsection (1), the*  
 11 *statute or decision controls that law governs.*

12 (3) ~~Failure to comply with an applicable law has only the effect spec-~~  
 13 ~~ified therein. For purposes of this article, failure to comply with a law~~  
 14 ~~referred to in subsection (1) has only the effect specified in that law.~~

15 (4) *This article modifies, limits, and supersedes the federal electronic*  
 16 *signatures in global and national commerce act, 15 U.S.C. section 7001*  
 17 *et sec., except that nothing in this article modifies, limits, or supersedes*  
 18 *section 7001(c) of that act or authorizes electronic delivery of any of the*  
 19 *notices described in section 7003(b) of that act.*

20 Sec. 3. K.S.A. 84-2a-105 is hereby amended to read as follows: 84-  
 21 2a-105. ~~Subject to the provisions of K.S.A. 84-2a-304(3) and 84-2a-305(3),~~  
 22 ~~with respect to goods covered by a certificate of title issued under a statute~~  
 23 ~~of this state or of another jurisdiction, compliance and the effect of com-~~  
 24 ~~pliance or noncompliance with a certificate of title statute are governed~~  
 25 ~~by the law (including the conflict of laws rules) of the jurisdiction issuing~~  
 26 ~~the certificate until the earlier of (a) surrender of the certificate, or (b)~~  
 27 ~~four months after the goods are removed from that jurisdiction and there-~~  
 28 ~~after until a new certificate of title is issued by another jurisdiction.~~

29 (1) *This section applies to goods covered by a certificate of title, even if*  
 30 *there is no other relationship between the jurisdiction under whose cer-*  
 31 *tificate of title the goods are covered and the goods or the lessee or lessor.*

32 (2) *Goods become covered by a certificate of title when a valid ap-*  
 33 *plication for the certificate of title and the application fee are delivered to*  
 34 *the appropriate authority. Goods cease to be covered by a certificate of*  
 35 *title at the earlier of the time the certificate of title ceases to be effective*  
 36 *under the law of the issuing jurisdiction or the time the goods become*  
 37 *covered subsequently by a certificate of title issued by another*  
 38 *jurisdiction.*

39 (3) *Subject to K.S.A. 84-2a-304(3) and 84-2a-305(3), and amend-*  
 40 *ments thereto, with respect to goods covered by a certificate of title under*  
 41 *a statute of this state or of another jurisdiction, compliance and the effect*  
 42 *of compliance or noncompliance with the certificate-of-title statute are*  
 43 *governed by the local law of jurisdiction whose certificate of title covers*

1 *the goods from the time the goods become covered by the certificate until*  
2 *the goods cease to be covered by the certificate of title.*

3 Sec. 4. K.S.A. 84-2a-107 is hereby amended to read as follows: 84-  
4 2a-107. ~~Any~~ A claim or right arising out of an alleged default or breach  
5 of warranty may be discharged in whole or in part without consideration  
6 ~~by a written waiver or renunciation signed and delivered by the aggrieved~~  
7 ~~party in a signed record.~~

8 Sec. 5. K.S.A. 84-2a-108 is hereby amended to read as follows: 84-  
9 2a-108. (1) If the court as a matter of law finds a lease contract or any  
10 clause of a lease contract to have been unconscionable at the time it was  
11 made, the court may refuse to enforce the lease contract, or it may en-  
12 force the remainder of the lease contract without the unconscionable  
13 clause, or it may so limit the application of any unconscionable clause as  
14 to avoid any unconscionable result.

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

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

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

27 (a) If the court finds unconscionability under subsection (1) or (2),  
28 the court shall award reasonable attorney fees to the lessee.

29 (b) If the court does not find unconscionability and the lessee claim-  
30 ing unconscionability has brought or maintained an action ~~such~~ *the* lessee  
31 knew to be groundless, the court shall award reasonable attorney fees to  
32 the party against ~~whom~~ *which* the claim is made.

33 (c) In determining attorney fees, the amount of the recovery on be-  
34 half of the claimant under subsections (1) and (2) is not controlling.

35 Sec. 6. K.S.A. 84-2a-109 is hereby amended to read as follows: 84-2a-  
36 109. (1) A term providing that one party or ~~such~~ *that* party's successor in  
37 interest may accelerate payment of performance or require collateral or  
38 additional collateral "at will" or "when ~~such~~ *the* party deems ~~such~~ *party's*  
39 ~~self~~ *itself* insecure" or ~~in~~ words of similar import ~~must be construed to~~  
40 ~~mean~~ *means* that ~~such~~ *the* party has power to do so only if ~~such~~ *that* party  
41 in good faith believes that the prospect of payment or performance is  
42 impaired.

43 (2) With respect to a consumer lease, the burden of establishing good

1 faith under subsection (1) is on the party ~~who~~ *that has* exercised the  
 2 power; otherwise, the burden of establishing lack of good faith is on the  
 3 party against ~~whom~~ *which* the power has been exercised.

4 Sec. 7. K.S.A. 84-2a-201 is hereby amended to read as follows: 84-  
 5 2a-201. (1) A lease contract is not enforceable by way of action or defense  
 6 unless:

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

9 (b) there is a ~~writing~~ *record*, signed by the party against ~~whom~~ *which*  
 10 enforcement is sought or by that party's authorized agent, sufficient to  
 11 indicate that a lease contract has been made between the parties and to  
 12 describe the goods leased and the lease term.

13 (2) Any description of leased goods or of the lease term is sufficient  
 14 and satisfies subsection (1)(b), whether or not it is specific, if it reasonably  
 15 identifies what is described.

16 (3) A ~~writing~~ *record* is not insufficient because it omits or incorrectly  
 17 states a term agreed upon, but the lease contract is not enforceable under  
 18 subsection (1)(b) beyond the lease term and the quantity of goods shown  
 19 in the ~~writing~~ *record*.

20 (4) A lease contract that does not satisfy the requirements of subsec-  
 21 tion (1), but which is valid in other respects, is enforceable:

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

28 (b) if the party against ~~whom~~ *which* enforcement is sought admits in  
 29 ~~that the~~ party's pleading, ~~testimony or otherwise in court~~ *or in the party's*  
 30 *testimony or otherwise under oath* that a lease contract was made, but  
 31 the lease contract is not enforceable under this ~~provision~~ *paragraph* be-  
 32 yond the quantity of goods admitted; or

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

35 (5) The lease term under a lease contract referred to in subsection  
 36 (4) is:

37 (a) If there is a ~~writing~~ *record* signed by the party against ~~whom~~ *which*  
 38 enforcement is sought or by that party's authorized agent specifying the  
 39 lease term, the term so specified;

40 (b) if the party against ~~whom~~ *which* enforcement is sought admits in  
 41 ~~that the~~ party's pleading, ~~testimony, or otherwise in court~~ *or in the party's*  
 42 *testimony or otherwise under oath* a lease term, the term so admitted; or

43 (c) a reasonable lease term.

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

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

11       ~~(1) By (a) Course of performance, course of dealing, or usage of trade~~  
12 ~~or by course of performance (K.S.A. 84-1-303, and amendments thereto;~~  
13 ~~and~~

14       ~~(2) by evidence of (b) consistent additional terms unless the court~~  
15 ~~finds the writing record to have been intended also as a complete and~~  
16 ~~exclusive 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. 9. K.S.A. 84-2a-203 is hereby amended to read as follows: 84-  
21 2a-203. The affixing of a seal to a ~~writing~~ *record* evidencing a lease con-  
22 tract or an offer to enter into a lease contract does not render the ~~writing~~  
23 *record* a sealed instrument and the law with respect to sealed instruments  
24 does not apply to the lease contract or offer.

25       Sec. 10. K.S.A. 84-2a-204 is hereby amended to read as follows: 84-  
26 2a-204. (1) A lease contract may be made in any manner sufficient to  
27 show agreement, including *offer and acceptance* conduct by both parties  
28 which recognizes the existence of a lease 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 lease contract may be  
31 found although the moment of its making is undetermined.

32       (3) ~~Although~~ *Even if* one or more terms are left open, a lease contract  
33 does not fail for indefiniteness if the parties have intended to make a lease  
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. 84-2a-222 through 84-2a-*  
37 *224, and amendments thereto, the following rules apply:*

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

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

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

15 Sec. 12. K.S.A. 84-2a-208 is hereby amended to read as follows: 84-  
 16 2a-208. (1) An agreement modifying a lease contract needs no consider-  
 17 ation to be binding.

18 (2) A signed lease agreement that excludes modification or rescission  
 19 except by a signed ~~writing~~ *record* may not be otherwise modified or re-  
 20 scinded, but, except as between merchants, such a requirement ~~on~~ *in* a  
 21 form supplied by a merchant must be separately signed by the other party.

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

24 (4) A party ~~who~~ *that* has made a waiver affecting an executory portion  
 25 of a lease contract may retract the waiver by reasonable notification re-  
 26 ceived by the other party that strict performance will be required of any  
 27 term waived, unless the retraction would be unjust in view of a material  
 28 change of position in reliance on the waiver.

29 Sec. 13. K.S.A. 84-2a-211 is hereby amended to read as follows: 84-  
 30 2a-211. ~~(1) There is in a lease contract a warranty that for the lease term~~  
 31 ~~no person holds a claim to or interest in the goods that arose from an act~~  
 32 ~~or omission of the lessor, other than a claim by way of infringement or~~  
 33 ~~the like, which will interfere with the lessee's enjoyment of its leasehold~~  
 34 ~~interest.~~

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

39 ~~—(3)—~~ A lessee who furnishes specifications to a lessor or a supplier shall  
 40 hold the lessor and the supplier harmless against any claim by way of  
 41 infringement or the like that arises out of compliance with the speci-  
 42 fications. (1) *Except in a finance lease, a lessor in a lease contract warrants*  
 43 *that, except for claims by any person by way of infringement or the like,*

- 1 *for the duration of the lease no person holds:*
- 2 *(a) A claim to or interest in the goods not attributable to the lessee's*  
3 *own act or omission which will interfere with the lessee's enjoyment of its*  
4 *leasehold interest; or*
- 5 *(b) a colorable claim to or interest in the goods which will unreason-*  
6 *ably expose the lessee to litigation.*
- 7 *(2) A finance lessor warrants that, except for claims by way of in-*  
8 *fringement or the like, for the duration of the lease no person holds:*
- 9 *(a) A claim or interest in the goods that arose from an act or omission*  
10 *of the lessor which will interfere with the lessee's enjoyment of its leasehold*  
11 *interest; or*
- 12 *(b) a colorable claim to or interest in the goods that arose from an*  
13 *act or omission of the lessor which will unreasonably expose the lessee to*  
14 *litigation.*
- 15 *(3) Except in a finance lease, a lessor that is a merchant regularly*  
16 *dealing in goods of the kind warrants that the goods will be delivered free*  
17 *of the rightful claim of a third party by way of infringement or the like.*  
18 *However, a lessee that furnishes specification to a lessor or a supplier*  
19 *holds the lessor and the supplier harmless against any claim of infringe-*  
20 *ment or the like that arises out of compliance with the specifications.*
- 21 *(4) A warranty under this section may be excluded or modified only*  
22 *by specific language that is conspicuous and contained in a record, or by*  
23 *circumstances, including course of performance, course of dealing, or us-*  
24 *age of trade, that give the lessee reason to know that the lessor purports*  
25 *to transfer only such right as the lessor or a third party may have, or that*  
26 *it is leasing subject to any claims of infringement or the like.*
- 27 Sec. 14. K.S.A. 84-2a-212 is hereby amended to read as follows: 84-  
28 2a-212. (1) Except in a finance lease, a warranty that the goods will be  
29 merchantable is implied in a lease contract if the lessor is a merchant  
30 with respect to goods of that kind.
- 31 (2) Goods to be merchantable must be at least such as:
- 32 (a) Pass without objection in the trade under the description in the  
33 lease agreement;
- 34 (b) in the case of fungible goods, are of fair average quality within  
35 the description;
- 36 (c) are fit for the ordinary purposes for which goods of that ~~type~~  
37 *description* are used;
- 38 (d) run, within the variation permitted by the lease agreement, of  
39 even kind, quality and quantity within each unit and among all units  
40 involved;
- 41 (e) are adequately contained, packaged and labeled as the lease  
42 agreement may require; and
- 43 (f) conform to any promises or affirmations of fact made on the con-

1 tainer or label.

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

4 Sec. 15. K.S.A. 84-2a-214 is hereby amended to read as follows: 84-  
5 2a-214. (1) Words or conduct relevant to the creation of an express war-  
6 ranty and words or conduct tending to negate or limit a warranty must  
7 be construed wherever reasonable as consistent with each other; but,  
8 subject to ~~the provisions of K.S.A. 84-2a-202 on parol or extrinsic evi-~~  
9 ~~dence, and amendments thereto~~, negation or limitation is inoperative to  
10 the extent that the construction is unreasonable.

11 (2) Subject to subsection (3), to exclude or modify the implied war-  
12 ranty of merchantability or any part of it the language must *be in a record*  
13 *and be conspicuous. In a consumer lease the language must state "The*  
14 *lessor undertakes no responsibility for the quality of the goods except as*  
15 *otherwise provided in this contract," and in any other contract the lan-*  
16 *guage must mention "merchantability,"* ~~be by a writing, and be conspic-~~  
17 ~~uous.~~ Subject to subsection (3), to exclude or modify ~~any~~ the implied  
18 warranty of fitness the exclusion must be ~~by a writing~~ *in a record* and be  
19 conspicuous. Language to exclude all implied warranties of fitness *in a*  
20 *consumer lease must state "The lessor assumes no responsibility that the*  
21 *goods will be fit for any particular purpose for which you may be leasing*  
22 *these goods, except as otherwise provided in the contract," and in any*  
23 *other contract language is sufficient if it is in writing, is conspicuous and*  
24 *states, for example, that "There is no warranty that the goods will be fit*  
25 *for a particular purpose." are no warranties that extend beyond the de-*  
26 *scription on the face hereof." Language that satisfies the requirements of*  
27 *this subsection for a consumer lease also satisfies its requirements for any*  
28 *other lease contract.*

29 (3) Notwithstanding subsection (2), ~~but subject to subsection (4):~~

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

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

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

42 (4) ~~To exclude or modify a warranty against interference or against~~  
43 ~~infringement (K.S.A. 84-2a-211) or any part of it, the language must be~~

1 ~~specific, be by a writing, and be conspicuous, unless the circumstances,~~  
 2 ~~including course of performance, course of dealing, or usage of trade,~~  
 3 ~~give the lessee reason to know that the goods are being leased subject to~~  
 4 ~~a claim or interest of any person. Remedies for breach of warranty can~~  
 5 ~~be limited in accordance with K.S.A. 84-2a-503 and 84-2a-504, and~~  
 6 ~~amendments thereto.~~

7 Sec. 16. K.S.A. 84-2a-219 is hereby amended to read as follows: 84-  
 8 2a-219. (1) Except in the case of a finance lease, risk of loss is retained  
 9 by the lessor and does not pass to the lessee. In the case of a finance  
 10 lease, risk of loss passes to the lessee.

11 (2) ~~Subject to the provisions of this article on the effect of default on~~  
 12 ~~risk of loss (K.S.A. 84-2a-220), and amendments thereto,~~ if risk of loss is  
 13 to pass to the lessee and the time of passage is not stated, the following  
 14 rules apply:

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

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

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

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

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

31 Sec. 17. K.S.A. 84-2a-220 is hereby amended to read as follows: 84-  
 32 2a-220. (1) Where risk of loss is to pass to the lessee and the time of  
 33 passage is not stated:

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

38 (b) If the lessee rightfully revokes acceptance, ~~such~~ *the* lessee, to the  
 39 extent of any deficiency in ~~such lessee's~~ *its* effective insurance coverage,  
 40 may treat the risk of loss as having remained with the lessor from the  
 41 beginning.

42 (2) Whether or not risk of loss is to pass to the lessee, if the lessee as  
 43 to conforming goods already identified to a lease contract repudiates or

1 is otherwise in default under the lease contract, the lessor, or, in the case  
2 of a finance lease, the supplier, to the extent of any deficiency in ~~such~~  
3 ~~supplier's~~ *its* effective insurance coverage may treat the risk of loss as  
4 resting on the lessee for a commercially reasonable time.

5 Sec. 18. K.S.A. 84-2a-221 is hereby amended to read as follows: 84-  
6 2a-221. If a lease contract requires goods identified when the lease con-  
7 tract is made, and the goods suffer casualty without fault of the lessee,  
8 the lessor or the supplier before delivery, or the goods suffer casualty  
9 before risk of loss passes to the lessee pursuant to the lease agreement  
10 or K.S.A. 84-2a-219, ~~then and amendments thereto:~~

11 (1) If the loss is total, the lease contract is ~~avoided~~ *terminated*; and  
12 (2) if the loss is partial or the goods have so deteriorated as to no  
13 longer conform to the lease contract, the lessee may nevertheless demand  
14 inspection and at the lessee's option either treat the lease contract as  
15 ~~avoided~~ *terminated* or, except in a finance lease that is not a consumer  
16 lease, accept the goods with due allowance from the rent payable for the  
17 balance of the lease term for the deterioration or the deficiency in quan-  
18 tity but without further right against the lessor.

19 New Sec. 19. (UCC 2a-222.) (1) A record or signature may not be  
20 denied legal effect or enforceability solely because it is in electronic form.

21 (2) A contract may not be denied legal effect or enforceability solely  
22 because an electronic record was used in its formation.

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

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

30 New Sec. 20. (UCC 2a-223.) An electronic record or electronic sig-  
31 nature is attributed to a person if it was the act of the person or the  
32 person's electronic agent or the person is otherwise legally bound by the  
33 act.

34 New Sec. 21. (UCC 2a-224.) (1) If the receipt of an electronic com-  
35 munication has a legal effect, it has that effect even if no individual is  
36 aware of its receipt.

37 (2) Receipt of an electronic acknowledgment of an electronic com-  
38 munication establishes that the communication was received but, in itself,  
39 does not establish that the content sent corresponds to the content  
40 received.

41 Sec. 22. K.S.A. 2004 Supp. 84-2a-303 is hereby amended to read as  
42 follows: 84-2a-303. (1) As used in this section, "creation of a security  
43 interest" includes the sale of a lease contract that is subject to article 9,

1 ~~secured transactions, by reason of K.S.A. 2004 Supp. 84-9-109(a)(3) and~~  
2 ~~amendments thereto.~~

3 ~~(2) Except as provided in subsection 3 and K.S.A. 2004 Supp. 84-9-~~  
4 ~~407 and amendments thereto, a provision in a lease agreement which (a)~~  
5 ~~prohibits the voluntary or involuntary transfer, including a transfer by sale,~~  
6 ~~sublease, creation or enforcement of a security interest, or attachment,~~  
7 ~~levy, or other judicial process, of an interest of a party under the lease~~  
8 ~~contract or of the lessor's residual interest in the goods, or (b) makes such~~  
9 ~~a transfer an event of default, gives rise to the rights and remedies pro-~~  
10 ~~vided in subsection (4), but a transfer that is prohibited or is an event of~~  
11 ~~default under the lease agreement is otherwise effective.~~

12 ~~—(3) A provision in a lease agreement which (a) prohibits a transfer of~~  
13 ~~a right to damages for default with respect to the whole lease contract or~~  
14 ~~of a right to payment arising out of the transferor's due performance of~~  
15 ~~the transferor's entire obligation, or (b) makes such a transfer an event~~  
16 ~~of default, is not enforceable, and such a transfer is not a transfer that~~  
17 ~~materially impairs the prospect of obtaining return performance by, ma-~~  
18 ~~terially changes the duty of, or materially increases the burden or risk~~  
19 ~~imposed on, the other party to the lease contract within the purview of~~  
20 ~~subsection (4).~~

21 ~~—(4) Subject to subsection (3) and K.S.A. 2004 Supp. 84-9-407 and~~  
22 ~~amendments thereto:~~

23 ~~—(a) If a transfer is made which is made an event of default under a~~  
24 ~~lease agreement, the party to the lease contract not making the transfer,~~  
25 ~~unless that party waives the default or otherwise agrees, has the rights~~  
26 ~~and remedies described in K.S.A. 84-2a-501(2);~~

27 ~~—(b) if paragraph (a) is not applicable and if a transfer is made that (i)~~  
28 ~~is prohibited under a lease agreement or (ii) materially impairs the pros-~~  
29 ~~pect of obtaining return performance by, materially changes the duty of,~~  
30 ~~or materially increases the burden or risk imposed on, the other party to~~  
31 ~~the lease contract, unless the party not making the transfer agrees at any~~  
32 ~~time to the transfer in the lease contract or otherwise, then, except as~~  
33 ~~limited by contract, (A) the transferor is liable to the party not making~~  
34 ~~the transfer for damages caused by the transfer to the extent that the~~  
35 ~~damages could not reasonably be prevented by the party not making the~~  
36 ~~transfer and (B) a court having jurisdiction may grant other appropriate~~  
37 ~~relief, including cancellation of the lease contract or an injunction against~~  
38 ~~the transfer.~~

39 ~~(2) Subject to subsection (3) and except as otherwise provided in~~  
40 ~~K.S.A. 84-9-407, and amendments thereto, or as otherwise agreed, a pro-~~  
41 ~~vision in a lease agreement which (i) prohibits the voluntary or involun-~~  
42 ~~tary transfer, including a transfer by sale, sublease, creation or enforce-~~  
43 ~~ment of a security interest, or attachment, levy, or other judicial process,~~

1 of an interest of a party under the lease contract or of the lessor's residual  
2 interest in the goods, or (ii) makes such a transfer an event of default,  
3 gives rise to the rights and remedies provided in subsection (4). However,  
4 a transfer that is prohibited or is an event of default under the lease  
5 agreement is otherwise effective.

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

14 (4) Subject to subsection (3) and K.S.A. 84-9-407, and amendments  
15 thereto:

16 (a) If a transfer is made that is an event of default under a lease  
17 agreement, the party to the lease contract not making the transfer, unless  
18 that party waives the default or otherwise agrees, has the rights and rem-  
19 edies described in K.S.A. 84-2a-510(2), and amendments thereto;

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

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

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

42 (7) In a consumer lease, to prohibit the transfer of an interest of a  
43 party under the lease contract or to make a transfer an event of default,

1 the language must be specific, by a ~~writing~~ *record* and conspicuous.

2 Sec. 23. K.S.A. 84-2a-304 is hereby amended to read as follows: 84-  
3 2a-304. (1) Subject to K.S.A. 84-2a-303, *and amendments thereto*, a sub-  
4 sequent lessee from a lessor of goods under an existing lease contract  
5 obtains, to the extent of the leasehold interest transferred, the leasehold  
6 interest in the goods that the lessor had or had power to transfer, and  
7 except as provided in subsection (2) and K.S.A. 84-2a-527(4), *and amend-*  
8 *ments thereto*, takes subject to the existing lease contract. A lessor with  
9 voidable title has power to transfer a good leasehold interest to a good  
10 faith subsequent lessee for value, but only to the extent set forth in the  
11 preceding sentence. If goods have been delivered under a transaction of  
12 purchase, the lessor has that power even ~~though~~ *if*:

13 (a) The lessor's transferor was deceived as to the identity of the lessor;  
14 (b) the delivery was in exchange for a check which is later dishonored;  
15 (c) it was agreed that the transaction was to be a "cash sale"; or  
16 (d) the delivery was procured through *criminal* fraud ~~punishable as~~  
17 ~~larcenous under the criminal law.~~

18 (2) A subsequent lessee in ~~the~~ ordinary course of business from a  
19 lessor ~~who~~ *that* is a merchant dealing in goods of that kind to ~~whom~~ *which*  
20 the goods were entrusted by the existing lessee of that lessor before the  
21 interest of the subsequent lessee became enforceable against that lessor  
22 obtains, to the extent of the leasehold interest transferred, all of that  
23 lessor's and the existing lessee's rights to the goods, and takes free of the  
24 existing lease contract.

25 (3) A subsequent lessee from the lessor of goods that are subject to  
26 an existing lease contract and are covered by a certificate of title issued  
27 under a statute of this state or of another jurisdiction takes no greater  
28 rights than those provided both by this section and by the certificate of  
29 title statute.

30 Sec. 24. K.S.A. 84-2a-305 is hereby amended to read as follows: 84-  
31 2a-305. (1) Subject to ~~the provisions of~~ K.S.A. 84-2a-303, *and amend-*  
32 *ments thereto*, a buyer or sublessee from the lessee of goods under an  
33 existing lease contract obtains, to the extent of the interest transferred,  
34 the leasehold interest in the goods that the lessee had or had power to  
35 transfer, and except as provided in subsection (2) and K.S.A. 84-2a-  
36 511(4), *and amendments thereto*, takes subject to the existing lease con-  
37 tract. A lessee with a voidable leasehold interest has power to transfer a  
38 good leasehold interest to a good faith buyer for value or a good faith  
39 sublessee for value, but only to the extent set forth in the preceding  
40 sentence. ~~When~~ *If* goods have been delivered under a transaction of lease  
41 the lessee has that power even ~~though~~ *if*:

42 (a) The lessor was deceived as the identity of the lessee;  
43 (b) the delivery was in exchange for a check which is later dishonored;

1 or

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

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

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

15 Sec. 25. K.S.A. 84-2a-306 is hereby amended to read as follows: 84-  
16 2a-306. If a person in the ordinary course of ~~such person's~~ *its* business  
17 furnishes services or materials with respect to goods subject to a lease  
18 contract, a lien upon those goods in the possession of that person given  
19 by statute or rule of law for those materials or services takes priority over  
20 any interest of the lessor or lessee under the lease contract or this article  
21 unless the lien is created by statute and the statute provides otherwise or  
22 unless the lien is created by rule of law and the rule of law provides  
23 otherwise.

24 Sec. 26. K.S.A. 2004 Supp. 84-2a-309 is hereby amended to read as  
25 follows: 84-2a-309. (1) In this section:

26 (a) Goods are "fixtures" ~~when~~ *if* they become so related to particular  
27 real ~~estate~~ *property* that an interest in them arises under real ~~estate~~ *prop-*  
28 *erty* law;

29 (b) a "fixture filing" is the filing, in the office where a ~~record of a~~  
30 mortgage on the real ~~estate~~ *property* would be filed or recorded, of a  
31 financing statement covering goods that are or are to become fixtures and  
32 conforming to the requirements of K.S.A. 2004 Supp. 84-9-502(a) and  
33 (b), and amendments thereto;

34 (c) a lease is a "purchase money lease" unless the lessee has posses-  
35 sion or use of the goods or the right to possession or use of the goods  
36 before the lease agreement is enforceable;

37 (d) a mortgage is a "construction mortgage" to the extent it secures  
38 an obligation incurred for the construction of an improvement on land  
39 including the acquisition cost of the land, if ~~the recorded writing~~ *a re-*  
40 *corded record of the mortgage* so indicates; and

41 (e) "encumbrance" includes real ~~estate~~ *property* mortgages and other  
42 liens on real ~~estate~~ *property* and all other rights in real ~~estate~~ *property*  
43 that are not ownership interests.

- 1       (2) Under this article a lease may be of goods that are fixtures or may  
2 continue in goods that become fixtures, but no lease exists under this  
3 article of ordinary building materials incorporated into an improvement  
4 on land.
- 5       (3) This article does not prevent creation of a lease of fixtures pur-  
6 suant to real ~~estate~~ *property* law.
- 7       (4) The perfected interest of a lessor of fixtures has priority over a  
8 conflicting interest of an encumbrancer or owner of the real ~~estate~~ *prop-*  
9 *erty* if:
- 10       (a) The lease is a purchase money lease, the conflicting interest of  
11 the encumbrancer or owner arises before the goods become fixtures, the  
12 interest of the lessor is perfected by a fixture filing before the goods  
13 become fixtures or within 10 days thereafter, and the lessee has an interest  
14 of record in the real ~~estate~~ *property* or is in possession of the real ~~estate~~  
15 *property*; or
- 16       (b) the interest of the lessor is perfected by a fixture filing before the  
17 interest of the encumbrancer or owner is of record, the lessor's interest  
18 has priority over any conflicting interest of a predecessor in title of the  
19 encumbrancer or owner, and the lessee has an interest of record in the  
20 real ~~estate~~ *property* or is in possession of the real ~~estate~~ *property*.
- 21       (5) The interest of a lessor of fixtures, whether or not perfected, has  
22 priority over the conflicting interest of an encumbrancer or owner of the  
23 real ~~estate~~ *property* if:
- 24       (a) The fixtures are readily removable factory or office machines,  
25 readily removable equipment that is not primarily used or leased for use  
26 in the operation of the real ~~estate~~ *property*, or readily removable replace-  
27 ments of domestic appliances that are goods subject to a consumer lease,  
28 and before the goods become fixtures the lease contract is enforceable;
- 29       (b) the conflicting interest is a lien on the real ~~estate~~ *property* ob-  
30 tained by legal or equitable proceedings after the lease contract is  
31 enforceable;
- 32       (c) the encumbrancer or owner has consented in ~~writing~~ *a record* to  
33 the lease or has disclaimed an interest in the goods as fixtures; or
- 34       (d) the lessee has a right to remove the goods as against the encum-  
35 brancer or owner, *but* if the lessee's right to remove terminates, the  
36 priority of the interest of the lessor continues for a reasonable time.
- 37       (6) Notwithstanding subsection (4)(a) but otherwise subject to sub-  
38 sections (4) and (5), the interest of a lessor of fixtures, including the  
39 lessor's residual interest, is subordinate to the conflicting interest of an  
40 encumbrancer of the real ~~estate~~ *property* under a construction mortgage  
41 recorded before the goods become fixtures if the goods become fixtures  
42 before the completion of the construction. To the extent given to refi-  
43 nance a construction mortgage, the conflicting interest of an encum-

1 brancer of the real ~~estate~~ *property* under a mortgage has this priority to  
2 the same extent as the encumbrancer of the real ~~estate~~ *property* under  
3 the construction mortgage.

4 (7) In cases not ~~within the preceding~~ *covered by* subsections (3)  
5 *through* (6), priority between the interest of a lessor of fixtures, including  
6 the lessor's residual interest, and the conflicting interest of an encum-  
7 brancer or owner of the real ~~estate who~~ *property that* is not the lessee is  
8 determined by the priority rules governing conflicting interests in real  
9 ~~estate~~ *property*.

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

26 (9) Even ~~though~~ *if* the lease agreement does not create a security  
27 interest, the interest of a lessor of fixtures, including the lessor's residual  
28 interest, is perfected by filing a financing statement as a fixture filing for  
29 leased goods that are or are to become fixtures in accordance with the  
30 relevant provisions of the article on secured transactions (article 9 of chap-  
31 ter 84 of the Kansas Statutes Annotated, and amendments thereto).

32 Sec. 27. K.S.A. 84-2a-310 is hereby amended to read as follows: 84-  
33 2a-310. (1) Goods are "accessions" when they are installed in or affixed  
34 to other goods.

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

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

1 interest in the goods as part of the whole.

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

4 (a) A buyer in the ordinary course of business or a lessee in the or-  
5 dinary course of business of any interest in the whole acquired after the  
6 goods became accessions; or

7 (b) a creditor with a security interest in the whole perfected before  
8 the lease contract was made to the extent that the creditor makes sub-  
9 sequent advances without knowledge of the lease contract.

10 (5) When under subsections (2) or (3) and (4) a lessor or a lessee of  
11 accessions holds an interest that is superior to all interests in the whole,  
12 the lessor or the lessee may (a) on default, expiration, termination or  
13 cancellation of the lease contract by the other party but subject to the  
14 provisions of the lease contract and this article, or (b) if necessary to  
15 enforce ~~such lessor's or lessee's~~ other rights and remedies under this  
16 article, remove the goods from the whole, free and clear of all interests  
17 in the whole, but ~~such~~ *the* lessor or lessee must reimburse any holder of  
18 an interest in the whole who is not the lessee and who has not otherwise  
19 agreed for the cost of repair of any physical injury but not for any dimi-  
20 nution in value of the whole caused by the absence of the goods removed  
21 or by any necessity for replacing them. A person entitled to reimburse-  
22 ment may refuse permission to remove until the party seeking removal  
23 gives adequate security for the performance of this obligation.

24 Sec. 28. K.S.A. 84-2a-401 is hereby amended to read as follows: 84-  
25 2a-401. (1) A lease contract imposes an obligation on each party that the  
26 other's expectation of receiving due performance will not be impaired.

27 (2) If reasonable grounds for insecurity arise with respect to the per-  
28 formance of either party, the insecure party may demand in ~~writing a~~  
29 *record* adequate assurance of due performance. Until the insecure party  
30 receives that assurance, if commercially reasonable the insecure party  
31 may suspend any performance for which ~~such~~ *the* insecure party has not  
32 already received the agreed return.

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

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

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

43 Sec. 29. K.S.A. 84-2a-402 is hereby amended to read as follows: 84-

- 1 2a-402. (1) If either party repudiates a lease contract with respect to a  
 2 performance not yet due under the lease contract, the loss of which per-  
 3 formance will substantially impair the value of the lease contract to the  
 4 other, the aggrieved party may:
- 5 ~~(1)~~ (a) For a commercially reasonable time, await retraction of re-  
 6 pudiation and performance by the repudiating party;
- 7 ~~(2)~~ (b) make demand pursuant to K.S.A. ~~84-2a-311~~[84-2a-401], and  
 8 amendments thereto, and await assurance of future performance adequate  
 9 under the circumstances of the particular case; or
- 10 ~~(3)~~ (c) resort to any right or remedy upon default under the lease  
 11 contract or this article, even though if the aggrieved party has notified  
 12 the repudiating party that the aggrieved party would await the repudiating  
 13 party's performance and assurance and has urged retraction. In addition,  
 14 whether or not the aggrieved party is pursuing one of the foregoing rem-  
 15 edies, the aggrieved party may suspend performance or, if the aggrieved  
 16 party is the lessor, proceed in accordance with the provisions of this article  
 17 on the lessor's right to identify goods to the lease contract notwithstanding  
 18 default or to salvage unfinished goods ~~( under K.S.A. 84-2a-524)~~, and  
 19 amendments thereto.
- 20 (2) *Repudiation includes language that a reasonable person would*  
 21 *interpret to mean that the other person will not or cannot make a per-*  
 22 *formance still due under the contract or voluntary, affirmative conduct*  
 23 *that would appear to a reasonable party to make a future performance*  
 24 *by the other party impossible.*
- 25 Sec. 30. K.S.A. 84-2a-404 is hereby amended to read as follows: 84-  
 26 2a-404. (1) If without fault of the lessee, the lessor and the supplier, the  
 27 agreed berthing, loading, or unloading facilities fail or the agreed type of  
 28 carrier becomes unavailable or the agreed manner of ~~delivery perform-~~  
 29 ~~ance~~ otherwise becomes commercially impracticable, but a commercially  
 30 reasonable substitute is available, the substitute performance must be  
 31 tendered and accepted.
- 32 (2) If the agreed means or manner of payment fails because of do-  
 33 mestic or foreign governmental regulation:
- 34 (a) The lessor may withhold or stop delivery or cause the supplier to  
 35 withhold or stop delivery unless the lessee provides a means or manner  
 36 of payment that is commercially a substantial equivalent; and
- 37 (b) if delivery has already been taken, payment by the means or in  
 38 the manner provided by the regulation discharges the lessee's obligation  
 39 unless the regulation is discriminatory, oppressive or predatory.
- 40 Sec. 31. K.S.A. 84-2a-405 is hereby amended to read as follows: 84-  
 41 2a-405. Subject to K.S.A. 84-2a-404 on substituted performance, the fol-  
 42 lowing rules apply:
- 43 ~~(1)~~ (a) Delay in ~~delivery or nondelivery performance or nonperform-~~

1 *ance* in whole or in part by a lessor or a supplier ~~who~~ *that* complies with  
 2 paragraphs ~~(2)~~ (b) and ~~(3)~~ (c) is not a default under the lease contract if  
 3 performance as agreed has been made impracticable by the occurrence  
 4 of a contingency the nonoccurrence of which was a basic assumption on  
 5 which the lease contract was made or by compliance in good faith with  
 6 any applicable foreign or domestic governmental regulation or order,  
 7 whether or not the regulation or order later proves to be invalid.

8 ~~(2)~~ (b) If the causes mentioned in paragraph ~~(1)~~ (a) affect only part  
 9 of the lessor's or the supplier's capacity to perform, ~~such the~~ lessor or  
 10 supplier shall allocate production and deliveries among ~~such lessor's or~~  
 11 ~~supplier's~~ customers but at ~~such the~~ lessor's or supplier's option may in-  
 12 clude regular customers not then under contract for sale or lease as well  
 13 as ~~such the~~ lessor's or supplier's own requirements for further manufac-  
 14 ture. ~~Such~~ *The* lessor or supplier may so allocate in any manner that is  
 15 fair and reasonable.

16 ~~(3)~~ (c) The lessor seasonably shall notify the lessee and in the case of  
 17 a finance lease the supplier seasonably shall notify the lessor and the  
 18 lessee, if known, that there will be delay or ~~nondelivery~~ *nonperformance*  
 19 and, if allocation is required under paragraph ~~(2)~~ (b), of the estimated  
 20 quota thus made available for the lessee.

21 Sec. 32. K.S.A. 84-2a-406 is hereby amended to read as follows: 84-  
 22 2a-406. (1) If the lessee receives notification of a material or indefinite  
 23 delay or an allocation justified under K.S.A. 84-2a-405, *and amendments*  
 24 *thereto*, the lessee may by ~~written~~ notification *in a record* to the lessor as  
 25 to any goods involved, and with respect to all of the goods if under an  
 26 installment lease contract the value of the whole lease contract is sub-  
 27 stantially impaired (K.S.A. 84-2a-510, *and amendments thereto*):

28 (a) Terminate the lease contract (K.S.A. 84-2a-505(2), *and amend-*  
 29 *ments thereto*); or

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

34 (2) If, after receipt of a notification from the lessor under K.S.A. 84-  
 35 2a-405, *and amendments thereto*, the lessee fails so to modify the lease  
 36 agreement within a reasonable time not exceeding 30 days, the lease  
 37 contract ~~lapses~~ *is terminated* with respect to any ~~deliveries~~ *performance*  
 38 affected.

39 Sec. 33. K.S.A. 84-2a-503 is hereby amended to read as follows: 84-  
 40 2a-503. (1) Except as otherwise provided in this article, the lease agree-  
 41 ment may include rights and remedies for default in addition to or in  
 42 substitution for those provided in this article and may limit or alter the  
 43 measure of damages recoverable under this article.

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

6 (3) Consequential damages may be liquidated under K.S.A. ~~84-2a-~~  
 7 ~~503~~ ~~84-2a-504~~, *and amendments thereto*, or may otherwise be limited,  
 8 altered or excluded unless the limitation, alteration or exclusion is uncon-  
 9 scionable. Limitation, alteration or exclusion of consequential damages  
 10 for injury to the person in the case of consumer goods is prima facie  
 11 unconscionable but limitation, alteration or exclusion of damages where  
 12 the loss is commercial is not prima facie unconscionable.

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

16 Sec. 34. K.S.A. 84-2a-504 is hereby amended to read as follows: 84-  
 17 2a-504. (1) Damages payable by either party for default, or any other act  
 18 or omission, including indemnity for loss or diminution of anticipated tax  
 19 benefits or loss or damage to lessor's residual interest, may be liquidated  
 20 in the lease agreement but only at an amount or by a formula that is  
 21 reasonable in light of the then anticipated harm caused by the default or  
 22 other act or omission. *K.S.A. 84-2a-503, and amendments thereto, deter-*  
 23 *mines the enforceability of a term that limits but does not liquidate*  
 24 *damages.*

25 (2) If the lease agreement provides for liquidation of damages, and  
 26 such provision does not comply with subsection (1), or such provision is  
 27 an exclusive or limited remedy that circumstances cause to fail of its es-  
 28 sential purpose, remedy may be had as provided in this article.

29 (3) If the lessor justifiably withholds ~~or stops~~ delivery of goods *or*  
 30 *stops performance* because of the lessee's default or insolvency (~~K.S.A.~~  
 31 ~~84-2a-525 or 84-2a-526~~), the lessee is entitled to restitution of any amount  
 32 by which the sum of such lessee's payments exceeds:

33 ~~(a) the amount to which the lessor is entitled by virtue of terms liq-~~  
 34 ~~uidating the lessor's damages in accordance with subsection (1), or~~

35 ~~(b) in the absence of those terms, 20% of the then present value of~~  
 36 ~~the total rent the lessee was obligated to pay for the balance of the lease~~  
 37 ~~term, or, in the case of a consumer lease, the lesser of such amount or~~  
 38 ~~\$500.~~

39 (4) A lessee's right to restitution under subsection (3) is subject to  
 40 offset to the extent the lessor establishes:

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

43 (b) the amount or value of any benefits received by the lessee directly

1 or indirectly by reason of the lease contract.

2 Sec. 35. K.S.A. 84-2a-506 is hereby amended to read as follows: 84-  
3 2a-506. (1) An action for default under a lease contract, including breach  
4 of warranty or indemnity, must be commenced within four years after  
5 the cause of action accrued. ~~By the original lease contract the parties~~  
6 *Except in a consumer lease or an action for indemnity, the original lease*  
7 *agreement may reduce the period of limitation limitations to not less than*  
8 one year.

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

15 (3) If an action commenced within the time limited by subsection (1)  
16 is so terminated as to leave available a remedy by another action for the  
17 same default or breach of warranty or indemnity, the other action may  
18 be commenced after the expiration of the time limited and within six  
19 months after the termination of the first action unless the termination  
20 resulted from voluntary discontinuance or from dismissal for failure or  
21 neglect to prosecute.

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

25 New Sec. 36. (UCC 2a-507a.) Specific performance may be decreed  
26 if the goods are unique or in other proper circumstances. In a contract  
27 other than a consumer lease, specific performance may be decreed if the  
28 parties have agreed to that remedy. However, even if the parties agree  
29 to specific performance, specific performance may not be decreed if the  
30 breaching party's sole remaining contractual obligation is the payment of  
31 money.

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

35 (3) A lessee has a right of replevin or similar remedy for goods iden-  
36 tified to the lease contract if after reasonable effort the lessee is unable  
37 to effect cover for those goods or the circumstances reasonably indicate  
38 that the effort will be unavailing or if the goods have been shipped under  
39 reservation and satisfaction of the security interest in them has been made  
40 or tendered.

41 Sec. 37. K.S.A. 84-2a-508 is hereby amended to read as follows: 84-  
42 2a-508. (1) If a lessor fails to deliver the goods in conformity to the lease  
43 contract (~~K.S.A. 84-2a-509~~) or repudiates the lease contract (~~K.S.A. 84-~~

1 ~~2a-402~~), or a lessee rightfully rejects the goods (K.S.A. ~~84-2a-500~~) or  
2 justifiably revokes acceptance of the goods (K.S.A. ~~84-2a-517~~), then with  
3 respect to any goods involved, and with respect to all of the goods if under  
4 an installment lease contract the value of the whole lease contract is sub-  
5 stantially impaired (K.S.A. ~~84-2a-510~~), the lessor is in default under the  
6 lease contract and the lessee may *do one or more of the following*:  
7 (a) Cancel the lease contract (K.S.A. ~~84-2a-505~~(1), *and amendments*  
8 *thereto*);  
9 (b) recover so much of the rent and security as has been paid and is  
10 just under the circumstances;  
11 (c) cover and ~~recover~~ *obtain* damages ~~as to all goods affected whether~~  
12 ~~or not they have been identified to the lease contract ( under K.S.A. 84-~~  
13 ~~2a-518 and 84-2a-520), or recover damages for nondelivery (K.S.A. 84-~~  
14 ~~2a-519 and 84-2a-520), and amendments thereto~~;  
15 (d) *recover damages for nondelivery under K.S.A. 84-2a-519(1), and*  
16 *amendments thereto*;  
17 (e) *if an acceptance of goods has not been justifiably revoked, recover*  
18 *damages for default with regard to accepted goods under K.S.A. 84-2a-*  
19 *519(3) and (4), and amendments thereto*;  
20 (f) *enforce a security interest under subsection (4)*;  
21 (g) *recover identified goods under K.S.A. 84-2a-522, and amendments*  
22 *thereto*;  
23 (h) *obtain specific performance or obtain the goods by replevin or*  
24 *similar remedy under section 37, and amendments thereto*;  
25 (i) *recover liquidated damages under K.S.A. 84-2a-504, and amend-*  
26 *ments thereto*;  
27 (j) *enforce limited remedies under K.S.A. 84-2a-503, and amendments*  
28 *thereto*;  
29 (k) exercise any other rights or pursue any other remedies *as* pro-  
30 vided in the lease contract.  
31 (2) ~~If a lessor fails to deliver the goods in conformity to the lease~~  
32 ~~contract or repudiates the lease contract, the lessee may also:~~  
33 ~~(a) If the goods have been identified, recover them (K.S.A. 84-2a-~~  
34 ~~522), or~~  
35 ~~(b) in a proper case, obtain specific performance or replevy the goods~~  
36 ~~(K.S.A. 84-2a-219) [84-2a-521].~~  
37 ~~(3) If a lessor is otherwise in default under a lease contract, the lessee~~  
38 ~~may exercise the rights and pursue the remedies provided in the lease~~  
39 ~~contract, which may include a right to cancel the lease, and in K.S.A. 84-~~  
40 ~~2a-519(3), and amendments thereto.~~  
41 ~~(4) (3) If a lessor has breached a warranty, whether express or im-~~  
42 ~~plied, the lessee may recover damages (K.S.A. 84-2a-519(4), and amend-~~  
43 ~~ments thereto).~~

1 ~~(5)~~ (4) On rightful rejection or justifiable revocation of acceptance, a  
 2 lessee has a security interest in goods in the lessee's possession or control  
 3 for any rent and security that has been paid and any expenses reasonably  
 4 incurred in their inspection, receipt, transportation, and care and custody  
 5 and may hold those goods and dispose of them in good faith and in a  
 6 commercially reasonable manner, subject to K.S.A. 84-2a-527(5), *and*  
 7 *amendment thereto.*

8 ~~(6)~~ (5) Subject to the provisions of K.S.A. 84-2a-407, *and amend-*  
 9 *ments thereto*, a lessee, on notifying the lessor of the lessee's intention to  
 10 do so, may deduct all or any part of the damages resulting from any default  
 11 under the lease contract from any part of the rent still due under the  
 12 same lease contract.

13 Sec. 38. K.S.A. 84-2a-509 is hereby amended to read as follows: 84-  
 14 2a-509. (1) Subject to the provisions of K.S.A. 84-2a-503, 84-2a-504, *and*  
 15 84-2a-510 ~~on default in installment lease contracts, and amendments~~  
 16 *thereto*, if the goods or the tender ~~or~~ of delivery fail in any respect to  
 17 conform to the lease contract, the lessee may ~~reject or accept the goods~~  
 18 ~~or accept any commercial unit or units and reject the rest of the goods.~~  
 19 ~~—(2) Rejection of goods is ineffective unless it is within a reasonable~~  
 20 ~~time after tender or delivery of the goods and the lessee seasonably no-~~  
 21 ~~tifies the lessor.:~~

22 (a) *Reject the whole;*

23 (b) *accept the whole; or*

24 (c) *accept any commercial unit or units and reject the rest.*

25 (2) *Rejection of goods must be within a reasonable time after their*  
 26 *delivery or tender. It is ineffective unless the lessee seasonably notifies the*  
 27 *lessor or supplier.*

28 (3) *Subject to K.S.A. 84-2a-511, 84-2a-512, and 84-2a-517(6), and*  
 29 *amendments thereto:*

30 (a) *After rejection any use by the lessee with respect to any commer-*  
 31 *cial unit is wrongful as against the lessor or supplier; and*

32 (b) *if the lessee has before rejection taken physical possession of goods*  
 33 *in which the lessee does not have a security interest under K.S.A. 84-2a-*  
 34 *508(4), and amendments thereto, the lessee is under a duty after rejection*  
 35 *to hold them with reasonable care at the lessor's or supplier's disposition*  
 36 *for a time sufficient to permit the lessor or supplier to remove them; but*

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

39 (d) *The lessor's or supplier's remedies with respect to goods wrong-*  
 40 *fully rejected are governed by K.S.A. 84-2a-523, and amendments thereto.*

41 Sec. 39. K.S.A. 84-2a-510 is hereby amended to read as follows: 84-  
 42 2a-510. (1) Under an installment lease contract a lessee may reject any  
 43 delivery that is nonconforming if the nonconformity substantially impairs

1 the value of that delivery ~~and cannot be cured~~ *to the lessee* or the non-  
 2 conformity is a defect in the required documents; but if the nonconform-  
 3 ity does not fall within subsection (2) and the lessor or the supplier gives  
 4 adequate assurance of its cure, the lessee must accept that delivery.

5 (2) ~~Whenever~~ *If a* nonconformity or default with respect to one or  
 6 more deliveries substantially impairs the value of the installment lease  
 7 contract as a whole there is a default with respect to the whole. But, the  
 8 aggrieved party reinstates the installment lease contract as a whole if the  
 9 aggrieved party accepts a nonconforming delivery without seasonably no-  
 10 tifying of cancellation or brings an action with respect only to past deliv-  
 11 eries or demands performance as to future deliveries.

12 Sec. 40. K.S.A. 84-2a-511 is hereby amended to read as follows: 84-  
 13 2a-511. (1) Subject to any security interest of a lessee (K.S.A. 84-2a-508(5)  
 14 (4), ~~and amendments thereto~~), if a lessor or a supplier has no agent or  
 15 place of business at the market of rejection, a merchant lessee, after  
 16 rejection of goods in ~~such merchant~~ *the* lessee's possession or control,  
 17 shall follow any reasonable instructions received from the lessor or the  
 18 supplier with respect to the goods. In the absence of those instructions a  
 19 merchant lessee shall make reasonable efforts to sell, lease, or otherwise  
 20 dispose of the goods for the lessor's account if they threaten to decline  
 21 in value speedily. *In the case of a rightful rejection* instructions are not  
 22 reasonable if on demand indemnity for expenses is not forthcoming.

23 (2) If a merchant lessee (subsection (1)) or any other lessee (K.S.A.  
 24 84-2a-512, ~~and amendments thereto~~) disposes of goods, ~~such merchant~~  
 25 *following a rightful rejection*, the lessee is entitled to reimbursement ei-  
 26 ther from the lessor or the supplier or out of the proceeds for reasonable  
 27 expenses of caring for and disposing of the goods and, if the expenses  
 28 include no disposition commission, to such commission as is usual in the  
 29 trade, or if there is none, to a reasonable sum not exceeding 10% of the  
 30 gross proceeds.

31 (3) In complying with this section or K.S.A. 84-2a-512, ~~and amend-~~  
 32 *ments thereto*, the lessee is held only to good faith. Good faith conduct  
 33 hereunder is neither acceptance or conversion nor the basis of an action  
 34 for damages.

35 (4) A purchaser ~~who~~ *which* purchases in good faith from a lessee  
 36 pursuant to this section or K.S.A. 84-2a-512, ~~and amendments thereto~~,  
 37 takes the goods free of any rights of the lessor and the supplier even  
 38 ~~though~~ *if* the lessee fails to comply with one or more of the requirements  
 39 of this article.

40 Sec. 41. K.S.A. 84-2a-512 is hereby amended to read as follows: 84-  
 41 2a-512. (1) ~~Except as otherwise provided with respect to goods that~~  
 42 ~~threaten to decline in value speedily (K.S.A. 84-2a-511) and subject to~~  
 43 ~~any security interest of a lessee (K.S.A. 84-2a-508(5))~~.

1 ~~—(a) The lessee, after rejection of goods in the lessee's possession, shall~~  
 2 ~~hold them with reasonable care at the lessor's or supplier's disposition for~~  
 3 ~~a reasonable time after the lessee's seasonable notification of rejection;~~  
 4 ~~—(b) If the lessor or the supplier gives no instructions within a reason-~~  
 5 ~~able time after notification of rejection, the lessee may store the rejected~~  
 6 ~~goods for the lessor's or the supplier's account or ship them to the lessor~~  
 7 ~~or the supplier or dispose of them for the lessor's or the supplier's account~~  
 8 ~~with reimbursement in the manner provided in K.S.A. 84-2a-511; but~~  
 9 ~~—(c) the lessee has no further obligations with regard to goods right-~~  
 10 ~~fully rejected, and amendments thereto.~~

11 (2) Action by the lessee pursuant to subsection (1) is not acceptance  
 12 or conversion.

13 Sec. 42. K.S.A. 84-2a-513 is hereby amended to read as follows: 84-  
 14 2a-513. ~~(1) If any tender or delivery by the lessor or the supplier is re-~~  
 15 ~~jected because nonconforming and the time for performance has not yet~~  
 16 ~~expired, the lessor or the supplier may seasonably notify the lessee of the~~  
 17 ~~lessor's or the supplier's intention to cure and may then make a conform-~~  
 18 ~~ing delivery within the time provided in the lease contract.~~

19 ~~—(2) If the lessee rejects a nonconforming tender that the lessor or the~~  
 20 ~~supplier had reasonable grounds to believe would be acceptable with or~~  
 21 ~~without money allowance, the lessor or the supplier may have a further~~  
 22 ~~reasonable time to substitute a conforming tender if such lessor supplier~~  
 23 ~~seasonably notifies the lessee. (1) If the lessee rejects goods or a tender of~~  
 24 ~~delivery under K.S.A. 84-2a-509 or 84-2a-510, and amendments thereto,~~  
 25 ~~or, except in a consumer contract, justifiably revokes acceptance under~~  
 26 ~~K.S.A. 84-2a-517(1)(b), and amendments thereto, and the agreed time for~~  
 27 ~~performance has not expired, a lessor or a supplier that has performed in~~  
 28 ~~good faith, upon seasonable notice to the lessee, and at the lessor's or~~  
 29 ~~supplier's own expense, may cure the default by making a conforming~~  
 30 ~~tender of delivery within the agreed time. The lessor or supplier shall~~  
 31 ~~compensate the lessee for all of the lessee's reasonable expenses caused by~~  
 32 ~~the lessor's or supplier's default and subsequent cure.~~

33 (2) *If the lessee rejects goods or a tender of delivery under K.S.A. 84-*  
 34 *2a-509 or 84-2a-510, and amendments thereto, or, except in a consumer*  
 35 *lease, justifiably revokes acceptance under K.S.A. 84-2a-517(1)(b), and*  
 36 *amendments thereto, and the agreed time for performance has expired, a*  
 37 *lessor or supplier that has performed in good faith may, upon seasonable*  
 38 *notice to the lessee and at the lessor's or supplier's own expense, cure the*  
 39 *default, if the cure is appropriate and timely under the circumstances, by*  
 40 *making a tender of conforming goods. The lessor or supplier shall com-*  
 41 *pensate the lessee for all of the lessee's reasonable expenses caused by the*  
 42 *lessor's or supplier's default and subsequent cure.*

43 Sec. 43. K.S.A. 84-2a-514 is hereby amended to read as follows: 84-

1 2a-514. ~~(1) In rejecting goods, a lessee's failure to state a particular defect~~  
 2 ~~that is ascertainable by reasonable inspection precludes the lessee from~~  
 3 ~~relying on the defect to justify rejection or to establish default.~~  
 4 ~~—(a) If, stated seasonably, the lessor or the supplier could have cured~~  
 5 ~~it (K.S.A. 84-2a-513); or~~  
 6 ~~—(b) between merchants if the lessor or the supplier after rejection has~~  
 7 ~~made a request in writing for a full and final written statement of all~~  
 8 ~~defects on which the lessee proposes to rely. (1) A lessee's failure to state~~  
 9 ~~in connection with rejection a particular defect or in connection with~~  
 10 ~~revocation of acceptance a defect that justifies revocation precludes the~~  
 11 ~~lessee from relying on the unstated defect to justify rejection or revocation~~  
 12 ~~of acceptance if the defect is ascertainable by reasonable inspection:~~  
 13 ~~(a) If the lessor or supplier had a right to cure the defect and could~~  
 14 ~~have cured it if stated seasonably; or~~  
 15 ~~(b) between merchants if the lessor or the supplier after rejection or~~  
 16 ~~revocation of acceptance has made a request in a record for a full and~~  
 17 ~~final statement in a record of all defects on which the lessee proposes to~~  
 18 ~~rely.~~  
 19 (2) A lessee's failure to reserve rights when paying rent or other con-  
 20 sideration against documents precludes recovery of the payment for de-  
 21 fects apparent ~~on the face of~~ in the documents.  
 22 Sec. 44. K.S.A. 84-2a-515 is hereby amended to read as follows: 84-  
 23 2a-515. ~~(1) Acceptance of goods occurs after the lessee has had a reason-~~  
 24 ~~able opportunity to inspect the goods; and~~  
 25 ~~—(a) the lessee signifies or acts with respect to the goods in a manner~~  
 26 ~~that signifies to the lessor or the supplier that the goods are conforming~~  
 27 ~~or that the lessee will take or retain them in spite of their nonconformity;~~  
 28 ~~or~~  
 29 ~~—(b) the lessee fails to make an effective rejection of the goods (K.S.A.~~  
 30 ~~84-2a-509(2)). (1) Acceptance of goods occurs when the lessee:~~  
 31 ~~(a) After a reasonable opportunity to inspect the goods signifies to the~~  
 32 ~~lessor or supplier that the goods are conforming or will be taken or re-~~  
 33 ~~tained in spite of their nonconformity;~~  
 34 ~~(b) fails to make an effective rejection under K.S.A. 84-2a-509(2), and~~  
 35 ~~amendments thereto, but such acceptance does not occur until the lessee~~  
 36 ~~has had a reasonable opportunity to inspect them; or~~  
 37 ~~(c) subject to K.S.A. 84-2a-517(6), and amendments thereto, uses the~~  
 38 ~~goods in any manner that is inconsistent with the lessor's or supplier's~~  
 39 ~~rights.~~  
 40 (2) Acceptance of a part of any commercial unit is acceptance of that  
 41 entire unit.  
 42 Sec. 45. K.S.A. 84-2a-516 is hereby amended to read as follows: 84-  
 43 2a-516. (1) A lessee must pay rent for any goods accepted in accordance

1 with the lease contract, ~~with due allowance for goods rightfully rejected~~  
2 ~~or not delivered.~~

3 (2) A lessee's acceptance of goods precludes rejection of the goods  
4 accepted. In the case of a finance lease, if made with knowledge of a  
5 nonconformity, acceptance ~~cannot~~ *may not* be revoked because of it. In  
6 any other case, if made with knowledge of a nonconformity, acceptance  
7 ~~cannot~~ *may not* be revoked because of it unless the acceptance was on  
8 the reasonable assumption that the nonconformity would be seasonably  
9 cured. Acceptance does not of itself impair any other remedy provided  
10 by this article or the lease agreement for nonconformity.

11 (3) If a tender has been accepted:

12 (a) Within a reasonable time after the lessee discovers or should have  
13 discovered any default, the lessee shall notify the lessor and the supplier,  
14 if any, ~~or be barred from any remedy against the party not notified.~~ *How-*  
15 *ever, failure to give timely notice bars the lessee from a remedy only to*  
16 *the extent that the lessor or supplier is prejudiced by the failure;*

17 (b) except in the case of a consumer lease, within a reasonable time  
18 after the lessee receives notice of litigation for infringement or the like  
19 (K.S.A. 84-2a-211, *and amendments thereto*) the lessee shall notify the  
20 lessor or be barred from any remedy over for liability established by the  
21 litigation; and

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

23 (4) If a lessee is sued for *indemnity*, breach of a warranty or other  
24 obligation for which ~~a lessor or a supplier~~ *another party* is answerable  
25 over the following *rules* apply:

26 (a) The lessee may give the ~~lessor or the supplier, or both,~~ *written*  
27 *other party* notice of the litigation *in a record*. If the notice states that  
28 the person notified may come in and defend and that if the person not-  
29 ified does not do so that person will be bound in any action against that  
30 person by the lessee by any determination of fact common to the two  
31 litigations, then unless the person notified after seasonable receipt of the  
32 notice does come in and defend that person is so bound.

33 (b) The ~~lessor or the supplier~~ *other party* may demand in ~~writing a~~  
34 *record* that the lessee turn over control of the litigation including settle-  
35 ment if the claim is one for infringement or the like (K.S.A. 84-2a-211,  
36 *and amendments thereto*) or else be barred from any remedy over. If the  
37 demand states that the ~~lessor or the supplier~~ *other party* agrees to bear  
38 all expense and to satisfy any adverse judgment, then unless the lessee  
39 after seasonable receipt of the demand does turn over control the lessee  
40 is so barred.

41 (5) Subsections (3) and (4) apply to any obligation of a lessee to hold  
42 the lessor or the supplier harmless against infringement or the like (K.S.A.  
43 84-2a-211, *and amendments thereto*).

1     Sec. 46. K.S.A. 84-2a-517 is hereby amended to read as follows: 84-  
 2 2a-517. (1) A lessee may revoke acceptance of a lot or commercial unit  
 3 whose nonconformity substantially impairs its value to the lessee if the  
 4 lessee has accepted it:

5     (a) Except in the case of a finance lease, on the reasonable assumption  
 6 that its nonconformity would be cured and it has not been seasonably  
 7 cured; or

8     (b) without discovery of the nonconformity if the lessee's acceptance  
 9 was reasonably induced either by the lessor's assurance or, except in the  
 10 case of a finance lease, by the difficulty of discovery before acceptance.

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

15     (3) If the lease agreement so provides, the lessee may revoke accep-  
 16 tance of a lot or commercial unit because of other defaults by the lessor.

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

22     (5) A lessee ~~who~~ *that* so revokes has the same rights and duties with  
 23 regard to the goods involved as if the lessee had rejected them.

24     (6) *If a lessee uses the goods after a rightful rejection or justifiable*  
 25 *revocation of acceptance, the following rules apply:*

26     (a) *Any use by the lessee which is unreasonable under the circum-*  
 27 *stances is wrongful as against the lessor or supplier and is an acceptance*  
 28 *only if ratified by the lessor or supplier under K.S.A. 84-2-515(1)(c), and*  
 29 *amendments thereto.*

30     (b) *Any use of the goods which is reasonable under the circumstances*  
 31 *is not wrongful as against the lessor or supplier and is not an acceptance,*  
 32 *but in an appropriated case the lessee shall be obligated to the lessor or*  
 33 *supplier for the value of the use to the lessee.*

34     Sec. 47. K.S.A. 84-2a-522 is hereby amended to read as follows: 84-  
 35 2a-522. (1) Subject to subsection (2) and even ~~though~~ *if* the goods have  
 36 not been shipped, a lessee ~~who~~ *that* has paid a part or all of the rent and  
 37 security for goods identified to a lease contract (K.S.A. 84-2a-217, *and*  
 38 *amendments thereto*) on making and keeping good a tender of any unpaid  
 39 portion of the rent and security due under the lease contract may recover  
 40 the goods identified from the lessor if ~~the lessor becomes insolvent within~~  
 41 ~~10 days after receipt of the first installment of rent and security. :~~

42     (a) *In the case of goods leased by a consumer, the lessor repudiates*  
 43 *or fails to deliver as required by the lease contract; or*

1 (b) in all cases, the lessor becomes insolvent within 10 days after re-  
2 ceipt of the first installment on their rent and security.

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

5 Sec. 48. K.S.A. 84-2a-523 is hereby amended to read as follows: 84-  
6 2a-523. (1) If ~~a~~ the lessee wrongfully rejects or ~~revokes attempts to revoke~~  
7 acceptance of goods or fails to make a payment when due or repudiates  
8 with respect to a part or the whole, ~~then, with respect to any goods in-~~  
9 ~~involved, and with respect to all of the goods if under an installment lease~~  
10 ~~contract the value of the whole lease contract is substantially impaired~~  
11 ~~(K.S.A. 84-2a-510), the lessee is in default under the lease contract with~~  
12 ~~respect to any goods involved and the lessor may do one or more of the~~  
13 ~~following:~~

14 ~~(a) Cancel the lease contract (K.S.A. 84-2a-505(1));~~

15 ~~—(b) proceed respecting goods not identified to the lease contract~~  
16 ~~(K.S.A. 84-2a-524);~~

17 ~~—(c) withhold delivery of the goods and take possession of goods pre-~~  
18 ~~viously delivered (K.S.A. 84-2a-525);~~

19 ~~—(d) stop delivery of the goods by any bailee (K.S.A. 84-2a-526);~~

20 ~~—(e) dispose of the goods and recover damages (K.S.A. 84-2a-527), or~~  
21 ~~retain the goods and recover damages (K.S.A. 84-2a-528), or in a proper~~  
22 ~~case recover rent (K.S.A. 84-2a-529).~~

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

25 ~~—(2) (a) Withhold delivery of the goods and take possession of goods~~  
26 ~~previously delivered under K.S.A. 84-2a-525, and amendments;~~

27 (b) stop delivery of the goods by any carrier or bailee under K.S.A.  
28 84-2a-526, and amendments thereto;

29 (c) proceed under K.S.A. 84-2a-524, and amendments thereto, with  
30 respect to goods still unidentified to the lease contract or unfinished;

31 (d) obtain specific performance under section 37, and amendments  
32 thereto, or recover the rent under K.S.A. 84-2a-529, and amendments  
33 thereto;

34 (e) dispose of the goods and recover damages under K.S.A. 84-2a-  
35 527, and amendments thereto, or retain the goods and recover damages  
36 under K.S.A. 84-2a-528, and amendments thereto;

37 (f) cancel the lease contract under K.S.A. 84-2a-505(1), and amend-  
38 ments thereto;

39 (g) recover liquidated damages under K.S.A. 84-2a-504, and amend-  
40 ments thereto;

41 (h) enforce limited remedies under K.S.A. 84-2a-503, and amend-  
42 ments thereto;

43 (i) exercise any other rights or pursue any other remedies provided

1 *in the lease agreement.*

2 (2) *If a lessee becomes insolvent but is not in default of the lease*  
 3 *contract under subsections (1) or (4), the lessor may:*

4 (a) *Refuse to deliver the goods under K.S.A. 84-2a-525(1), and*  
 5 *amendments thereto;*

6 (b) *take possession of the goods under K.S.A. 84-2a-525(2), and*  
 7 *amendments thereto;*

8 (c) *stop delivery of the goods by any bailee or carrier under K.S.A.*  
 9 *84-2a-526(1), and amendments thereto.*

10 (3) *If a lessor does not fully exercise a right or obtain a remedy to*  
 11 *which the lessor is entitled under subsection (1), the lessor may recover*  
 12 *the loss resulting in the ordinary course of events from the lessee's default*  
 13 *as determined in any reasonable manner, together with incidental or con-*  
 14 *sequential damages allowed under K.S.A. 84-2a-530, and amendments*  
 15 *thereto, less expenses saved in consequence of the lessee's default.*

16 ~~(4)~~ (4) *If a lessee is otherwise in default under a lease contract, the*  
 17 *lessor may exercise the rights and pursue the remedies provided in the*  
 18 *lease contract, which may include a right to cancel the lease. In addition,*  
 19 *unless otherwise provided in the lease contract:*

20 (a) *If the default substantially impairs the value of the lease contract*  
 21 *to the lessor, the lessor may exercise the rights and pursue the remedies*  
 22 *provided in subsection (1) or (2); or*

23 (b) *if the default does not substantially impair the value of the lease*  
 24 *contract to the lessor, the lessor may recover as provided in subsection*  
 25 *(2).*

26 Sec. 49. K.S.A. 84-2a-526 is hereby amended to read as follows: 84-  
 27 2a-526. (1) A lessor may stop delivery of goods in the possession of a  
 28 carrier or other bailee if the lessor discovers the lessee to be insolvent  
 29 ~~and may stop delivery of carload, truckload, planload, or larger ship-~~  
 30 ~~ments of express or freight or~~ *or if the lessee repudiates or fails to make a*  
 31 *payment due before delivery, whether for rent, security or otherwise un-*  
 32 *der the lease contract, or for any other reason the lessor has a right to*  
 33 *withhold or take possession of the goods.*

34 (2) *In pursuing its remedies under subsection (1), the lessor may stop*  
 35 *delivery until*

36 (a) *receipt of the goods by the lessee;*

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

39 (c) *such an acknowledgment to the lessee by a carrier via reshipment*  
 40 *or as warehouseman a warehouse.*

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

43 (b) *After notification, the bailee shall hold and deliver the goods ac-*

1 cording to the directions of the lessor, but the lessor is liable to the bailee  
2 for any ensuing charges or damages.

3 (c) A carrier ~~who~~ *that* has issued a nonnegotiable bill of lading is not  
4 obliged to obey a notification to stop received from a person other than  
5 the consignor.

6 Sec. 50. K.S.A. 84-2a-527 is hereby amended to read as follows: 84-  
7 2a-527. (1) After a default by a lessee under the lease contract of a type  
8 described in section K.S.A. 84-2a-523(1) or ~~(3)~~ (4)(a), *and amendments*  
9 *thereto*, or after the lessor refuses to deliver or takes possession of goods  
10 (K.S.A. 84-2a-525 or 84-2a-526, *and amendments thereto*), or, if agreed,  
11 after other default by a lessee, the lessor may dispose of the goods con-  
12 cerned or the undelivered balance thereof by lease, sale or otherwise.

13 (2) Except as otherwise provided with respect to damages liquidated  
14 in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*), or  
15 otherwise determined pursuant to agreement of the parties (K.S.A. 84-  
16 1-102(3) and K.S.A. 84-2a-503, *and amendments thereto*), ~~and amend-~~  
17 ~~ments thereto~~, if the disposition is by lease agreement substantially similar  
18 to the original lease agreement and the new lease agreement is made in  
19 good faith and in a commercially reasonable manner, the lessor may re-  
20 cover from the lessee as damages ~~(a)~~ (i) accrued and unpaid rent as of  
21 the date of the commencement of the term of the new lease agreement,  
22 ~~(b)~~ (ii) the present value, as of the same date, of the total rent for the  
23 then remaining lease term of the original lease agreement minus present  
24 value, as of the same date, of the rent under the new lease agreement  
25 applicable to that period of the new lease term which is comparable to  
26 the then remaining term of the original lease agreement, and ~~(c)~~ (iii) any  
27 incidental *or consequential* damages allowed under K.S.A. 84-2a-530, *and*  
28 *amendments thereto*, less expenses saved in consequence of the lessee's  
29 default.

30 (3) If the lessor's disposition is by lease agreement that for any reason  
31 does not qualify for treatment under subsection (2), or is by sale or oth-  
32 erwise, the lessor may recover from the lessee as if the lessor had elected  
33 not to dispose of the goods and K.S.A. 84-2a-528, *and amendments*  
34 *thereto*, governs.

35 (4) A subsequent buyer or lessee ~~who~~ *that* buys or leases from the  
36 lessor in good faith for value as a result of a disposition under this section  
37 takes the goods free of the original lease contract and any rights of the  
38 original lessee even ~~though~~ *if* the lessor fails to comply with one or more  
39 of the requirements of this article.

40 (5) The lessor is not accountable to the lessee for any profit made on  
41 any disposition. A lessee ~~who~~ *that* has rightfully rejected or justifiably  
42 revoked acceptance shall account to the lessor for any excess over the  
43 amount of the lessee's security interest (K.S.A. 84-2a-508~~(5)~~ (4), *and*

1 *amendments thereto*).

2 Sec. 51. K.S.A. 84-2a-528 is hereby amended to read as follows: 84-  
3 2a-528. (1) Except as otherwise provided with respect to damages liqui-  
4 dated in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*)  
5 or otherwise determined pursuant to agreement of the parties (K.S.A. 84-  
6 1-102(3) and K.S.A. 84-2a-503, *and amendments thereto*) ~~and amend-~~  
7 ~~ments thereto~~, if a lessor elects to retain the goods or a lessor elects to  
8 dispose of the goods and the disposition is by lease agreement that for  
9 any reason does not qualify for treatment under K.S.A. 84-2a-527(2), *and*  
10 *amendments thereto*, or is by sale or otherwise, the lessor may recover  
11 from the lessee as damages for a default of the type described in K.S.A.  
12 84-2a-523(1) or ~~(3)(a)~~ (4)(a), *and amendments thereto*, or, if agreed, for  
13 other default of the lessee, ~~(a)~~ (i) accrued and unpaid rent as of the date  
14 of default if the lessee has never taken possession of the goods, or, if the  
15 lessee has taken possession of the goods as of the date the lessor repos-  
16 sses the goods or an earlier date on which the lessee makes a tender of  
17 goods to the lessor, ~~(b)~~ (ii) the present value as of the date determined  
18 under clause ~~(a)~~ (i) of the total rent for the then remaining lease term of  
19 the original lease agreement minus the present value as of the same date  
20 of the market rent at the place where the goods are located computed  
21 for the same lease term, and ~~(c)~~ (iii) any incidental *or consequential* dam-  
22 ages allowed under K.S.A. 84-2a-530, *and amendments thereto*, less ex-  
23 penses saved in consequence of the lessee's default.

24 (2) If the measure of damages provided in subsection (1) is inade-  
25 quate to put a lessor in as good a position as performance would have,  
26 the measure of damages is the present value of the profit, including reason-  
27 able overhead, the lessor would have made from full performance by  
28 the lessee, together with any incidental *or consequential* damages allowed  
29 under K.S.A. 84-2a-530, ~~due allowance for costs reasonably incurred and~~  
30 ~~due credit for payment or proceeds of disposition~~ *and amendments*  
31 *thereto*.

32 Sec. 52. K.S.A. 84-2a-529 is hereby amended to read as follows: 84-  
33 2a-529. (1) After default by the lessee under the lease contract of the  
34 type described in K.S.A. 84-2a-523(1) or ~~(3)(a)~~ (4)(a), *and amendments*  
35 *thereto*, or, if agreed, after other default by the lessee, if the lessor com-  
36 plies with subsection (2), the lessor may recover from the lessee as  
37 damages:

38 (a) For goods accepted by the lessee and not repossessed by or ten-  
39 dered to the lessor, and for conforming goods lost or damaged within a  
40 commercially reasonable time after risk of loss passes to the lessee (K.S.A.  
41 84-2a-219, *and amendments thereto*), (i) accrued and unpaid rent as of  
42 the date of entry of judgment in favor of the lessor, (ii) the present value  
43 as of the same date of the rent for the then remaining lease term of the

1 lease agreement, and (iii) any incidental *or consequential* damages al-  
2 lowed under K.S.A. 84-2a-530, *and amendments thereto*, less expenses  
3 saved in consequence of the lessee's default; and

4 (b) for goods identified to the lease contract if the lessor is unable  
5 after reasonable effort to dispose of them at a reasonable price or the  
6 circumstances reasonably indicate that effort will be unavailing, (i) ac-  
7 crued and unpaid rent as of the date of entry of judgment in favor of the  
8 lessor, (ii) the present value as of the same date of the rent for the then  
9 remaining lease term of the lease agreement, and (iii) any incidental *or*  
10 *consequential* damages allowed under K.S.A. 84-2a-530, *and amendments*  
11 *thereto*, less expenses saved in consequence of the lessee's default.

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

15 (3) The lessor may dispose of the goods at any time before collection  
16 of the judgment for damages obtained pursuant to subsection (1). If the  
17 disposition is before the end of the remaining lease term of the lease  
18 agreement, the lessor's recovery against the lessee for damages is gov-  
19 erned by K.S.A. 84-2a-527 or 84-2a-528, *and amendments thereto*, and  
20 the lessor will cause an appropriate credit to be provided against a judg-  
21 ment for damages to the extent that the amount of the judgment exceeds  
22 the recovery available pursuant to K.S.A. 84-2a-527 or 84-2a-528, *and*  
23 *amendments thereto*.

24 (4) Payment of the judgment for damages obtained pursuant to sub-  
25 section (1) entitles the lessee to use and possession of the goods not then  
26 disposed of for the remaining lease term of and in accordance with the  
27 lease agreement.

28 (5) After default by the lessee under the lease contract of the type  
29 described in subsection (1) or ~~(3)(a)~~ (4)(a) of K.S.A. 84-2a-523, *and*  
30 *amendments thereto*, or, if agreed, after other default by the lessee, a  
31 lessor who is held not entitled to rent under this section must nevertheless  
32 by awarded damages for nonacceptance under K.S.A. 84-2a-527 and 84-  
33 2a-528, *and amendments thereto*.

34 Sec. 53. K.S.A. 84-2a-530 is hereby amended to read as follows: 84-  
35 2a-530. (1) Incidental damages to an aggrieved lessor include any com-  
36 mercially reasonable charges, expenses, or commissions incurred in stop-  
37 ping delivery, in the transportation, care and custody of goods after the  
38 lessee's default, in connection with return or disposition of the goods, or  
39 otherwise resulting from the default.

40 (2) *Consequential damages resulting from a lessee's default include*  
41 *any loss resulting from general or particular requirements and needs of*  
42 *which the lessee at the time of contracting had reason to know and which*  
43 *could not reasonably be prevented by disposition under K.S.A. 84-2a-527,*

1 *and amendments thereto, or otherwise.*

2 (3) *In a consumer lease contract, a lessor may not recover conse-*  
3 *quential damages from a consumer.*

4 Sec. 54. K.S.A. 84-2a-531 is hereby amended to read as follows: 84-  
5 2a-531. (1) If a third party so deals with goods that have been identified  
6 to a lease contract as to cause actionable injury to a party to the lease  
7 contract (a) the lessor has a right of action against the third party, and (b)  
8 the lessee also has a right of action against the third party if the lessee:

9 ~~(i)~~ (a) Has a security interest in the goods;  
10 ~~(ii)~~ (b) has an insurable interest in the goods; or  
11 ~~(iii)~~ (c) bears the risk of loss under the lease contract or has since the  
12 injury assumed that risk as against the lessor and the goods have been  
13 converted or destroyed.

14 (2) If at the time of the injury the party plaintiff did not bear the risk  
15 of loss as against the other party to the lease contract and there is no  
16 arrangement between them for disposition of the recovery, ~~such the~~ party  
17 plaintiff's suit or settlement, subject to ~~such the~~ party plaintiff's own in-  
18 terest, is as a fiduciary for the other party to the lease contract.

19 (3) Either party with the consent of the other may sue for the benefit  
20 of ~~whom~~ *which* it may concern.

21 New Sec. 55. (UCC 2a-602.) This act amends existing article 2a of  
22 chapter 84 of the Kansas Statutes Annotated.

23 New Sec. 56. (UCC 2a-603.) (1) This act applies to a transaction  
24 within its scope that is entered into on or after the effective date of this  
25 act.

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

29 (3) This act does not apply to a cause of action that has accrued before  
30 the effective date of this act.

31 New Sec. 57. (UCC 2a-604.) A transaction entered into before the  
32 effective date of this act and the rights, obligations and interests flowing  
33 from that transaction are governed by any statute or other law amended  
34 or repealed by this act as if amendment or repeal had not occurred and  
35 may be terminated, completed, consummated or enforced under that  
36 statute or other law.

37 Sec. 58. K.S.A. 2004 Supp. 84-9-102 is hereby amended to read as  
38 follows: 84-9-102. (a) **Definitions.** In this article:

39 (1) "Accession" means goods that are physically united with other  
40 goods in such a manner that the identity of the original goods is not lost.

41 (2) "Account," except as used in "account for," means a right to pay-  
42 ment of a monetary obligation, whether or not earned by performance,  
43 (A) for property that has been or is to be sold, leased, licensed, assigned,

1 or otherwise disposed of, (B) for services rendered or to be rendered, (C)  
2 for a policy of insurance issued or to be issued, (D) for a secondary ob-  
3 ligation incurred or to be incurred, (E) for energy provided or to be  
4 provided, (F) for the use or hire of a vessel under a charter or other  
5 contract, (G) arising out of the use of a credit or charge card or infor-  
6 mation contained on or for use with the card, or (H) as winnings in a  
7 lottery or other game of chance operated or sponsored by a state, gov-  
8 ernmental unit of a state, or person licensed or authorized to operate the  
9 game by a state or governmental unit of a state. The term includes health-  
10 care-insurance receivables. The term does not include: (A) rights to pay-  
11 ment evidenced by chattel paper or an instrument, (B) commercial tort  
12 claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit  
13 rights or letters of credit, or (F) rights to payment for money or funds  
14 advanced or sold, other than rights arising out of the use of a credit or  
15 charge card or information contained on or for use with the card.

16 (3) “Account debtor” means a person obligated on an account, chattel  
17 paper, or general intangible. The term does not include persons obligated  
18 to pay a negotiable instrument, even if the instrument constitutes part of  
19 chattel paper.

20 (4) “Accounting,” except as used in “accounting for,” means a record:

21 (A) Authenticated by a secured party;

22 (B) indicating the aggregate unpaid secured obligations as of a date  
23 not more than 35 days earlier or 35 days later than the date of the record;  
24 and

25 (C) identifying the components of the obligations in reasonable  
26 detail.

27 (5) “Agricultural lien” means an interest, other than a security inter-  
28 est, in farm products: (A) Which secures payment or performance of an  
29 obligation for:

30 (i) Goods or services furnished in connection with a debtor’s farming  
31 operation; or

32 (ii) rent on real property leased by a debtor in connection with its  
33 farming operation;

34 (B) which is created by statute in favor of a person that:

35 (i) In the ordinary course of its business furnished goods or services  
36 to a debtor in connection with a debtor’s farming operation; or

37 (ii) leased real property to a debtor in connection with the debtor’s  
38 farming operation; and

39 (C) whose effectiveness does not depend on the person’s possession  
40 of the personal property. Agricultural lien shall not include statutory liens.

41 (6) “As-extracted collateral” means: (A) Oil, gas, or other minerals  
42 that are subject to a security interest that:

43 (i) Is created by a debtor having an interest in the minerals before

- 1 extraction; and
- 2 (ii) attaches to the minerals as extracted; or
- 3 (B) accounts arising out of the sale at the wellhead or minehead of
- 4 oil, gas, or other minerals in which the debtor had an interest before
- 5 extraction.
- 6 (7) “Authenticate” means:
- 7 (A) To sign; or
- 8 (B) to execute or otherwise adopt a symbol, or encrypt or similarly
- 9 process a record in whole or in part, with the present intent of the au-
- 10 thenticating person to identify the person and adopt or accept a record.
- 11 (8) “Bank” means an organization that is engaged in the business of
- 12 banking. The term includes savings banks, savings and loan associations,
- 13 credit unions, and trust companies.
- 14 (9) “Cash proceeds” means proceeds that are money, checks, deposit
- 15 accounts, or the like.
- 16 (10) “Certificate of title” means a certificate of title with respect to
- 17 which a statute provides for the security interest in question to be indi-
- 18 cated on the certificate as a condition or result of the security interest’s
- 19 obtaining priority over the rights of a lien creditor with respect to the
- 20 collateral.
- 21 (11) “Chattel paper” means a record or records that evidence both a
- 22 monetary obligation and a security interest in specific goods, a security
- 23 interest in specific goods and software used in the goods, a security in-
- 24 terest in specific goods and license of software used in the goods, a lease
- 25 of specific goods, or a lease of specific goods and license of software used
- 26 in the goods. In this subsection, “monetary obligation” means a monetary
- 27 obligation secured by the goods or owed under a lease of the goods and
- 28 includes a monetary obligation with respect to software used in the goods.
- 29 The term does not include (i) charters or other contracts involving the
- 30 use or hire of a vessel or (ii) records that evidence a right to payment
- 31 arising out of the use of a credit or charge card or information contained
- 32 on or for use with the card. If a transaction is evidenced by records that
- 33 include an instrument or series of instruments, the group of records taken
- 34 together constitutes chattel paper.
- 35 (12) “Collateral” means the property subject to a security interest or
- 36 agricultural lien. The term includes:
- 37 (A) Proceeds to which a security interest attaches;
- 38 (B) accounts, chattel paper, payment intangibles, and promissory
- 39 notes that have been sold; and
- 40 (C) goods that are the subject of a consignment.
- 41 (13) “Commercial tort claim” means a claim arising in tort with re-
- 42 spect to which:
- 43 (A) The claimant is an organization; or

- 1 (B) the claimant is an individual and the claim:  
2 (i) arose in the course of the claimant's business or profession; and  
3 (ii) does not include damages arising out of personal injury to or the  
4 death of an individual.
- 5 (14) "Commodity account" means an account maintained by a com-  
6modity intermediary in which a commodity contract is carried for a com-  
7modity customer.
- 8 (15) "Commodity contract" means a commodity futures contract, an  
9option on a commodity futures contract, a commodity option, or another  
10contract if the contract or option is:
- 11 (A) Traded on or subject to the rules of a board of trade that has  
12been designated as a contract market for such a contract pursuant to  
13federal commodities laws; or
- 14 (B) traded on a foreign commodity board of trade, exchange, or mar-  
15ket, and is carried on the books of a commodity intermediary for a com-  
16modity customer.
- 17 (16) "Commodity customer" means a person for which a commodity  
18intermediary carries a commodity contract on its books.
- 19 (17) "Commodity intermediary" means a person that:
- 20 (A) Is registered as a futures commission merchant under federal  
21commodities law; or
- 22 (B) in the ordinary course of its business provides clearance or set-  
23tlement services for a board of trade that has been designated as a contract  
24market pursuant to federal commodities law.
- 25 (18) "Communicate" means:
- 26 (A) To send a written or other tangible record;
- 27 (B) to transmit a record by any means agreed upon by the persons  
28sending and receiving the record; or
- 29 (C) in the case of transmission of a record to or by a filing office, to  
30transmit a record by any means prescribed by filing-office rule.
- 31 (19) "Consignee" means a merchant to which goods are delivered in  
32a consignment.
- 33 (20) "Consignment" means a transaction, regardless of its form, in  
34which a person delivers goods to a merchant for the purpose of sale and:
- 35 (A) The merchant:
- 36 (i) Deals in goods of that kind under a name other than the name of  
37the person making delivery;
- 38 (ii) is not an auctioneer; and
- 39 (iii) is not generally known by its creditors to be substantially engaged  
40in selling the goods of others;
- 41 (B) with respect to each delivery, the aggregate value of the goods is  
42\$1,000 or more at the time of delivery;
- 43 (C) the goods are not consumer goods immediately before delivery;

1 and

2 (D) the transaction does not create a security interest that secures an  
3 obligation.

4 (21) "Consignor" means a person that delivers goods to a consignee  
5 in a consignment.

6 (22) "Consumer debtor" means a debtor in a consumer transaction.

7 (23) "Consumer goods" means goods that are used or bought for use  
8 primarily for personal, family, or household purposes.

9 (24) "Consumer-goods transaction" means a consumer transaction in  
10 which:

11 (A) An individual incurs an obligation primarily for personal, family,  
12 or household purposes; and

13 (B) a security interest in consumer goods secures the obligation.

14 (25) "Consumer obligor" means an obligor who is an individual and  
15 who incurred the obligation as part of a transaction entered into primarily  
16 for personal, family, or household purposes.

17 (26) "Consumer transaction" means a transaction in which (i) an in-  
18 dividual incurs an obligation primarily for personal, family, or household  
19 purposes, (ii) a security interest secures the obligation, and (iii) the col-  
20 lateral is held or acquired primarily for personal, family, or household  
21 purposes. The term includes consumer-goods transactions.

22 (27) "Continuation statement" means an amendment of a financing  
23 statement which:

24 (A) Identifies, by its file number, the initial financing statement to  
25 which it relates; and

26 (B) indicates that it is a continuation statement for, or that it is filed  
27 to continue the effectiveness of, the identified financing statement.

28 (28) "Debtor" means:

29 (A) A person having an interest, other than a security interest or other  
30 lien, in the collateral, whether or not the person is an obligor;

31 (B) a seller of accounts, chattel paper, payment intangibles, or prom-  
32 issory notes; or

33 (C) a consignee.

34 (29) "Deposit account" means a demand, time, savings, passbook, or  
35 similar account maintained with a bank. The term does not include in-  
36 vestment property or accounts evidenced by an instrument.

37 (30) "Document" means a document of title or a receipt of the type  
38 described in subsection (2) of K.S.A. 84-7-201, and amendments thereto.

39 (31) "Electronic chattel paper" means chattel paper evidenced by a  
40 record or records consisting of information stored in an electronic  
41 medium.

42 (32) "Encumbrance" means a right, other than an ownership interest,  
43 in real property. The term includes mortgages and other liens on real

1 property.

2 (33) "Equipment" means goods other than inventory, farm products,  
3 or consumer goods.

4 (34) "Farm products" means goods, other than standing timber, with  
5 respect to which the debtor is engaged in a farming operation and which  
6 are: (A) Crops grown, growing, or to be grown, including:

7 (i) Crops produced on trees, vines, and bushes; and

8 (ii) aquatic goods produced in aquacultural operations;

9 (B) livestock, born or unborn, including aquatic goods produced in  
10 aquacultural operations;

11 (C) supplies used or produced in a farming operation; or

12 (D) products of crops or livestock in their unmanufactured states.

13 (35) "Farming operation" means raising, cultivating, propagating, fat-  
14 tening, grazing, or any other farming, livestock, or aquacultural operation.

15 (36) "File number" means the number assigned to an initial financing  
16 statement pursuant to subsection (a) of K.S.A. 2004 Supp. 84-9-519, and  
17 amendments thereto.

18 (37) "Filing office" means an office designated in K.S.A. 2004 Supp.  
19 84-9-501, and amendments thereto, as the place to file a financing  
20 statement.

21 (38) "Filing-office rule" means a rule adopted pursuant to K.S.A.  
22 2004 Supp. 84-9-526, and amendments thereto.

23 (39) "Financing statement" means a record or records composed of  
24 an initial financing statement and any filed record relating to the initial  
25 financing statement.

26 (40) "Fixture filing" means the filing of a financing statement cov-  
27 ering goods that are or are to become fixtures and satisfying subsections  
28 (a) and (b) of K.S.A. 2004 Supp. 84-9-502, and amendments thereto. The  
29 term includes the filing of a financing statement covering goods of a  
30 transmitting utility which are or are to become fixtures.

31 (41) "Fixtures" means goods that have become so related to partic-  
32 ular real property that an interest in them arises under real property law.

33 (42) "General intangible" means any personal property, including  
34 things in action, other than accounts, chattel paper, commercial tort  
35 claims, deposit accounts, documents, goods, instruments, investment  
36 property, letter-of-credit rights, letters of credit, money, and oil, gas, or  
37 other minerals before extraction. The term includes payment intangibles  
38 and software.

39 (43) "Good faith" means honesty in fact and the observance of rea-  
40 sonable commercial standards of fair dealing.

41 (44) "Goods" means all things that are movable when a security in-  
42 terest attaches. The term includes (A) fixtures, (B) standing timber that  
43 is to be cut and removed under a conveyance or contract for sale, (C) the

1 unborn young of animals, (D) crops grown, growing, or to be grown, even  
2 if the crops are produced on trees, vines, or bushes, and (E) manufactured  
3 homes. The term also includes a computer program embedded in goods  
4 and any supporting information provided in connection with a transaction  
5 relating to the program if (A) the program is associated with the goods in  
6 such a manner that it customarily is considered part of the goods, or (B)  
7 by becoming the owner of the goods, a person acquires a right to use the  
8 program in connection with the goods. The term does not include a com-  
9 puter program embedded in goods that consist solely of the medium in  
10 which the program is embedded. The term also does not include ac-  
11 counts, chattel paper, commercial tort claims, deposit accounts, docu-  
12 ments, general intangibles, instruments, investment property, letter-of-  
13 credit rights, letters of credit, money, or oil, gas, or other minerals before  
14 extraction.

15 (45) “Governmental unit” means a subdivision, agency, department,  
16 county, parish, municipality, or other unit of the government of the  
17 United States, a state, or a foreign country. The term includes an organ-  
18 ization having a separate corporate existence if the organization is eligible  
19 to issue debt on which interest is exempt from income taxation under the  
20 laws of the United States.

21 (46) “Health-care-insurance receivable” means an interest in or claim  
22 under a policy of insurance which is a right to payment of a monetary  
23 obligation for health-care goods or services provided.

24 (47) “Instrument” means a negotiable instrument, a writing that  
25 would otherwise qualify as a certificate of deposit (defined in subsection  
26 (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the  
27 writing contains a limitation on transfer, or any other writing that evi-  
28 dences a right to the payment of a monetary obligation, is not itself a  
29 security agreement or lease, and is of a type that in ordinary course of  
30 business is transferred by delivery with any necessary indorsement or  
31 assignment. The term does not include (i) investment property, (ii) letters  
32 of credit, or (iii) writings that evidence a right to payment arising out of  
33 the use of a credit or charge card or information contained on or for use  
34 with the card.

35 (48) “Inventory” means goods, other than farm products, which:

36 (A) Are leased by a person as lessor;

37 (B) are held by a person for sale or lease or to be furnished under a  
38 contract of service;

39 (C) are furnished by a person under a contract of service; or

40 (D) consist of raw materials, work in process, or materials used or  
41 consumed in a business.

42 (49) “Investment property” means a security, whether certificated or  
43 uncertificated, security entitlement, securities account, commodity con-

1 tract, or commodity account.

2 (50) “Jurisdiction of organization,” with respect to a registered or-  
3 ganization, means the jurisdiction under whose law the organization is  
4 organized.

5 (51) “Letter-of-credit right” means a right to payment or perform-  
6 ance under a letter of credit, whether or not the beneficiary has de-  
7 manded or is at the time entitled to demand payment or performance.  
8 The term does not include the right of a beneficiary to demand payment  
9 or performance under a letter of credit.

10 (52) “Lien creditor” means:

11 (A) A creditor that has acquired a lien on the property involved by  
12 attachment, levy, or the like;

13 (B) an assignee for benefit of creditors from the time of assignment;

14 (C) a trustee in bankruptcy from the date of the filing of the petition;

15 or

16 (D) a receiver in equity from the time of appointment.

17 (53) “Manufactured home” means a structure, transportable in one  
18 or more sections, which, in the traveling mode, is eight body feet or more  
19 in width or 40 body feet or more in length, or, when erected on site, is  
20 320 or more square feet, and which is built on a permanent chassis and  
21 designed to be used as a dwelling with or without a permanent foundation  
22 when connected to the required utilities, and includes the plumbing,  
23 heating, air conditioning, and electrical systems contained therein. The  
24 term includes any structure that meets all of the requirements of this  
25 paragraph except the size requirements and with respect to which the  
26 manufacturer voluntarily files a certification required by the United States  
27 Secretary of Housing and Urban Development and complies with the  
28 standards established under Title 42 of the United States Code.

29 (54) “Manufactured-home transaction” means a secured transaction:

30 (A) That creates a purchase-money security interest in a manufac-  
31 tured home, other than a manufactured home held as inventory; or

32 (B) in which a manufactured home, other than a manufactured home  
33 held as inventory, is the primary collateral.

34 (55) “Mortgage” means a consensual interest in real property, in-  
35 cluding fixtures, which secures payment or performance of an obligation.

36 (56) “New debtor” means a person that becomes bound as a debtor  
37 under subsection (d) of K.S.A. 2004 Supp. 84-9-203, and amendments  
38 thereto, by a security agreement previously entered into by another  
39 person.

40 (57) “New value” means (A) money, (B) money’s worth in property,  
41 services, or new credit, or (C) release by a transferee of an interest in  
42 property previously transferred to the transferee. The term does not in-  
43 clude an obligation substituted for another obligation.

- 1 (58) “Noncash proceeds” means proceeds other than cash proceeds.
- 2 (59) “Obligor” means a person that, with respect to an obligation  
3 secured by a security interest in or an agricultural lien on the collateral,  
4 (A) owes payment or other performance of the obligation, (B) has pro-  
5 vided property other than the collateral to secure payment or other per-  
6 formance of the obligation, or (C) is otherwise accountable in whole or  
7 in part for payment or other performance of the obligation. The term  
8 does not include issuers or nominated persons under a letter of credit.
- 9 (60) “Original debtor” except as used in K.S.A. 2004 Supp. 84-9-  
10 310(c), and amendments thereto, means a person that, as debtor, entered  
11 into a security agreement to which a new debtor has become bound under  
12 subsection (d) of K.S.A. 2004 Supp. 84-9-203, and amendments thereto.
- 13 (61) “Payment intangible” means a general intangible under which  
14 the account debtor’s principal obligation is a monetary obligation.
- 15 (62) “Person related to,” with respect to an individual, means:  
16 (A) The spouse of the individual;  
17 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;  
18 (C) an ancestor or lineal descendant of the individual or the individ-  
19 ual’s spouse; or  
20 (D) any other relative, by blood or marriage, of the individual or the  
21 individual’s spouse who shares the same home with the individual.
- 22 (63) “Person related to,” with respect to an organization, means:  
23 (A) A person directly or indirectly controlling, controlled by, or under  
24 common control with the organization;  
25 (B) an officer or director of, or a person performing similar functions  
26 with respect to, the organization;  
27 (C) an officer or director of, or a person performing similar functions  
28 with respect to, a person described in subparagraph (A);  
29 (D) the spouse of an individual described in subparagraph (A), (B),  
30 or (C); or  
31 (E) an individual who is related by blood or marriage to an individual  
32 described in subparagraph (A), (B), (C), or (D) and shares the same home  
33 with the individual.
- 34 (64) “Proceeds” except as used in K.S.A. 2004 Supp. 84-9-609(b), and  
35 amendments thereto, means the following property:  
36 (A) Whatever is acquired upon the sale, lease, license, exchange, or  
37 other disposition of collateral;  
38 (B) whatever is collected on, or distributed on account of, collateral;  
39 (C) rights arising out of collateral;  
40 (D) to the extent of the value of collateral, claims arising out of the  
41 loss, nonconformity, or interference with the use of, defects or infringe-  
42 ment of rights in, or damage to, the collateral; or  
43 (E) to the extent of the value of collateral and to the extent payable

- 1 to the debtor or the secured party, insurance payable by reason of the  
2 loss or nonconformity of, defects or infringement of rights in, or damage  
3 to, the collateral.
- 4 (65) “Promissory note” means an instrument that evidences a prom-  
5 ise to pay a monetary obligation, does not evidence an order to pay, and  
6 does not contain an acknowledgment by a bank that the bank has received  
7 for deposit a sum of money or funds.
- 8 (66) “Proposal” means a record authenticated by a secured party  
9 which includes the terms on which the secured party is willing to accept  
10 collateral in full or partial satisfaction of the obligation it secures pursuant  
11 to K.S.A. 2004 Supp. 84-9-620, 84-9-621 and 84-9-622, and amendments  
12 thereto.
- 13 (67) “Pursuant to commitment,” with respect to an advance made or  
14 other value given by a secured party, means pursuant to the secured  
15 party’s obligation, whether or not a subsequent event of default or other  
16 event not within the secured party’s control has relieved or may relieve  
17 the secured party from its obligation.
- 18 (68) “Record,” except as used in “for record,” “of record,” “record  
19 or legal title,” and “record owner,” means information that is inscribed  
20 on a tangible medium or which is stored in an electronic or other medium  
21 and is retrievable in perceivable form.
- 22 (69) “Registered organization” means an organization organized  
23 solely under the law of a single state or the United States and as to which  
24 the state or the United States must maintain a public record showing the  
25 organization to have been organized.
- 26 (70) “Secondary obligor” means an obligor to the extent that:  
27 (A) The obligor’s obligation is secondary; or  
28 (B) The obligor has a right of recourse with respect to an obligation  
29 secured by collateral against the debtor, another obligor, or property of  
30 either.
- 31 (71) “Secured party” means:  
32 (A) A person in whose favor a security interest is created or provided  
33 for under a security agreement, whether or not any obligation to be se-  
34 cured is outstanding;  
35 (B) a person that holds an agricultural lien;  
36 (C) a consignor;  
37 (D) a person to which accounts, chattel paper, payment intangibles,  
38 or promissory notes have been sold;  
39 (E) a trustee, indenture trustee, agent, collateral agent, or other rep-  
40 resentative in whose favor a security interest or agricultural lien is created  
41 or provided for; or  
42 (F) a person that holds a security interest arising under K.S.A. 84-2-  
43 401, 84-2-505, subsection (3) of 84-2-711, subsection ~~(5)~~ (4) of 84-2a-508,

1 84-4-210 and 84-5-118, and amendments thereto.

2 (72) "Security agreement" means an agreement that creates or pro-  
3 vides for a security interest.

4 (73) "Send," in connection with a record or notification, means:

5 (A) To deposit in the mail, deliver for transmission, or transmit by  
6 any other usual means of communication, with postage or cost of trans-  
7 mission provided for, addressed to any address reasonable under the cir-  
8 cumstances; or

9 (B) to cause the record or notification to be received within the time  
10 that it would have been received if properly sent under subparagraph (A).

11 (74) "Software" means a computer program and any supporting in-  
12 formation provided in connection with a transaction relating to the pro-  
13 gram. The term does not include a computer program that is included in  
14 the definition of goods.

15 (75) "State" means a state of the United States, the District of Co-  
16 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
17 insular possession subject to the jurisdiction of the United States.

18 (76) "Statutory lien" means liens created by K.S.A. 2-1319, 2-2608,  
19 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220,  
20 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and  
21 84-7-209, and amendments thereto.

22 (77) "Supporting obligation" means a letter-of-credit right or second-  
23 ary obligation that supports the payment or performance of an account,  
24 chattel paper, a document, a general intangible, an instrument, or in-  
25 vestment property.

26 (78) "Tangible chattel paper" means chattel paper evidenced by a  
27 record or records consisting of information that is inscribed on a tangible  
28 medium.

29 (79) "Termination statement" means an amendment of a financing  
30 statement which:

31 (A) Identifies, by its file number, the initial financing statement to  
32 which it relates; and

33 (B) indicates either that it is a termination statement or that the iden-  
34 tified financing statement is no longer effective.

35 (80) "Transmitting utility" means a person primarily engaged in the  
36 business of:

37 (A) Operating a railroad, subway, street railway, or trolley bus;

38 (B) transmitting communications electrically, electromagnetically, or  
39 by light;

40 (C) transmitting goods by pipeline or sewer; or

41 (D) transmitting or producing and transmitting electricity, steam, gas,  
42 or water.

43 (b) **Definitions in other articles.** The following definitions in other

1 articles apply to this article:

2 “Applicant” K.S.A. 84-5-102, *and amendments thereto*

3 “Beneficiary” K.S.A. 84-5-102, *and amendments thereto*

4 “Broker” K.S.A. 84-8-102, *and amendments thereto*

5 “Certificated security” K.S.A. 84-8-102, *and amendments thereto*

6 “Check” K.S.A. 84-3-104, *and amendments thereto*

7 “Clearing corporation” K.S.A. 84-8-102, *and amendments thereto*

8 “Contract for sale” K.S.A. 84-2-106, *and amendments thereto*

9 “Customer” K.S.A. 84-4-104, *and amendments thereto*

10 “Entitlement holder” K.S.A. 84-8-102, *and amendments thereto*

11 “Financial asset” K.S.A. 84-8-102, *and amendments thereto*

12 “Holder in due course” K.S.A. 84-3-302, *and amendments thereto*

13 “Issuer” (with respect to a letter of

14 credit or letter-of-credit right) K.S.A. 84-5-102, *and amendments thereto*

15 “Issuer” (with respect to a security) K.S.A. 84-8-102, *and amendments thereto*

16 “Lease” K.S.A. 84-2a-103, *and amendments thereto*

17 “Lease agreement” K.S.A. 84-2a-103, *and amendments thereto*

18 “Lease contract” K.S.A. 84-2a-103, *and amendments thereto*

19 “Leasehold interest” K.S.A. 84-2a-103, *and amendments thereto*

20 “Lessee” K.S.A. 84-2a-103, *and amendments thereto*

21 “Lessee in ordinary course of business” K.S.A. 84-2a-103, *and amendments thereto*

22 “Lessor” K.S.A. 84-2a-103, *and amendments thereto*

23 “Lessor’s residual interest” K.S.A. 84-2a-103, *and amendments thereto*

24 “Letter of credit” K.S.A. 84-5-102, *and amendments thereto*

25 “Merchant” K.S.A. 84-2-104, *and amendments thereto*

26 “Negotiable instrument” K.S.A. 84-3-104, *and amendments thereto*

27 “Nominated person” K.S.A. 84-5-102, *and amendments thereto*

28 “Note” K.S.A. 84-3-104, *and amendments thereto*

29 “Proceeds of a letter of credit” K.S.A. 84-5-114, *and amendments thereto*

30 “Prove” K.S.A. 84-3-103, *and amendments thereto*

31 “Sale” K.S.A. 84-2-106, *and amendments thereto*

32 “Securities account” K.S.A. 84-8-501, *and amendments thereto*

33 “Securities intermediary” K.S.A. 84-8-102, *and amendments thereto*

34 “Security” K.S.A. 84-8-102, *and amendments thereto*

35 “Security certificate” K.S.A. 84-8-102, *and amendments thereto*

36 “Security entitlement” K.S.A. 84-8-102, *and amendments thereto*

37 “Uncertificated security” K.S.A. 84-8-102, *and amendments thereto*

38 (c) **Article 1 definitions and principles.** Article 1 of *chapter 84 of*

39 *the Kansas Statutes Annotated, and amendments thereto*, contains general

40 definitions and principles of construction and interpretation applicable

41 throughout this article.

42 Sec. 59. K.S.A. 2004 Supp. 84-9-109 is hereby amended to read as

43 follows: 84-9-109. (a) **General scope of article.** Except as otherwise

1 provided in subsections (c) and (d), this article applies to:

- 2 (1) A transaction, regardless of its form, that creates a security interest
- 3 in personal property or fixtures by contract;
- 4 (2) an agricultural lien;
- 5 (3) a sale of accounts, chattel paper, payment intangibles, or prom-
- 6 issory notes;
- 7 (4) a consignment;
- 8 (5) a security interest arising under K.S.A. 84-2-401, 84-2-505, sub-
- 9 section (3) of 84-2-711 or subsection ~~(5)~~ (4) of 84-2a-508, and amend-
- 10 ments thereto, as provided in K.S.A. 2004 Supp. 84-9-110, and amend-
- 11 ments thereto; and
- 12 (6) a security interest arising under K.S.A. 84-4-201 or 84-5-118, and
- 13 amendments thereto.

14 (b) **Security interest in secured obligation.** The application of this

15 article to a security interest in a secured obligation is not affected by the

16 fact that the obligation is itself secured by a transaction or interest to

17 which this article does not apply.

18 (c) **Extent to which article does not apply.** This article does not

19 apply to the extent that:

- 20 (1) A statute, regulation, or treaty of the United States preempts this
- 21 article;
- 22 (2) another statute of this state expressly governs the creation, per-
- 23 fection, priority or enforcement of a security interest created by this state
- 24 or a governmental unit of this state;
- 25 (3) a statute of another state, a foreign country, or a governmental
- 26 unit of another state or a foreign country, other than a statute generally
- 27 applicable to security interests, expressly governs creation, perfection,
- 28 priority, or enforcement of a security interest created by the state, coun-
- 29 try, or governmental unit; or
- 30 (4) the rights of a transferee beneficiary or nominated person under
- 31 a letter of credit are independent and superior under K.S.A. 84-5-114
- 32 and amendments thereto.

33 (d) **Inapplicability of article.** This article does not apply to:

- 34 (1) A landlord's lien, other than an agricultural lien;
- 35 (2) a statutory lien, or a lien given by statute or other rule of law for
- 36 services or materials, but K.S.A. 2004 Supp. 84-9-333, and amendments
- 37 thereto, applies with respect to priority of the lien;
- 38 (3) an assignment of a claim for wages, salary, or other compensation
- 39 of an employee;
- 40 (4) a sale of accounts, chattel paper, payment intangibles, or prom-
- 41 issory notes as part of a sale of the business out of which they arose;
- 42 (5) an assignment of accounts, chattel paper, payment intangibles, or
- 43 promissory notes which is for the purpose of collection only;

- 1 (6) an assignment of a right to payment under a contract to an as-  
2 signee that is also obligated to perform under the contract;
- 3 (7) an assignment of a single account, payment intangible, or prom-  
4 issory note to an assignee in full or partial satisfaction of a preexisting  
5 indebtedness;
- 6 (8) a transfer of an interest in or an assignment of a claim under a  
7 policy of insurance, other than an assignment by or to a health-care pro-  
8 vider of a health-care-insurance receivable and any subsequent assign-  
9 ment of the right to payment, but K.S.A. 2004 Supp. 84-9-315 and 84-9-  
10 322, and amendments thereto, apply with respect to proceeds and  
11 priorities in proceeds;
- 12 (9) an assignment of a right represented by a judgment, other than a  
13 judgment taken on a right to payment that was collateral;
- 14 (10) a right of recoupment or set-off, but:
  - 15 (A) K.S.A. 2004 Supp. 84-9-340, and amendments thereto, applies  
16 with respect to the effectiveness of rights of recoupment or set-off against  
17 deposit accounts; and
  - 18 (B) K.S.A. 2004 Supp. 84-9-404, and amendments thereto, applies  
19 with respect to defenses or claims of an account debtor;
- 20 (11) the creation or transfer of an interest in or lien on real property,  
21 including a lease or rents thereunder, except to the extent that provision  
22 is made for:
  - 23 (A) Liens on real property in K.S.A. 2004 Supp.84-9-203 and 84-9-  
24 308, and amendments thereto;
  - 25 (B) fixtures in K.S.A. 2004 Supp.84-9-334, and amendments thereto;
  - 26 (C) fixture filings in K.S.A. 2004 Supp. 84-9-501, 84-9-502, 84-9-512,  
27 84-9-516 and 84-9-519, and amendments thereto; and
  - 28 (D) security agreements covering personal and real property in  
29 K.S.A. 2004 Supp. 84-9-604, and amendments thereto;
- 30 (12) an assignment of a claim arising in tort, other than a commercial  
31 tort claim, but K.S.A. 2004 Supp. 84-9-315 and 84-9-322, and amend-  
32 ments thereto, apply with respect to proceeds and priorities in proceeds;
- 33 (13) an assignment of a deposit account in a consumer transaction,  
34 but K.S.A. 2004 Supp. 84-9-315 and 84-9-322, and amendments thereto,  
35 apply with respect to proceeds and priorities in proceeds;
- 36 (14) an assignment of rights in or under:
  - 37 (A) A claim or right to receive benefits under any workers compen-  
38 sation, industrial accident or similar statute or regulation which provides  
39 benefits for occupational injury or illness; or
  - 40 (B) a deferred payment or benefit arrangement that enables a par-  
41 ticipant to exclude or defer recognition of income for purposes of federal  
42 or state income taxation; or
  - 43 (15) a transfer by a government or governmental agency or

1 subdivision.

2 Sec. 60. K.S.A. 2004 Supp. 84-9-110 is hereby amended to read as  
3 follows: 84-9-110. A security interest arising under K.S.A. 84-2-401, 84-  
4 2-505, 84-2-711(3) or 84-2a-508~~(5)~~ (4), and amendments thereto, is sub-  
5 ject to this article. However, until the debtor obtains possession of the  
6 goods:

- 7 (1) The security interest is enforceable, even if K.S.A. 2004 Supp. 84-  
8 9-203(b)(3), and amendments thereto, has not been satisfied;
- 9 (2) filing is not required to perfect the security interest;
- 10 (3) the rights of the secured party after default by the debtor are  
11 governed by article 2 or 2a; and
- 12 (4) the security interest has priority over a conflicting security interest  
13 created by the debtor.

14 Sec. 61. K.S.A. 2004 Supp. 84-9-309 is hereby amended to read as  
15 follows: 84-9-309. The following security interests are perfected when  
16 they attach:

- 17 (1) A purchase-money security interest in consumer goods, except as  
18 otherwise provided in K.S.A. 2004 Supp.84-9-311(b) and amendments  
19 thereto with respect to consumer goods that are subject to a statute or  
20 treaty described in K.S.A. 2004 Supp.84-9-311(a), and amendments  
21 thereto;
- 22 (2) an assignment of accounts or payment intangibles which does not  
23 by itself or in conjunction with other assignments to the same assignee  
24 transfer a significant part of the assignor's outstanding accounts or pay-  
25 ment intangibles;
- 26 (3) a sale of a payment intangible;
- 27 (4) a sale of a promissory note;
- 28 (5) a security interest created by the assignment of a health-care-  
29 insurance receivable to the provider of the health-care goods or services;
- 30 (6) a security interest arising under K.S.A. 84-2-401, 84-2-505, 84-2-  
31 711(3), or 84-2a-508~~(5)~~ (4), and amendments thereto, until the debtor  
32 obtains possession of the collateral;
- 33 (7) a security interest of a collecting bank arising under K.S.A. 84-4-  
34 210 , and amendments thereto;
- 35 (8) a security interest of an issuer or nominated person arising under  
36 K.S.A. 84-5-118 , and amendments thereto;
- 37 (9) a security interest arising in the delivery of a financial asset under  
38 K.S.A. 2004 Supp. 84-9-206, and amendments thereto;
- 39 (10) a security interest in investment property created by a broker or  
40 securities intermediary;
- 41 (11) a security interest in a commodity contract or a commodity ac-  
42 count created by a commodity intermediary;
- 43 (12) an assignment for the benefit of all creditors of the transferor

1 and subsequent transfers by the assignee thereunder; and  
2 (13) a security interest created by an assignment of a beneficial in-  
3 terest in a decedent's estate.  
4 Sec. 62. K.S.A. 2004 Supp. 84-9-325 is hereby amended to read as  
5 follows: 84-9-325. (a) **Subordination of security interest in trans-**  
6 **ferred collateral.** Except as otherwise provided in subsection (b), a se-  
7 curity interest created by a debtor is subordinate to a security interest in  
8 the same collateral created by another person if:  
9 (1) The debtor acquired the collateral subject to the security interest  
10 created by the other person;  
11 (2) the security interest created by the other person was perfected  
12 when the debtor acquired the collateral; and  
13 (3) there is no period thereafter when the security interest is  
14 unperfected.  
15 (b) **Limitation of subsection (a) subordination.** Subsection (a)  
16 subordinates a security interest only if the security interest:  
17 (1) Otherwise would have priority solely under K.S.A. 2004 Supp.84-  
18 9-322(a) or 84-9-324, and amendments thereto; or  
19 (2) arose solely under K.S.A. 84-2-711(3) or 84-2a-508~~(5)~~(4), and  
20 amendments thereto.  
21 Sec. 63. K.S.A. 84-2a-104, 84-2a-105, 84-2a-107, 84-2a-108, 84-2a-  
22 109, 84-2a-201, 84-2a-202, 84-2a-203, 84-2a-204, 84-2a-205, 84-2a-208,  
23 84-2a-211, 84-2a-212, 84-2a-214, 84-2a-219, 84-2a-220, 84-2a-221, 84-2a-  
24 304, 84-2a-305, 84-2a-306, 84-2a-310, 84-2a-401, 84-2a-402, 84-2a-404,  
25 84-2a-405, 84-2a-406, 84-2a-503, 84-2a-504, 84-2a-506, 84-2a-508, 84-2a-  
26 509, 84-2a-510, 84-2a-511, 84-2a-512, 84-2a-513, 84-2a-514, 84-2a-515,  
27 84-2a-516, 84-2a-517, 84-2a-521, 84-2a-522, 84-2a-523, 84-2a-526, 84-2a-  
28 527, 84-2a-528, 84-2a-529, 84-2a-530 and 84-2a-531 and K.S.A. 2004  
29 Supp. 84-2a-103, 84-2a-303, 84-2a-309, 84-9-102, 84-9-109, 84-9-110, 84-  
30 9-309 and 84-9-325 are hereby repealed.  
31 Sec. 64. This act shall take effect and be in force from and after July  
32 1, 2006, and its publication in the statute book.